Final Environmental Assessment

Prepared For Secret Beach Properties, LLC
June 2011

Prepared By

SSFM INTERNATIONAL

501 Sumner Street, Suite 620
Honolulu, Hawai'i 96817

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Project Summary

Project Name:	Secret Beach Properties Existing Trail Improvements
Applicant Action by:	Secret Beach Properties, LLC (SBP) P.O. Box 781, Kīlauea, Hawaiʻi 96754 Contact: Michele and Justin Hughes Phone: 808-639-0904
Accepting Authority:	State of Hawaiʻi Department of Land and Natural Resources Office of Conservation and Coastal Lands P.O Box 621, Honolulu, Hawaiʻi 06809 Contact: Mr. Michael Cain Phone: 808-587-0048
Proposed Action:	SBP is seeking the approval of after-the-fact permits from the State Department of Land and Natural Resources (DLNR) and County of Kaua'i Planning Department for an existing trail network along the coastal bluff of Kīlauea Town's northwest shores. Concurrent with the after-the-fact application for existing trails, SBP will be applying for Conservation District Use approval of the following combined actions: 1. Uses associated with an existing trail system consisting of about two (2) miles of trails stretching across 23.8-acres of a parcel mostly within the State Conservation District and County Special Management Area. 2. Actions associated with land management activities to control the spread of invasive plants and replant affected areas with native vegetation. 3. Actions to remove dead, downed and hazardous ironwood trees. 4. Actions to construct a code-compliant barrier fence along the property boundary bordering neighboring properties.
Determination:	Finding of No Significant Impact (FONSI)
Permits/Approvals Required:	• DLNR Conservation District Use Permit • County of Kauaʻi Special Management Area Use Permit (minor) and Shoreline Setback Determination
EA Prepared by:	SSFM International, Inc. 501 Sumner Street, Suite 620, Honolulu Hawaiʻi 96817 Contact: Ms. Robyn Loudermilk, AICP Phone: 808-531-1308

Project Location:	The project is located on a 23.8 acre parcel off Kauapea Road in Kīlauea on the North Shore of Kaua'i.
Tax Map Key:	5-2-05: 036
Existing Uses:	Approximately 17.3 acres of coastal forest on a steep basaltic bluff within the Conservation District. The remaining 6.5 acres of the property is in active agricultural use for the cultivation of tropical flowers and ornamental plants.
State Land Use District:	Agricultural (6.5 acres) and Conservation (17.3 acres)
Conservation District Subzone:	Limited
Community Plan:	Agricultural (6.5 acres) and Open Space (17.3 acres)
Zoning:	Agricultural (6.5 acres) and Not Zoned (17.3 acres)
Special Management Area:	Within SMA
Summary of Anticipated Impacts:	No significant impacts are anticipated to result from the approval of proposed project actions. Anticipated impacts will generally be limited to the subject property and would include: • Cultural shoreline access consideration for the Native Hawaiian community to enter Kauapea Beach. • Impacts to flora and fauna involving the protection of the federally designated critical habitats and Federal and State listed threatened and endangered species • Temporary increases in ambient noise and fugitive dust associated with land management activities • Construction impacts on vegetation and soils related to the establishment of a fence along the mauka property boundary. For a full list of the anticipated impacts, see Table 4: Summary of Potential Impacts. An overall beneficial impact is expected by emergency responders using the trail network as an alternative access to Kauapea Beach.

Table of Contents

CHAPTER 1: INTRODUCTION **1**
1.1: Project Purpose and Need **1**
1.2: Project Background **1**
1.3: Project Description **5**
1.4: Chapter 343, Hawai'i Revised Statutes **10**
1.5: Kilauea Neighborhood Association Meeting **10**
CHAPTER 2: EXISTING PHYSICAL & BIOLOGICAL ENVRIONMENT AND POTENTIAL IMPACTS **11**
2.1: Project Location and Surrounding Uses **11**
2.1.1: Existing Conditions 11
2.2: Land Use Designations **11**
2.2.1: Existing Conditions 11
2.2.2: Potential Impacts on Land Use 20
2.3: Climate **20**
2.3.1: Existing Conditions 20
2.3.2: Potential Impacts 21
2.4: Geology, Topography, and Soils **21**
2.4.1: Existing Conditions 21
2.4.2: Potential Impacts 25
2.5: Natural Hazards **25**
2.5.1: Existing Conditions 25
2.5.2: Potential Impacts 29
2.6: Hydrology **29**
2.6.1: Existing Conditions 29
2.6.2: Potential Impacts 31
2.7: Air Quality **31**
2.7.1: Existing Conditions 31
2.7.2: Potential Impacts 33
2.8: Noise Quality **33**
2.8.1: Existing Conditions 33
2.8.2: Potential Impacts 34
2.9: Visual Resources **34**
2.9.1: Existing Conditions 34
2.9.2: Potential Impacts 34
2.10: Historic, Archaeological, and Cultural Resources **35**
2.10.1: Existing Conditions 35
2.10.2: Potential Impacts 38
2.11: Biological Environment **38**
2.11.1: Existing Conditions 38

2.11.2: Potential Impacts 41
CHAPTER 3: EXISTING SOCIO-ECONOMIC ENVIRONMENT 43
3.1: Existing Conditions 43
3.1.1: Social Factors 43
3.1.2: Economic Factors 44
3.2: Potential Impacts 44
CHAPTER 4: PUBLIC SERVICES AND UTILITIES 45
4.1: Solid Waste Facilities 45
4.1.1: Existing Conditions 45
4.1.2: Potential Impacts 45
4.2: Recreational Facilities 45
4.2.1: Existing Conditions 45
4.2.2: Potential Impacts 46
4.3: Police Protection 46
4.3.1: Existing Conditions 46
4.3.2: Potential Impacts 46
4.4: Fire Protection 46
4.4.1: Existing Conditions 46
4.4.2: Potential Impacts 47
4.5: Educational Facilities 47
4.5.1: Existing Conditions 48
4.5.2: Potential Impacts 48
4.6: Medical Facilities 48
4.6.1: Existing Conditions 48
4.6.2: Potential Impacts 48
4.7: Electrical and Communications Facilities 48
4.7.1: Existing Conditions 48
4.7.2: Potential Impacts 48
CHAPTER 5: INFRASTRUCTURE 49
5.1: Transportation Facilities 49
5.1.1: Existing Conditions 49
5.1.2: Potential Impacts 49
5.2: Wastewater Facilities 49
5.2.1: Existing Conditions 49
5.2.2: Potential Impacts 49
5.3: Water Facilities 49
5.3.1: Existing Conditions 49
5.3.2: Potential Impacts 50
5.4: Drainage Facilities 50

5.4.1: Existing Conditions 50
5.4.2: Potential Impacts 50
CHAPTER 6: CUMULATIVE AND SECONDARY IMPACTS 51
6.1: Secondary Impacts 51
6.2: Cumulative Impacts 51
CHAPTER 7: RELATIONSHIP TO GOVERNMENTAL PLANS AND POLICIES 53
7.1: Hawai'i State Plan 53
7.2: State Land Use Districts 54
7.3: State Conservation District 54
7.4: Hawai'i Coastal Zone Management Program 55
7.5: State Environmental Policy 61
7.6: County General Plan 62
7.7: Development/ Community Plan 66
7.8: Zoning 67
7.9: Special Management Area 67
7.10: Shoreline Setback Area 68
CHAPTER 8: SUMMARY OF POTENTIAL ENVIRONMENTAL EFFECTS 69
CHAPTER 9: ALTERNATIVES TO THE PROPOSED ACTION 73
9.1: No Action Alternative 73
9.2: Remediation Alternative 73
CHAPTER 10: AGENCY AND PUBLIC CONSULTATION 75
10.1: PRE-ASSESSMENT CONSULTATION 75
10.2: DRAFT ENVIRONMENTAL ASSESSMENT COMMENTS 76
CHAPTER 11: FINDINGS AND ANTICIPATED DETERMINATION 77
11.1: Findings 77
11.2: Determination 79
CHAPTER 12: REFERENCES 81

List of Tables

Table 1: Maximum Permissible Sound Levels in dBA....33
Table 2: Kauai 2020 Projection of Population and Key Employment Sectors....43
Table 3: Fire Department Response to Secret Beach....47
Table 4: Summary of Potential Impacts....69

List of Figures

Figure 1: Project Location Map....4
Figure 2: Existing Trails Part 1: West (Gulch) Portion of Property....7
Figure 3: Existing Trails Part 2: Middle Portion of Property....8
Figure 4: Existing Trails Part 3: Eastern Portion of Property....9
Figure 5: Aerial Photograph....12
Figure 6: Property Tax Map Key....13
Figure 7: State Land Use District Boundary Map....15
Figure 8: State Conservation District Subzone Map....16
Figure 9: Community Plan Map Designations....17
Figure 10: Zoning MapFigure 11: Special Management Area Boundary Map....18
Figure 11: Special Management Area Boundary Map....19
Figure 12: U.S. Soil Conservation Service....22
Figure 13: Land Study Bureau....24
Figure 15: FIRM Map....28
Figure 16: Groundwater Hydrologic Units....30
Figure 17: Surface Water Hydrologic Units....32
Figure 18: North Shore Planning District Heritage Resources....36
Figure 19: Kilauea Sugar Company Map (1930)....37
Figure 20: Biological Assessment Map....40

CHAPTER 1: INTRODUCTION

1.1: Project Purpose and Need

Secret Beach Properties, LLC (SBC), also referred to as the "applicant," is applying for after-the-fact State Conservation District Use and County of Kaua'i Special Management Area permits to allow for existing trails, safety improvements, land management activities, and a fence that are located on lands within the State Conservation District and County Special Management Area. A discussion of the project background is provided in the next section.

1.2: Project Background

On March 11, 2010, the Board of Land and Natural Resources (BLNR) found the Applicant in violation of Chapter 183C, Hawai'i Revised Statues (HRS), and Title 13-5, Hawai'i Administrative Rules (HAR) by landscaping in the Conservation District, "Limited" subzone, without a Conservation District Use Permit (Enforcement File: KA-08-06). The chronology of events leading to this action is documented below.

- **July 1990.** The State Department of Health cites a previous landowner for allowing illegal camping without approved sanitary facilities on the Property. This citation orders the landowner to take steps to resolve the matter within ten working days after the receipt of the citation letter.
- **September 1990**. The State Department of Health issues a Notice of Violation (NOV) to the previous landowner as no action had been taken to address the illegal camping. Upon receipt of the NOV, action was taken by the lease to clean up the Property. During the clean up process, a bulldozer used to clear a path to the beach, slid into the valley and could not be retrieved. A larger bull dozer was brought in to cut a roadway to retrieve the small bulldozer. On September 26, 1990, a DLNR inspector verbally ordered that no further work be done in the Conservation District without a use permit.
- **July 1991**. The Board of Land and Natural Resources (BLNR) granted a Conservation District Use Permit (CDUP KA-2454) for roadway construction, fencing, and property improvements associated with the general clean up of the Property. Completion of the roadway would facilitate access to the Property for general clean up as well as provide easier access for law enforcement officials. General clean up encompassed the removal of rubbish and trash, contouring of certain areas, removal of underbrush, and application of herbicide by a license person. The fencing would encompass the entire to delineate property boundaries as well as to prevent vagrants from entering. It was during this time frame, cleaning up of the Property, that the lateral trail was initially established.
- **April 2000**. The Board of Land and Natural Resources granted a Conservation District Use Permit (CDUP KA-2966) for the construction of a private trans-pali stairway across the Property. Access to the upper most portion of this stairway/trail is adjacent to Tax Map Key 5-2-05:025 and commences at Kauapea Beach.
- **November 2005.** SBP purchased the "Property" identified as Tax Map Key (TMK) 5-2-005: 036 and comprised of 23.8 acres.

- **2006**. Agricultural activities were established on the portion of the Property located within the State Agricultural District. These activities included the planting, maintenance, and harvesting of tropical flowers and other ornamental plants. To assist in the agricultural operations, several mauka-makai trails were created for maintenance access. These trails are accessed through an adjacent parcel identified as TMK 5-2-005: 032 and also owned by the applicant.
- **March 2007**. The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL) investigated a complaint for the cutting of trees on the Property. This cutting occurred along the mauka border of the Property, adjacent to TMK 5-2-005: 029, and was not conducted by the Applicant. Although DLNR-OCCL personnel determined that a violation occurred, they were not able to determine if the Applicant authorized the work or if a neighboring property initiated the work without the Applicant's authorization. The DLNR-OCCL did not pursue the case further while SBP agreed to clean up the green waste generated by the unauthorized work.
- **December 2007**. SBP's attorney acknowledges receipt of a letter from DLNR-OCCL informing the applicant of a site inspection to be conducted on their property as a result of the prior complaint. Adjacent property owners, Mr. Haas and wife admitted that they were responsible for the tree cutting in the Conservation District on the Property.
- **January 28, 2008**. DLNR-OCCL and the Division of Conservation and Resources Enforcement (DOCARE) opened an investigation and inspected the Property. The site visit revealed that the cut ironwoods had begun to grow back, but according to the DLNR-OCCL staff the debris from the cuttings remained on the Property. This debris consisted of cut dead trees abutting the beach and within the coastal bluff. Additionally, a poisoned ironwood tree approximately 60 feet tall remained on a small ridge half way up the pali along with a partially cut ironwood tree approximately 15 feet tall. The neighboring property owner, Mr. Haas provided a statement to the DOCARE officer that he observed some ironwoods leaning on one another and he had contracted a person remove the potentially hazardous trees. He further stated that he did not know where his property boundary was. SBP was not aware of the work being done on the Property nor did they authorize it. DLNR-OCCL concluded that a land use violation had occurred. However, it was faced with the difficulty that SBP was possibly unaware of the work and the contractor who conducted the work could not be named. DLNR-OCCL decided not to pursue an enforcement action at that time and left the case open, pending clean up of the debris. It was during this site visit that DLNR-OCCL instructed SBP and their representative to remove the remaining green waste on the Property. Additionally, SBP was instructed to maintain the Property and remove dead, dying, or hazardous trees without a use permit as long as there was internal documentation.
- **September 2008.** SBP's attorney receives a letter from DLNR-OCCL regarding a complaint about SBP installing steps along a trail within the Property. SBP responded to DLNR-OCCL that steps were needed to access some dead, dying or hazardous trees. These new steps were located along an existing trail within the property.
- **July 2009**. DLNR-OCCL receives another complaint that additional trees were cut and a new trail was being constructed on the Property. SBP responded that in order to reach areas where the

deadfall trees had come to rest, the grounds keepers needed to reestablish some trails and install safety fencing for their own protection. During this time and throughout the cleanup process, grounds keepers observed that more property owners had been dumping waste into the Property. Consequently, the grounds keepers needed to continue the trail in an easterly direction in order to reach newly found cutting and dumping sites. DLNR-OCCL and DOCARE then re-opened the investigation that began in March 2007.

- **July 30, 2009**. DLNR-OCCL issues a Notice of Violation to SBP regarding unauthorized landscaping in the Conservation District, Limited subzone without an approved Use Permit.
- **March 11, 2011.** At the BLNR meeting, DLNR-OCCL Staff Report recommends fines and requires SBP to apply for an after-the-fact Conservation District Use Permit or restore land to original state.

The general location of the project is shown in Figure 1.

FIGURE 1

PROJECT LOCATION

Secret Beach Properties, LLC

Source: DeLorne

0 1,050 2,100 4,200 Feet

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1.3: Project Description

This proposed action includes the following:

1. Uses associated with an existing trail system consisting of about two (2) miles of trails stretching across 23.8-acres of a parcel mostly within the State Conservation District and County Special Management Area.
2. Actions associated with land management activities to control the spread of invasive plants and replant affected areas with native vegetation.
3. Actions to remove dead, downed and hazardous ironwood trees from the Property.
4. Actions to construct a code-compliant barrier fence along the property boundary bordering neighboring properties.

The existing trail system includes two mauka-makai trails starting at the top of the Property bluff to the shoreline area. The mauka access for one of the mauka-makai trails is on TMK 5-2-005:032, an adjacent parcel owned by the Applicant. For the second mauka-makai trail, access is from two (2) adjacent parcels: TMK 5-2-005: 027 and 028, owned by Sophia Farm and David Smith, respectively. A third mauka-makai trail was permitted by the BLNR in 2000 (CDUP KA-2966). The existing lateral trails cover approximately 0.6 acres and are located along a natural shelf on the side of a coastal bluff at an elevation of approximately 150 feet mean sea level (msl).

Example of hog wire fencing on left side of the trail.

Existing trail components include narrow swaths cleared of vegetation; Trex and wooden planks to shore up earthen steps; rebars that have been driven into the soil to hold these planks in place; and hog wire fencing with metal T-posts along hazardous portions of the trails to ensure that persons walking along the trails do not slip and fall over the cliffs.

The re-establishment and maintenance of the lateral trails is needed primarily for Property land management activities and safe access to areas where debris clean-up is necessary. Mauka-makai trails afford the mauka landowners pedestrian access to Kauapea Beach. The existing mauka-makai trail that begins on Applicant's adjoining property also is used in connection with the agricultural activities (planting, maintenance and harvesting of tropical flowers and other ornamental plants) conducted on the portion of the Property located within the State Agricultural District.

Additionally, the mauka-makai trails provide emergency personnel (fire, rescue, police and DOCARE) with alternative access to the shoreline area, which often times means a faster response in emergency situations.

In addition to requesting approval for the existing trail, including trail maintenance, these applications seek approval for future removal of unwanted vegetation, including dead and hazardous trees, subject to plans submitted to and approved by DLNR/OCCL.

Previously cleared trail area.

Tree cutting activities, including the 2007 incident that culminated in BLNR finding SBP in violation of HRS Chapter 183C, are assumed to be for the purpose of creating unblocked ocean views by adjacent coastal landowners. As documented in the 2007 incident, tree-cutting was done by adjacent landowners without the SBP's knowledge or consent. In light of subsequent DOCARE site investigations, these illegal tree-cutting activities have continued and are likely to continue, notwithstanding the SBP's increased vigilance.

Lastly, the proposed action includes a request to re-permit property fencing along the mauka property boundary to prevent unauthorized use of the Property. This fence will only be constructed if unauthorized use of the property by adjoining landowners persists. Fencing of the Property was previously approved by the BLNR with the granting of CDUA KA-2454 in April 1991. This CDUA allowed for the continued clean up of the Property in response to a Notice of Violation (NOV) issued by the Department of Health for illegal campers. The field fence would delineate the boundaries between private properties and the State Conservation District. Additionally, the proposed fence would prevent vagrants from crossing through the Property. A dditional photos are located in Appendix A

Figures 2 through 4 are topographic maps of the Property that delineates the location of the existing trails. Trails depicted in green are pre-existing trails with no improvements; trails in brown are re-opened from 1991; and new trails in dark blue are from SBP.

A portion of the lateral trail.

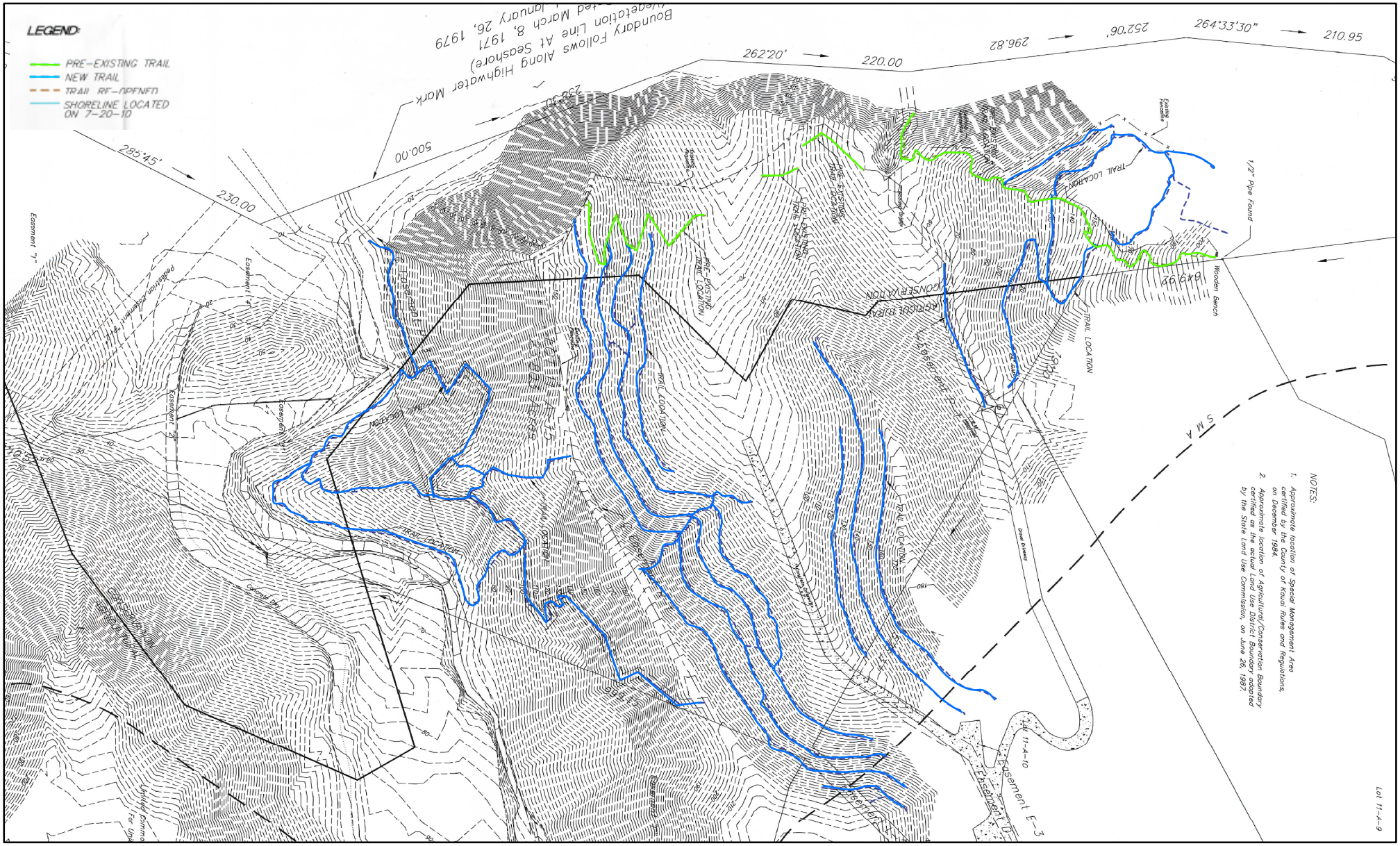

FIGURE 2

EXISTING TRAILS PART 1: Western (Gulch) Portion of Property

Secret Beach Properties, LLC
Source: Alan Hiranaka

Not to Scale

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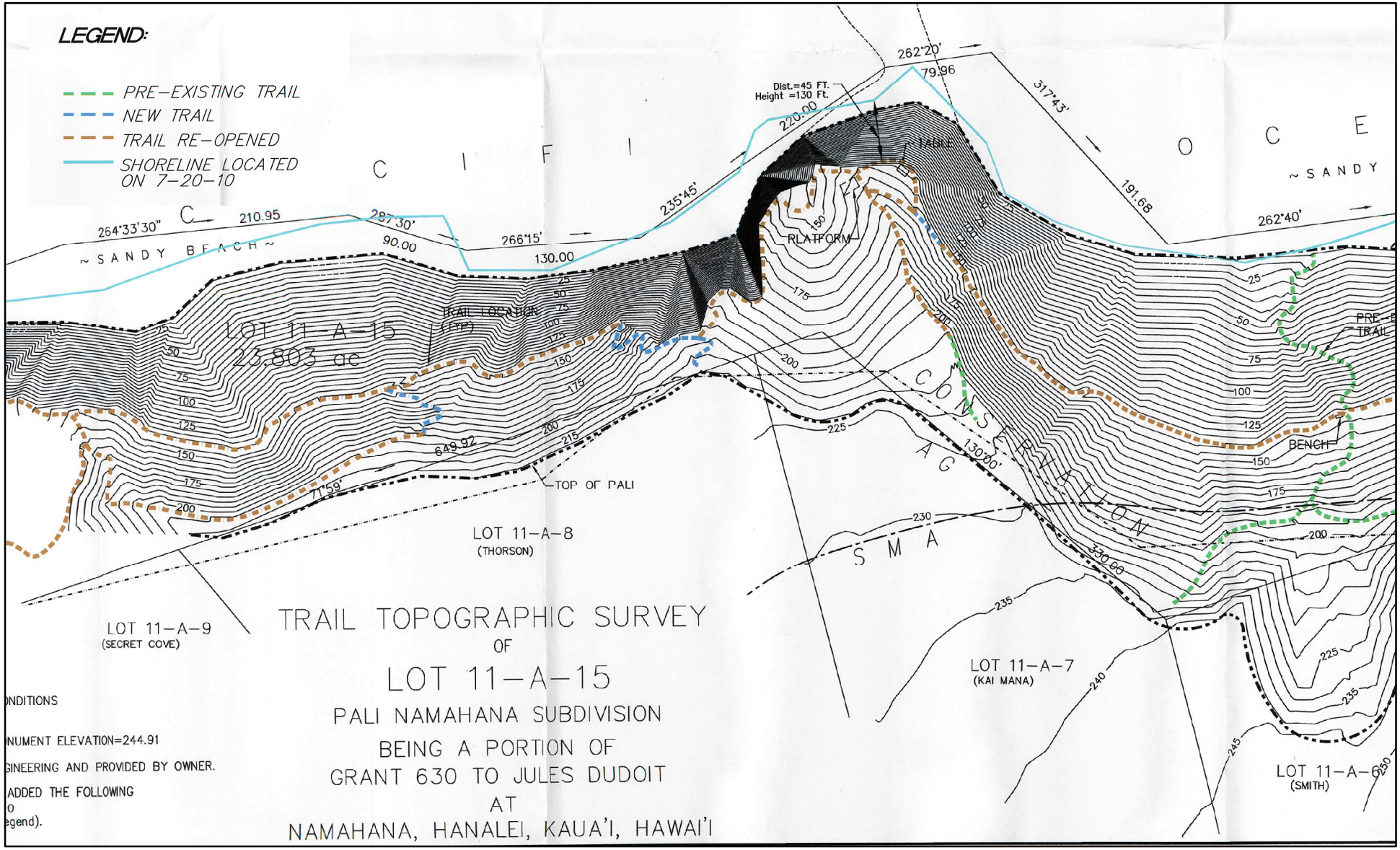

FIGURE 3

EXISTING TRAILS PART 2: Middle Portion of Property

Secret Beach Properties, LLC
Source: Trail Topogrpahic Survey Map dated September 2, 2010 by Hiranaka Survey and Mapping

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Not To Scale

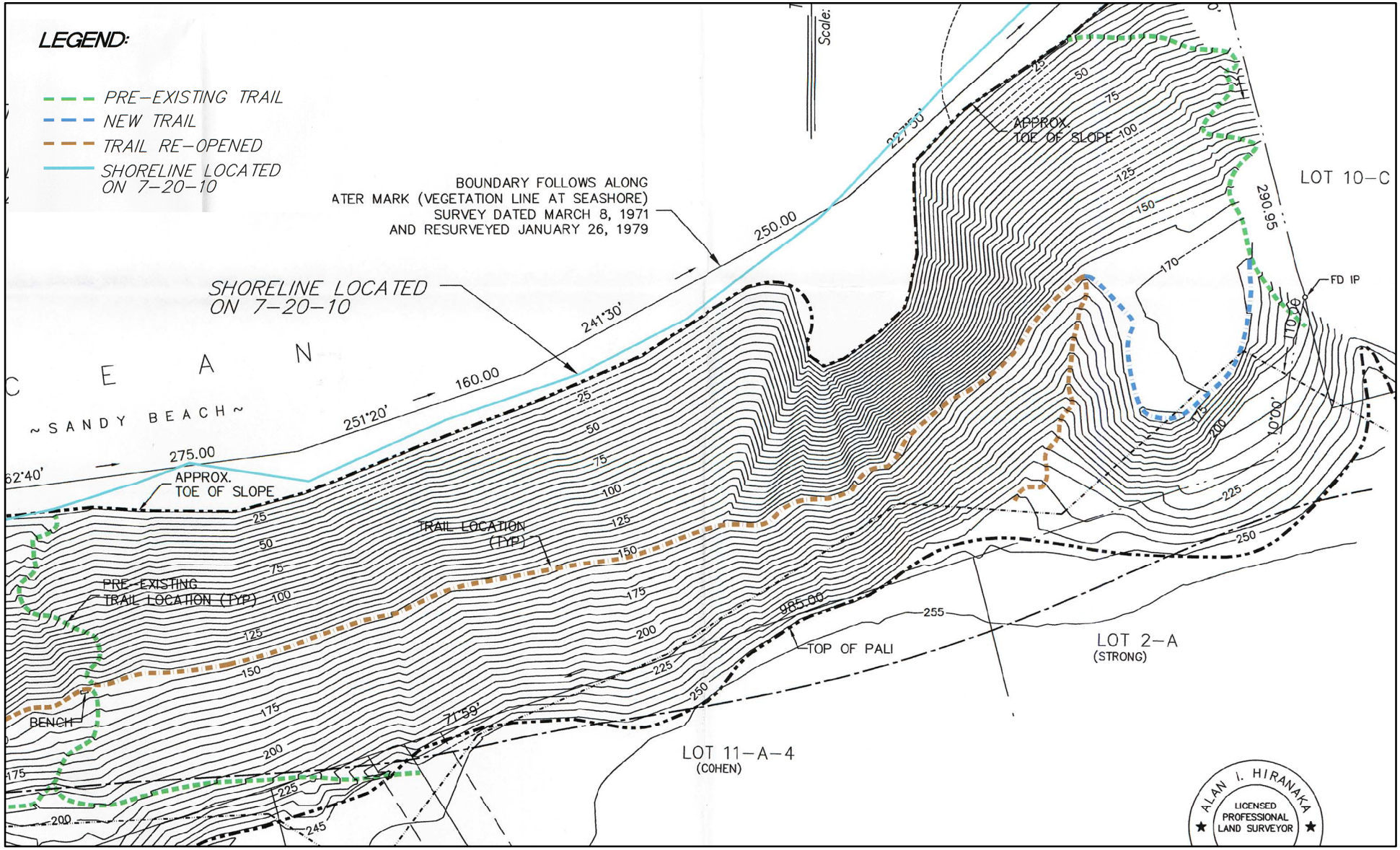

FIGURE 4

EXISTING TRAILS PART 3: Eastern Portion of Property

Secret Beach Properties, LLC
Source: Trail Topogrpahic Survey Map dated September 2, 2010 by Hiranaka Survey and Mapping

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Not To Scale

1.4: Chapter 343, Hawai‘i Revised Statutes

Chapter 343, *Environmental Impact Statements*, Hawai‘i Revised Statutes (HRS) established a system of environmental review in order to assure that environmental concerns are considered as part of the decision making process. Additionally, Chapter 343, HRS identifies the types of programs or actions required to undergo an environmental review. Actions proposing a use of land in the State Conservation District trigger the need for compliance with Chapter 343, HRS. Therefore, this environmental assessment is being prepared for the proposed actions.

This Final Environmental Assessment (Final EA) was prepared in conformance to the regulatory and documentation requirements prescribed under Chapter 343, *Environmental Impact Statements*, Hawai‘i Revised Statutes otherwise referred to as the “Hawai‘i Environmental Impact Statement Law” and Title 11, Chapter 200 (Environmental Impact Statement Rules) of the State Department of Health’s Administrative Rules (HAR). A Draft Environmental Assessment (Draft EA) was published in the March 8, 2011 issue of *The Environmental Notice.* The 30 day public comment period for the review of the Draft EA ended on April 6, 2011. Subsequently, this Final EA was prepared based upon the comments received on the Draft EA. A Finding of No Significant Impact (FONSI) is being issued for this project.

1.5: Kilauea Neighborhood Association Meeting

On the evening of April 5, 2011, SSFM International attended the monthly meeting of the Kīlauea Neighborhood Association at the Kīlauea Community Center. SSFM International conducted a presentation of the project and environmental assessment process and then answered questions. Once the presentation was completed, SSFM International Staff remained until the completion of the meeting to answer additional comments. Copies of the PowerPoint presentation, handout, and meeting sign-in sheet are provided in Appendix D.

CHAPTER 2: EXISTING PHYSICAL & BIOLOGICAL ENVRIONMENT AND POTENTIAL IMPACTS

2.1: Project Location and Surrounding Uses

2.1.1: Existing Conditions

The Hawaiian Archipelago is comprised of more than 100 hundred islands spanning a distance of more than 1,500 miles. These islands are emerged summits of volcanoes on a great submarine ridge that moves in a northwest direction. Known as the Pacific lithospheric plate, the islands were formed by the plate's movement over a hot spot fixed in the earth's mantle. The sequential formation of the archipelago is indicated by the occurrence of submerged older islands in the northwest portion of the chain and by the relative youth and current volcanic activity of the islands of the State of Hawaiʻi at the southeast end.

Kauaʻi is the oldest and fourth (4th) largest of the eight (8) major islands in the State of Hawaiʻi. It is circular in shape with a land area approximately 555 square miles. Additionally, the Island has a maximum length of 33 miles and maximum width of 25 miles. The proposed action is located along a coastal bluff northwest of Kīlauea Town on Kauai's North shore. It was once part of the Kīlauea Sugar Plantation which ceased operations in 1972. An aerial photograph of the Property is shown on Figure 5.

The Property is approximately one half mile in length with a width ranging from 100 to 700 feet. It is approximately 23.8 acres and is bordered by Kauapea Beach and agricultural lands. Approximately 6.5 acres along the western portion of the Property is in active agricultural use. The remainder of the Property consists of steeply sloped coastal bluffs with heavy vegetation and shorelines. A 14,167 square foot pedestrian easement to Kauapea Beach traverses the western portion of the Property. This easement connects to an adjacent parcel. A map of the Property's tax map key is provided in Figure 6.

Land use to the north of the Property is beach. Land uses to the east are comprised of beach, vegetated coastal bluffs, and the Kīlauea Point National Wildlife Refuge. Land uses to the south are Kauapea Road, agricultural lands with existing farm dwellings and Kūhiō Highway. Land uses to the west are beaches, vegetated coastal bluffs, and agricultural lands.

2.2: Land Use Designations

2.2.1: Existing Conditions

<u>State Land Use District</u>

Chapter 205, Hawaiʻi Revised Statutes (HRS), also known as the State Land Use Law, designates all lands within the State of Hawaiʻi into one of four categories: Agricultural, Conservation, Rural, and Urban. Permissible uses and standards are identified for each district. The Property is located on lands designated both Agricultural (6.5 acres) and Conservation (17.3 acres) by State Land Use Commission Maps K-5, Hanalei and K-9, Anahola. Uses within the Agricultural District are regulated and enforced by the respective counties. Uses within the Conservation District are regulated and enforced by DLNR-OCCL.

FIGURE 5

AERIAL PHOTOGRAPH

Secret Beach Properties, LLC
Sources: State of Hawaii GIS Website and ESRI

0 480 960 1,920 Feet

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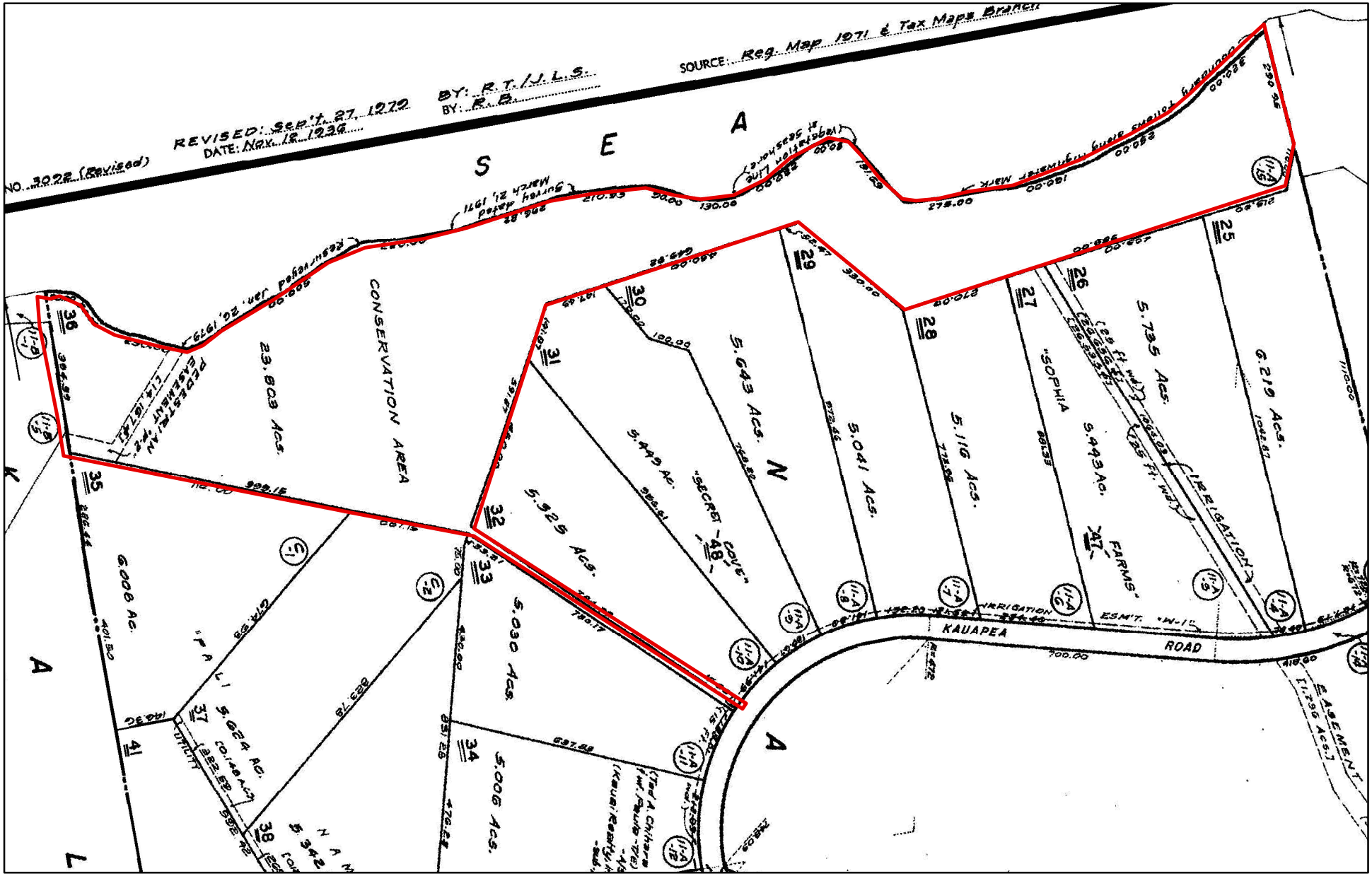

FIGURE 6

TMK MAP 5-2-5:036

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website

0 310 620 1,240 Feet

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At the Property, there have been no changes to the State Land Use designation since the adoption of the State Land Use District maps in the 1960's. The State Land Use Boundaries are shown on Figure 7.

Lands within the Conservation District contain important natural resources essential to the preservation of the State's fragile natural ecosystems and the sustainability of the State's water supply. These lands are to be conserved, protected, and preserved to promote their long-term sustainability and the public health, safety, and welfare. Chapter 183C, HRS allows for the establishment of zones to govern uses of these lands. All Conservation District lands are categorized into one of the following subzones: Protective, Limited, Resource, General, and Special. The portion of the Property located within the Conservation District is in the Limited subzone.

Pursuant to §13-5-12, Hawai'i Administrative Rules (HAR), the objective of the Limited (L) subzone is to limit uses where natural conditions suggest constraints on human activities. Lands in this subzone are susceptible to floods and soil erosion, or major erosion damage requiring corrective attention by the county, state, or federal governments. Also in this subzone are lands necessary for the protection of the health, safety, and welfare of the public due to susceptibility to inundation by tsunami, flooding, volcanic activity, landslide, or have a general slope of forty percent or more. A Conservation District Use Permit Application will be submitted to the DLNR for review and action. The Conservation District subzones are shown on Figure 8.

County Development Plan

There are five (5) development plan districts for the County of Kaua'i. The Property is located within the North Shore Planning District. The portion of the Property located within the State Conservation District is designated as Open with the remaining portion is designated Agricultural on the North Shore Planning District Land Use Map. The North Shore Planning District land use designations are shown on Figure 9.

County Zoning Districts

Zoning in the County of Kaua'i is regulated by the *Comprehensive Zoning Ordinance (CZO),* Chapter 8 of the Kauai County Code. The portion of the Property located within the State Conservation District is not zoned. The remaining portion of the Property in the State Agricultural District is zoned Agricultural. There have been no changes to the zoning of this Property since the adoption of CZO in 1973. Zoning districts are shown on Figure 10.

Special Management Area and Shoreline Setbacks

Majority of the Property is located within the Special Management Area as adopted by the Kauai Planning Commission. A Special Management Area Permit (minor) application will be submitted to the Kaua'i Planning Department for review and action. There have been no changes to these boundaries since being adopted in the 1970's. The Special Management Area boundaries are shown on Figure 11.

The Property is adjacent to the shoreline. As such, portions of the proposed action may be located within the Shoreline Setback Area. A Shoreline Setback Determination application will be submitted to the Kaua'i Planning Department for review and action.

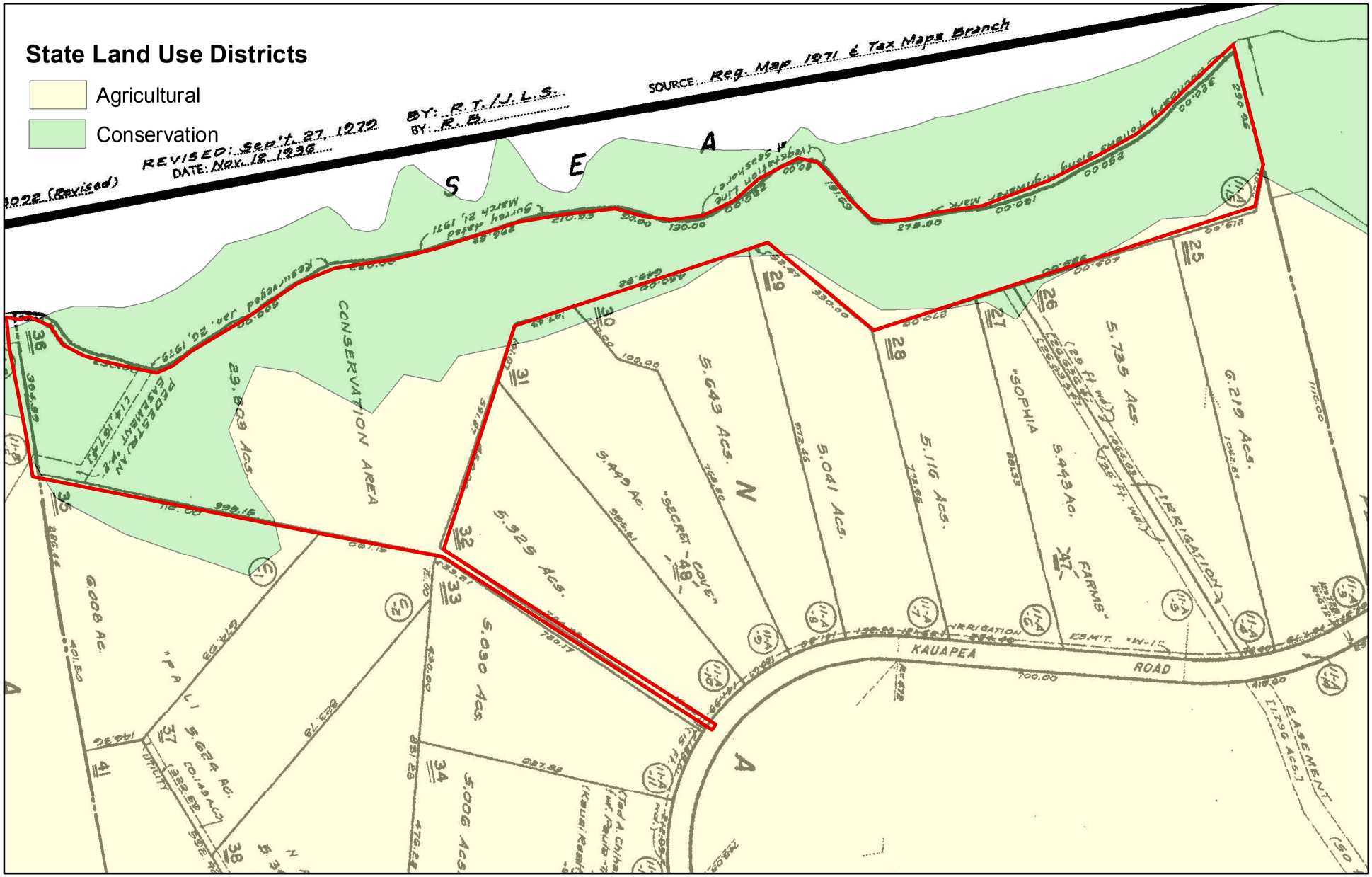

FIGURE 7

STATE LAND USE DISTRICTS

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website

0 140 280 560 Feet

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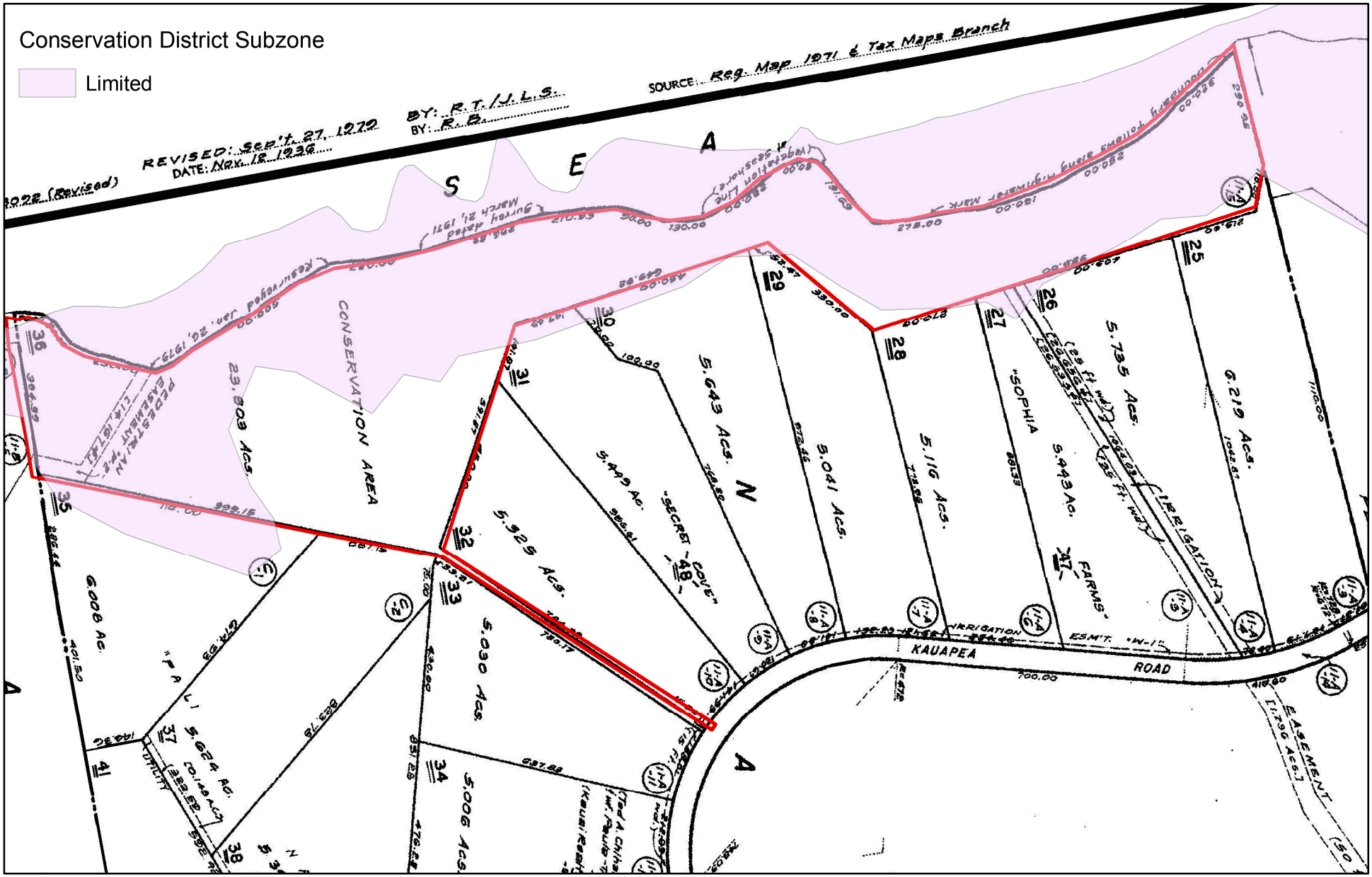

FIGURE 8

CONSERVATION DISTRICT SUBZONES

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website

0 145 290 580 Feet

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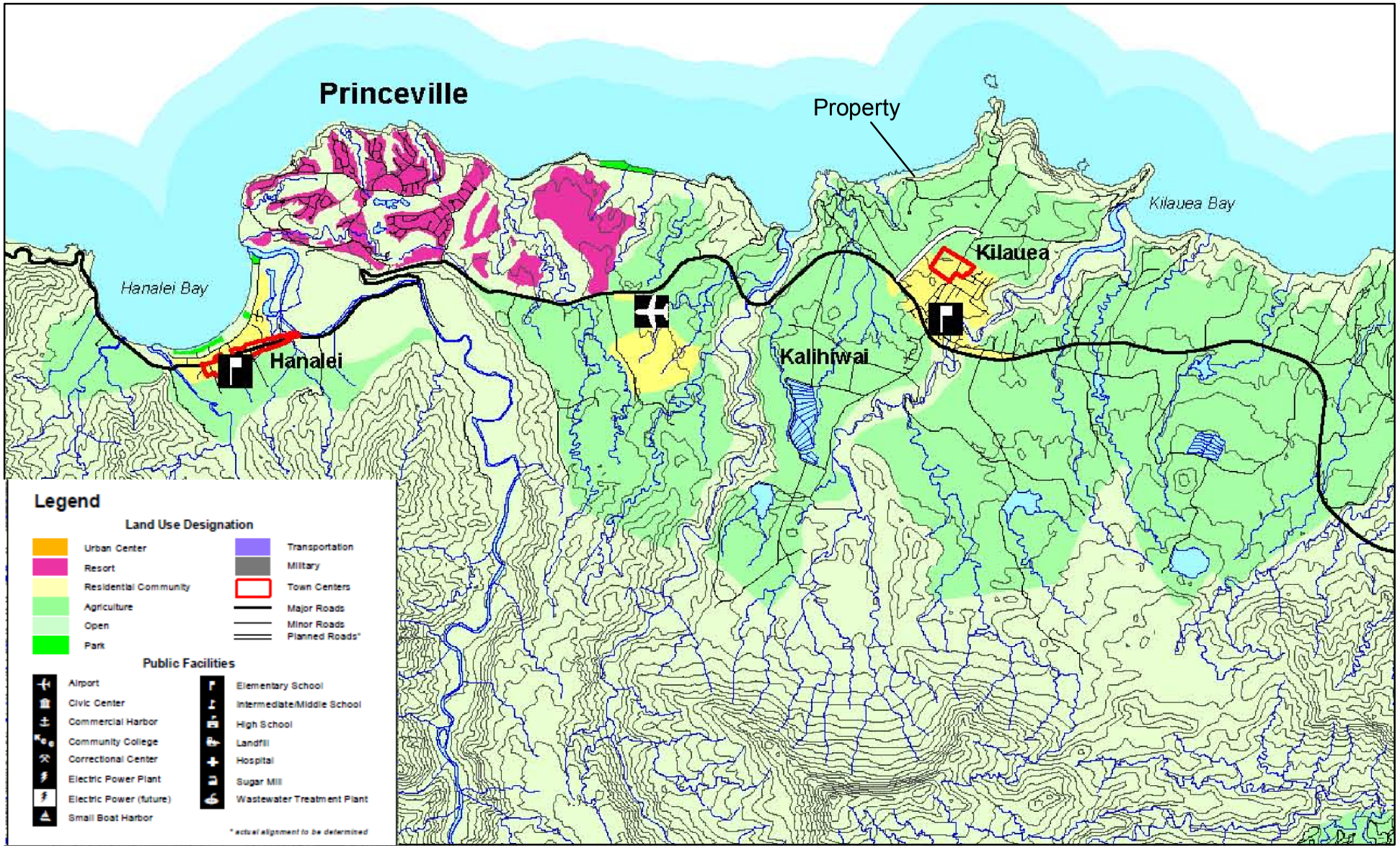

FIGURE 9

NORTH SHORE PLANNING DISTRICT LAND USE MAP

Secret Beach Properties, LLC
Source: Kauai General Plan, November 2000

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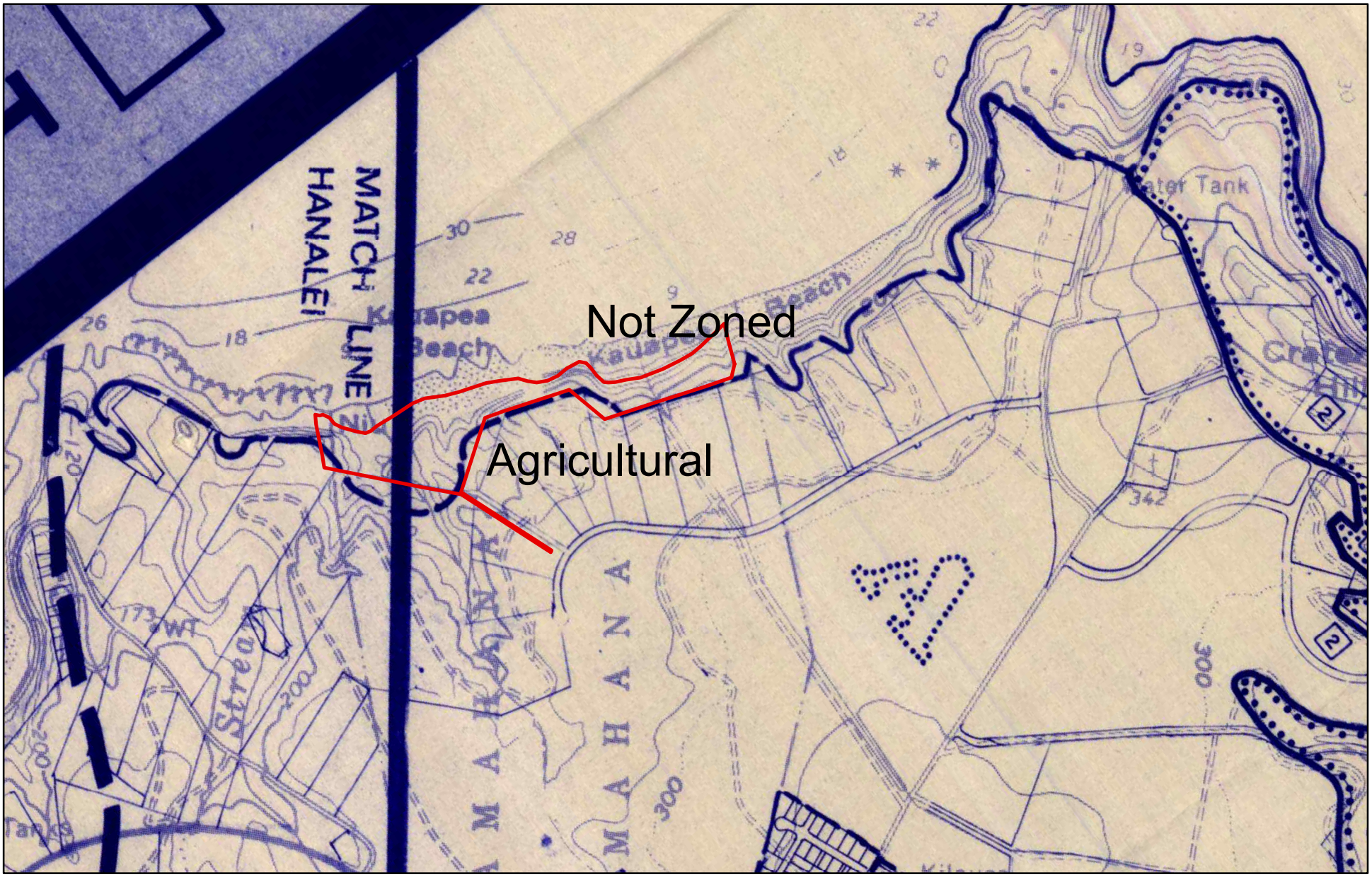

FIGURE 10

ZONING MAP

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website, County of Kauai Kilauea Zoning Map

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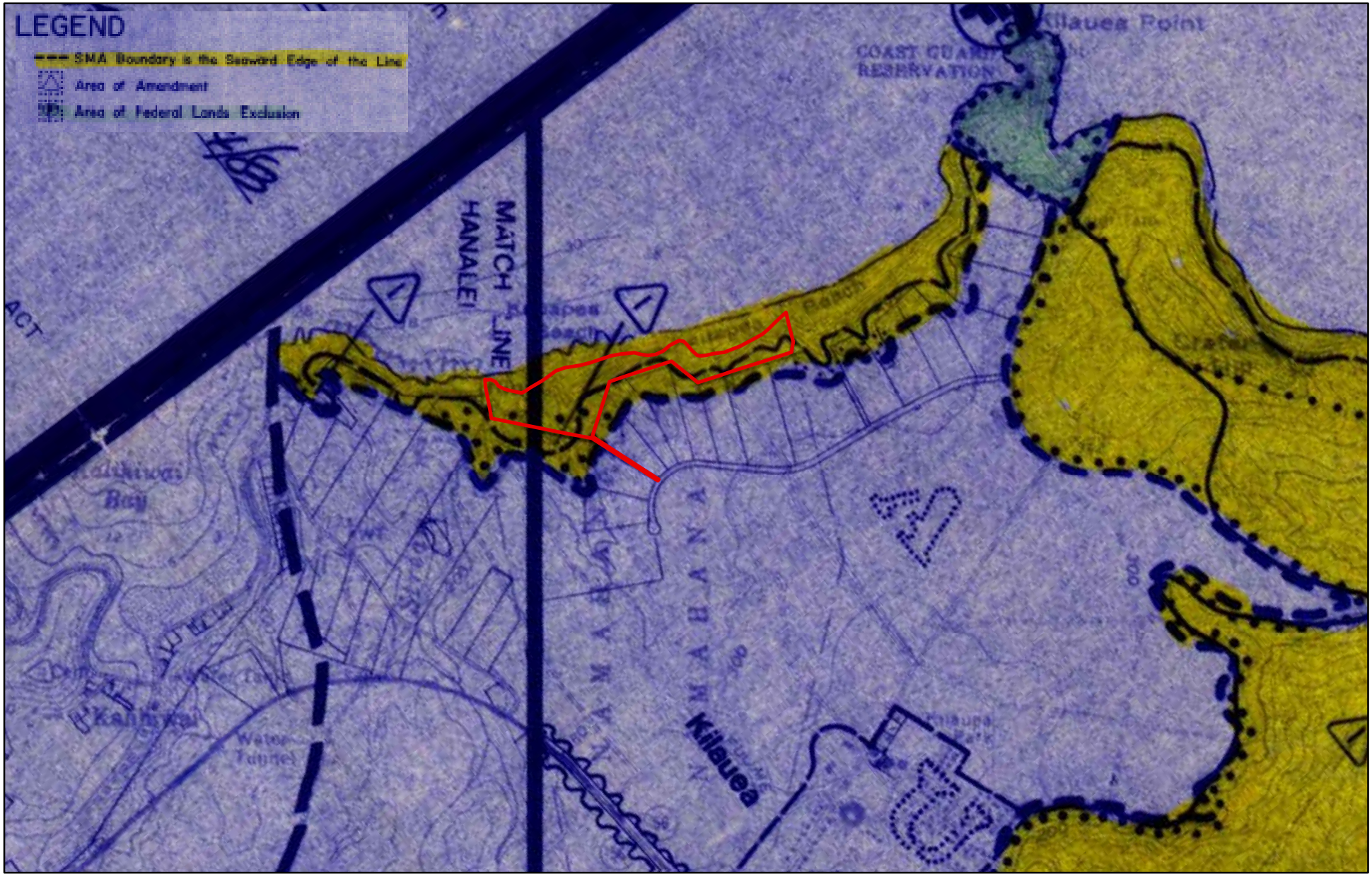

FIGURE 11

SPECIAL MANAGEMENT AREA

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website, County of Kauai Kilauea Special Management Area Map

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The County of Kaua‘i Planning Department utilize two methods to determine the shoreline setback area: annual coastal erosion rates and average lot depth. Coastal erosion rate maps have been established for a number of coastal areas of Kaua‘i.

2.2.2: Potential Impacts on Land Use

Minimal impacts to existing land uses are anticipated as a result of the proposed action. A Conservation District Use Permit and Special Management Area Minor Permit applications will be submitted to allow for the existing uses and future construction of a fence along the mauka boundary of the Property. Further, a Shoreline Setback Determination will be submitted to identify what portions of the proposed action are located in the Shoreline Setback Area.

During the Draft EA comment period issues related to vacation rentals, certified shoreline, and allowable uses in the State Conservation District were raised.

2.3: Climate

2.3.1: Existing Conditions

Native Hawaiians identified two (2) seasons in Hawai‘i, Kau and Hoo-ilo. Kau is the warm fruitful season with steady trade winds extending from May through October. The sun is mostly directly overhead in the sky. Hoo-ilo is the cool season with interruption of trade winds extending from November to April. The sun is located more towards the south in the sky. To the north of the Hawaiian Islands is the large Pacific semi-permanent high pressure cell that affects air circulation in the region. In the North Pacific, this cell provides the north easterly trade winds (trade winds) that traverse the Hawaiian Islands, including the Island of Kaua‘i.

Climate in the State of Hawai‘i as well as on the island of Kaua‘i is characterized as having low day-to-day and month-to-month variability. Differences in the climate of various areas are generally attributable to the island’s geologic formation and topography. This creates miniature ecosystems ranging from tropical rain forests to the drier plains; along with corresponding differences in temperature, humidity, wind, and rainfall over short distances.

Steady temperatures as measured at the Līhu‘e Airport, are associated with the cooling effect of the Pacific Ocean and the small seasonal variation in the amount of energy received from the sun. Trade winds that blow across the island also contribute to the steady temperatures. The variable range in normal temperature is approximately 9.4 degrees Fahrenheit. This is generally reflected in the temperatures of the Kīlauea area which is located to the north of the Līhu‘e Airport and have similar climate characteristics. Average monthly temperatures recorded at Līhu‘e Airport varied between 69 and 79 degrees, and averaged 74.5 degrees in 2009.

Normal annual rainfall is over 40 inches. Trade wind showers are common with most being light and of short duration. However the frequency and intensity of the showers increase towards the mountains. Mt. Waialeale has the highest annual rainfall in the world with an average of 486 inches. Annual rainfalls greater than 620 inches per year are not uncommon. At Līhu‘e Airport, average monthly rainfall varied between 0.29 to 5.55 inches, with an annual rainfall of 26.63 inches in 2009.

2.3.2: Potential Impacts

No significant impacts on climate are anticipated to result from this project.

2.4: Geology, Topography, and Soils

2.4.1: Existing Conditions

Geology

The Hawaiian Islands are comprised of an undersea mountain range built up by volcanic activity. Each island has followed a similar pattern of development: building of the shield dome, collapse of the caldera, eruption, erosion, and then post erosion eruptions. At many locations, particularly the younger islands (Hawaiʻi and Maui), the near surface "soil" conditions consist of shallow basaltic rock.

Kauaʻi is one of the oldest and most structurally complicated of the eight major islands and has passed through the principle stages of Hawaiian volcanism. It was built by a single shield volcano that underwent tremendous erosion prior to the commencement of post erosion eruptions. The highest point on Kauaʻi is Mount Kawaikini at an elevation of 5,170 feet. It is adjacent to the more well known Mount Waialeale with an elevation of 5,080 feet.

Kauaʻi was formed by the Waimea Canyon and Kōloa volcanic series. The Waimea Canyon series is the older of the two and is predominantly comprised of olivine basalts. This series is further broken down in to a number of formations. The Napali formation is a series of lava flows, which over time formed the single shield volcanic dome. Lavas that filled the caldera are known as the Olokele formation. Lavas that filled the southwestern portion of the original collapsed shield are known as the Makaweli formation. Lastly, lavas from the small caldera on the southeast of the island are called the Hāʻupu formation.

The Kōloa series occurred during the post erosion eruption phase and are comprised of a range of formations from olivine basalt to nepheline basalt. These rocks filled in the valleys and covered much of the east Kauaʻi.

Topography and Soils

The U.S. Department of Agricultural, Soil Conservation Service's *Soil Survey of Islands of Kauaʻi, Oʻahu, Maui, Molokaʻi, and Lānaʻi, State of Hawaiʻi* (SCS, 1973) identifies soil types, their location, and how they can be used. This report was developed by the SCS (subsequently renamed the Natural Resources Conservation Service) to provide technical assistance to the existing Soil and Water Conservation Districts located on the islands.

The Property is classified as Beaches (BS); Rock Outcrop (rRO); Rough Broken Land (rRR); Hanalei silty clay deep water table, 0 to 6 percent slope (HrB), and Līhuʻe silty clay, 0 to 8 percent slope (LhB). These soil designations are shown in Figure 12.

Beaches (BS) occur as sand, gravelly, or cobbly areas on all the islands surveyed. Beaches are comprised of light colored sands derived from coral and seashell as well as dark colored sands derived from basalt and andesite. This soil is suitable for recreational uses and resort development. Rock Outcrop (rRO) is

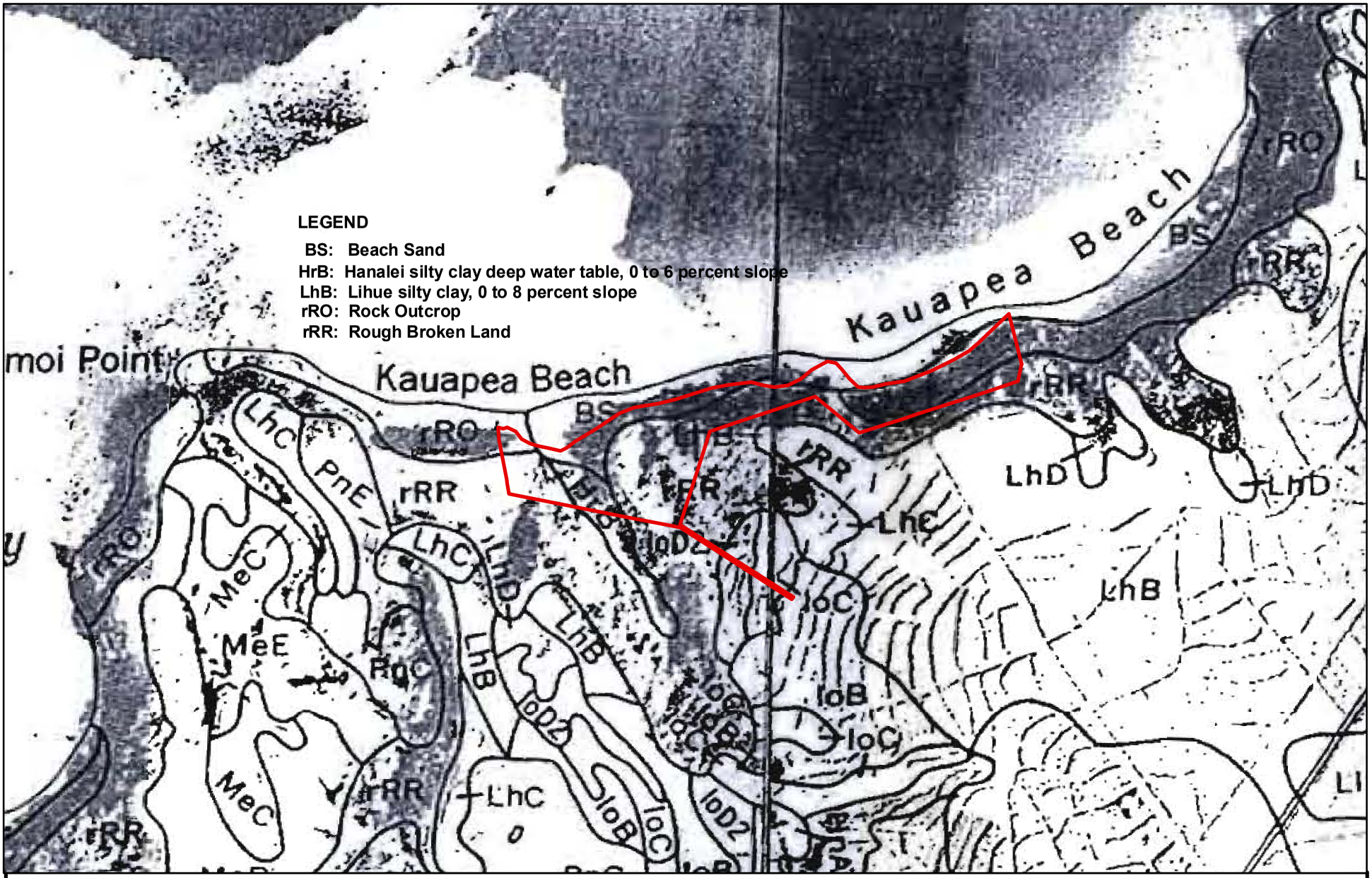

FIGURE 12

U.S. SOIL CONSERVATION SERVICE

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website and US Soil Conservation Service

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comprised of areas where exposed bedrock covers more than 90 percent of the surface and mainly comprised of basalt as well as andesite. Rough Broken Land (rRR) consists of very steep land broken by numerous intermittent drainage channels. This land type is not stony and occurs in gulches on mountainsides on all of the islands except for Oʻahu. The slope is 40 to 70 percent with elevations ranging from nearly sea level to about 8,000 feet. This land type is used for watershed, wildlife habitat, pasture, and woodland.

Hanalei silty clay deep water table, 0 to 6 percent slope (HrB) is located on stream bottoms and flood plains. Permeability is moderate, runoff is very slow, and the erosion hazard is no more than slight. This soil is used for sugarcane, taro, pasture, and vegetables. This Hanalei Series is level to gently sloping. Elevations range from nearly sea level to 300 feet. It is used for taro, pasture, sugarcane and vegetables.

Līhuʻe silty clay, 0 to 8 percent slope (LhB) is located on the broad uplands. Permeability is moderately rapid, runoff is slow, and the erosion hazard is no more than slight. This soil is used for sugarcane, pineapple, pasture, truck crops, orchards, wildlife habitat, and home sites. The Līhuʻe Series is gently sloping to precipitous. Elevations range from nearly sea level to 10,000 feet. It is used for water supply, wildlife habitat, and recreation.

Rock Outcrop and Rough Broken Land are part of the Rough mountainous land-Rough broken land-Rock outcrop association which consist of well-drained land types on uplands on the island of Kauaʻi. They are usually found in elevations ranging from near sea level to approximately 5,170 feet. This association is used for water supply, pasture, woodland, and wildlife habitat.

The Hanalei silty clay deep water table, 0 to 6 percent slope (HrB) soil is part of the Hanalei-Kolokolo-Pakala association which consist of poorly drained to well drained soils on bottom land on the island of Kauaʻi. They are usually found in elevations from near sea level to approximately 500 feet. This association is used for irrigated sugarcane, irrigated taro, irrigated truck crops, pasture, and wildlife habitat. The Līhuʻe silty clay, 0 to 8 percent slope (LhB) soil is part of the Līhuʻe-Puhi association which consist of well-drained, medium textured and fine-textured soils on the uplands of South and East Kauaʻi. They are usually found in elevations from near sea level to approximately 800 feet. This association is used for irrigated sugarcane, pineapple, pasture, woodland, and wildlife habitat.

The University of Hawaiʻi Land Study Bureau *Detailed Land Classification-Island of Kauai* (LSB, 1967) classifies lands based upon soil productivity ratings and is utilized in conjunction with the State Land Use Law as set forth in Chapter 205, HRS. This classification system was developed in relation to overall agricultural uses as well as for select agricultural uses. Productivity ratings characterizes a soils over all agricultural suitability (master suitability) and specific crop all suitability. Master suitability ratings range from A to E: A-very good, B-good, C-fair, D-Poor, and E-very poorly suited. Lands rated U indicate that they were in an urban type use during the development of the classification system, thus not analyzed for soil productivity. The Property is classified as E-very poorly suited.

The State of Hawaiʻi Land Study Bureau boundaries are shown in Figure 13.

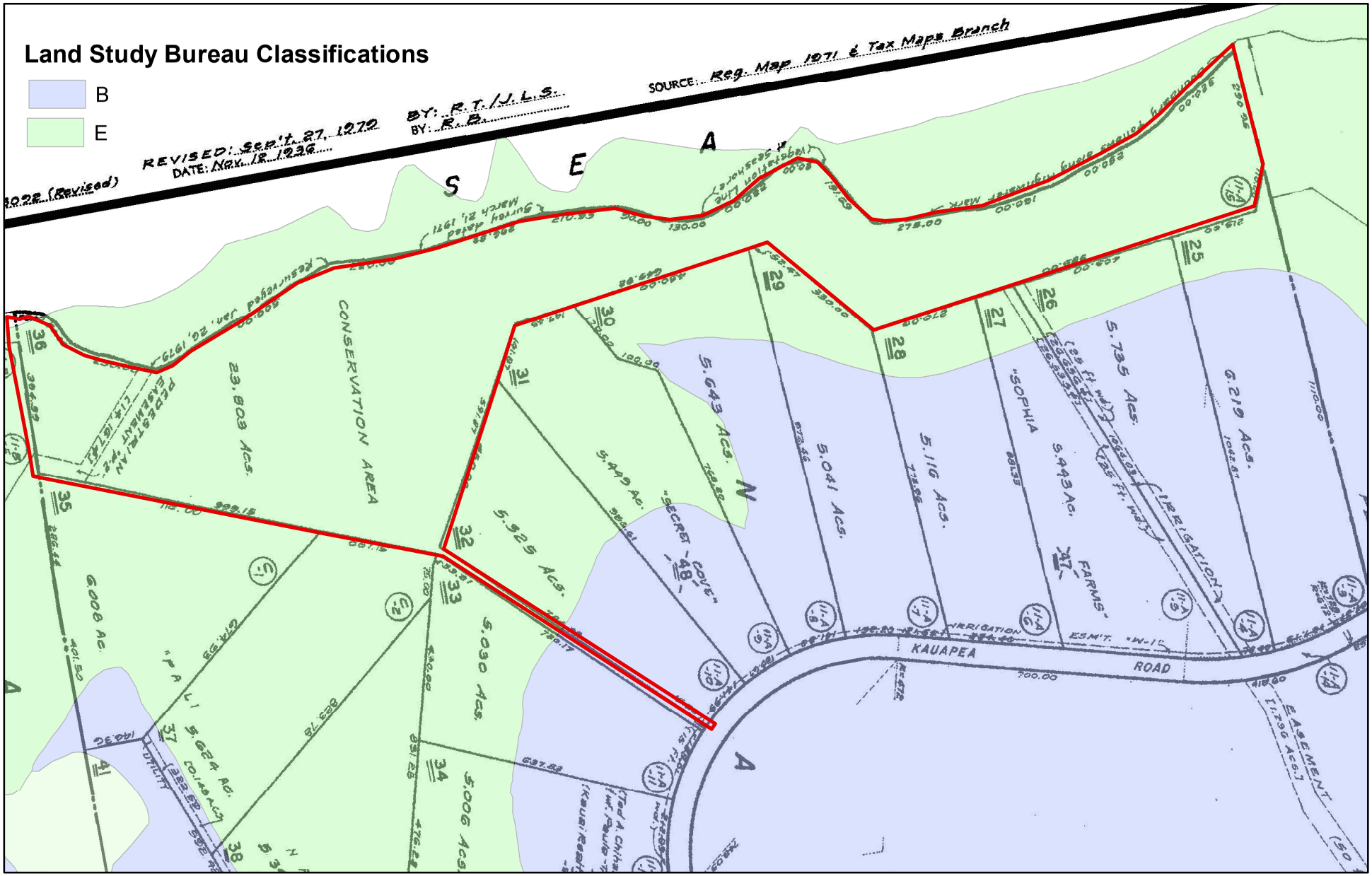

FIGURE 13

LAND STUDY BUREAU

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website

0 140 280 560 Feet

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The State of Hawaiʻi Department of Agriculture *Agricultural Lands of Importance to the State of Hawaiʻi for Kauaʻi, Oʻahu, Maui, Molokaʻi, Lānaʻi , and Hawaiʻi* (DOA, 1977) was established as part of a national effort to inventory important farm lands. In Hawaiʻi, these national criteria were adapted by the U.S. Department of Agriculture, University of Hawaiʻi College of Tropical Agricultural and Human Resources, and State Department of Agricultural. Agricultural Lands of Importance to the State of Hawaiʻi (ALISH) classifies lands into one of four(4) categories, "Prime", "Unique", "Other Important Agricultural Lands", and "Unclassified". "Prime" lands have soil quality, growing season, and moisture supply needed to produce sustained crops yield economically. "Unique" lands have the combination of soil quality, location, growing season, and moisture supply currently used to produce sustained yield of a specific crop. "Other" Important Agricultural Lands include lands not rated as Prime or Unique.

A small portion on the western side of the Property is classified as "Other Important Agricultural Lands" while the remainder of the Property is "Unclassified". There is some erosion on the eastern portion of the coastal bluff in areas previously impacted by the cutting of or removal of trees. The ALISH boundaries are shown in Figure 14.

2.4.2: Potential Impacts

Long term positive impacts are anticipated as a result of the proposed action by allowing for the protection, conservation, and preservation of the coastal bluff. This will minimize the potential for soil erosion and landslides. Further active agriculture is occurring on approximately 6.5 acres of land classified as "E" by the LSB and "Unclassified" by ALISH.

2.5: Natural Hazards

2.5.1: Existing Conditions

This section discusses those natural hazards applicable to the project site including coastal erosion, earthquakes, flooding hazards, high waves, hurricanes, and tsunamis.

Coastal Erosion Hazards

According to the *Atlas of Natural Hazards in the Hawaiian Coastal Zone*, coastal erosion and beach loss are chronic and widespread problems in the Hawaiian Islands with a typical erosion rate ranging from 0.5 to 1 foot per year. Coastal lands in Hawaiʻi are generally composed of carbonate sand that is subject movement by wave action. Coastal erosion rate maps have been developed for Kauaʻi, based upon established annual erosion rates. According to the Kauapea study area map, erosion is occurring at an average rate of -0.6 feet per year.

Earthquake Hazards

Earthquake activity in Hawaiʻi is generally linked to volcanic activity. Thus earthquake activity primarily occurs before or during volcanic eruptions. Additionally, earthquakes may occur as part of the underground movement of magma that travels nears the surface but does not erupt. Hawaiʻi Island experiences thousands of earthquakes each year however, most can only be detected by sensitive

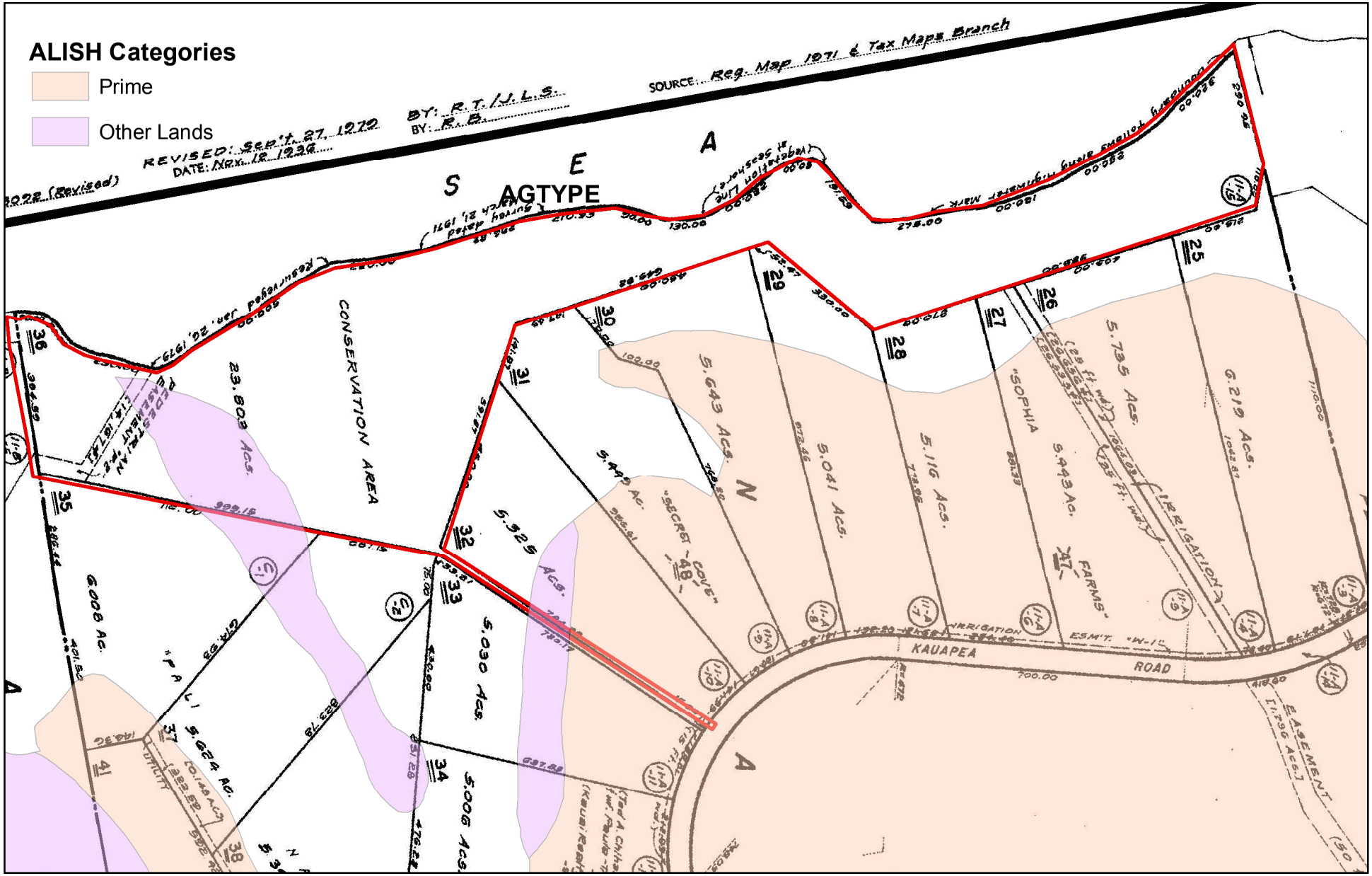

FIGURE 14

AGRICULTURAL LANDS IMPORTANT TO THE STATE OF HAWAII

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website

0 140 280 560 Feet

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instruments. Then there are some earthquakes that can be felt and also cause minor to moderate damage Most of the earthquakes associated with volcanic activity in the State of Hawaiʻi occur on the Island of Hawaiʻi. Earthquakes associated with the movement of magma are concentrated beneath Kilauea and Mauna Loa volcanoes. A majority of earthquakes greater than Magnitude 5 (M5+) are concentrated on Hawaiʻi Island. No large earthquakes have been recorded on Kauaʻi.

Flooding Hazards

The Property is located in flood hazard zones VE (EL 24), VE (EL 25), VE (EL 26), VE (EL 27), VE (EL 28), VE (EL 29), and X on Flood Insurance Rate Map (FIRM) No. 1500020060E issued by the Federal Emergency Management Agency (FEMA). Zone VE indicates a coastal flood zone with a velocity hazard (wave action) in which the base flood elevation has been determined. Zone X indicates an area determined to be outside of the 0.2% annual chance floodplain. FIRM designations are shown on Figure 15.

High Wave Hazards

Tied in with the flooding hazards are high wave hazards. According to the Atlas of Natural Hazards in the Hawaiian Coastal Zone, sudden high waves are the most predictable coastal hazard in the State of Hawaiʻi. There are four (4) primary sources of waves in Hawaiʻi: North Pacific swell, trade wind swells, south swells, and Kona storm swell. Occasional sources of waves are tropical storms and hurricanes.

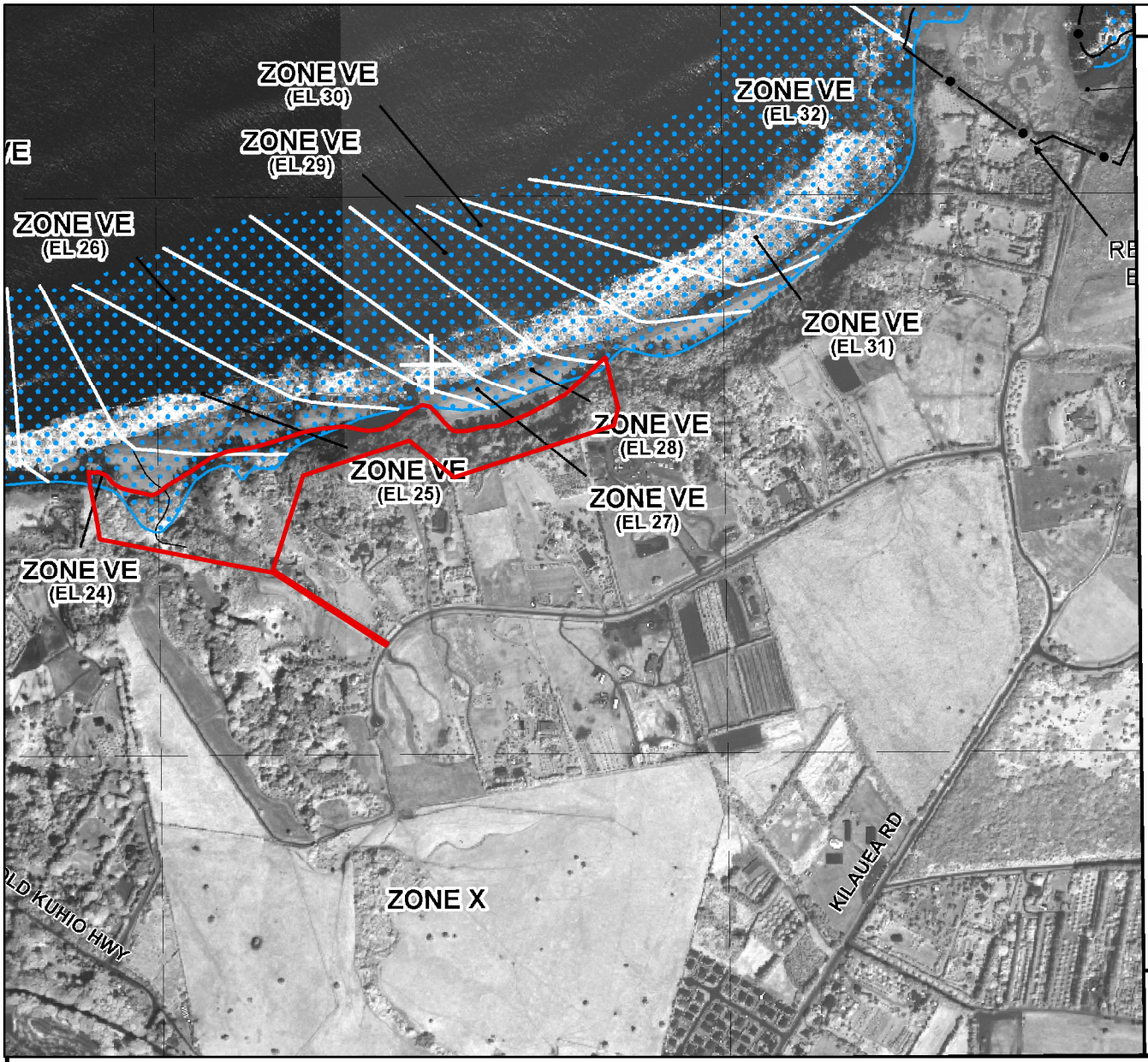
The Property is subject to the trade wind swell and the North Pacific swell due to its location on the north shore. Both types of swells occur throughout the year, however, the North Pacific swell produces the largest waves during the year from October to May. Wave heights during the winter from the North Pacific swell range between 20 to 40 foot faces.

Hurricane Hazards

There are three major elements that make a hurricane dangerous: strong winds and gusts; large waves and storm surge; and heavy rainfall. Although generally difficult to predict, a hurricane of significant strength passing close to the island could cause damages to the existing improvements. The proposed action could be susceptible to damage from strong winds, flooding due to heavy rainfall, impacts from large waves and storm surges.

A hazard mitigation report prepared by the Federal Emergency Management Agency (FEMA) after Hurricane Iniki in 1992 identified nine (9) hurricanes within 300 nautical miles of Hawaiʻi between 1970 and 1992. The significance of the 300 nautical miles is that it is about one day's travel time to the Hawaiian Islands. Most of these hurricanes are in the vicinity of the Island of Kauaʻi. A review of hurricane tracking, dating back to the 1950's, has not been able to identify meteorological or geographical reasons for hurricanes to head for Kauaʻi and bypass the remaining islands.

Within the past 20 years, Kauaʻi has sustained extensive damages due to Hurricanes Iwa and Iniki. Much of this damage was the result of high winds and storm surges. Hurricane Iniki has been the strongest and most destructive of hurricanes in the State of Hawaiʻi.



NFIP

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0060E

FIRM

FLOOD INSURANCE RATE MAP

KAUAI COUNTY, HAWAII

PANEL 60 OF 356

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
KAUAI COUNTY	150002	0060	E

Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.

MAP NUMBER
1500020060E

MAP REVISED
September 16, 2005

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema

FIGURE 15

FLOOD INSURANCE RATE MAP

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website and US Soil Conservation Service

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Tsunami Hazards

A tsunami is a series of powerful waves caused by underwater earthquakes, near shore or underwater landslides, or volcanic eruptions. These waves differ from regular ocean waves which are generated from the wind. Tsunami's travel at great speeds (up to 590 mph), can have a wave length up to 120 miles, and have a long period between successive wave crests. There are instances in which the near shore water recedes and exposes the ocean floor prior to the arrival of the initial wave. A tsunami event can last over several hours.

The Aleutian earthquake of 1946 generated a tsunami in which the run up at Hanalei was recorded at three (3) feet while a few miles away at Hāʻena, the run up was recorded at 35 feet. This highlights the variability of impact on Kauaʻi from a tsunami. During the early 1960's two (2) tsunami's impacted the Kauaʻi coastline. The Chilean earthquake of 1960 generated a Pacific wide tsunami that tore through portions of the town of Hilo on the Big Island. A run up height of 10 feet was recorded in Hāʻena while Hanapepe recorded a run up height of 14 feet. In 1964, the Alaska earthquake generated a Pacific wide tsunami with a recorded run up of one (1) foot in Līhuʻe while Hāʻena recorded a run a run up height of 10 feet. During the Draft EA comment period, no issues were raised with regards to tsunamis.

2.5.2: Potential Impacts

Minimal impacts resulting from natural hazards are anticipated as a result of the proposed action. There is some risk associated with coastal erosion. However, coastal erosion is a direct result of the other hazards also discussed in this section. There is little risk of seismic and tsunami activity. The 1964 tsunami was the last tsunami to impact Kauaʻi. Although generally difficult to predict, a hurricane of significant strength passing close to Kauaʻi could damage existing improvements. Lastly, portions of the Property are located in a special flood hazard zone subject to coastal flooding through high wave action. Depending on factors such as wave height, the lower portion of the mauka-makai trails could be impacted by high wave action.

2.6: Hydrology

2.6.1: Existing Conditions

Water resources in Hawaiʻi are classified as either surface or ground water by the State of Hawaiʻi Commission on Water Resources Management (CWRM). Surface water is comprised of streams, springs, ditches and canals, as well as reservoirs. Ground water is located beneath the surface of the earth and is stored in a number of geologic settings. The CRWM has adopted a hydrologic unit approach to manage both surface and ground water resources.

Ground water hydrologic units are comprised of a series of aquifers. An Aquifer Sector Area is the largest aquifer unit: it is then further divided into sub-regional hydrologic units known as Aquifer System Areas. Surface water hydrologic units are comprised of a watershed that may contain more than one drainage basin.

The Property is located in the Hanalei Aquifer Sector (202) ground water hydrologic unit which is comprised of Kalihiwai, Hanalei, Wainiha, and Napali Aquifer System Areas. Existing improvements are

located within the Kalihiwai Aquifer System Area (20201). Additionally, the Property is located in the Kauapea (2027) surface hydrologic unit.

Groundwater Water

Groundwater resources on Kaua'i are comprised of fresh basal water, dike confined water, perched water, and flank aquifers. As discussed earlier, lands underneath the Property are comprised of the Kōloa volcanic series, the least permeable rocks on the islands. This is because the Kōloa volcanic series were usually deposited as flat layers which tend to be massive and devoid of permeability elements. The Napali formation of the Waimea Canyon volcanic series are the most permeable rocks in the island. The CRWM groundwater hydrologic units for Kaua'i island are shown in Figure 16.

The groundwater underneath the Property is identified as belonging to a basil aquifer.

Figure 16**: Groundwater Hydrologic Units**

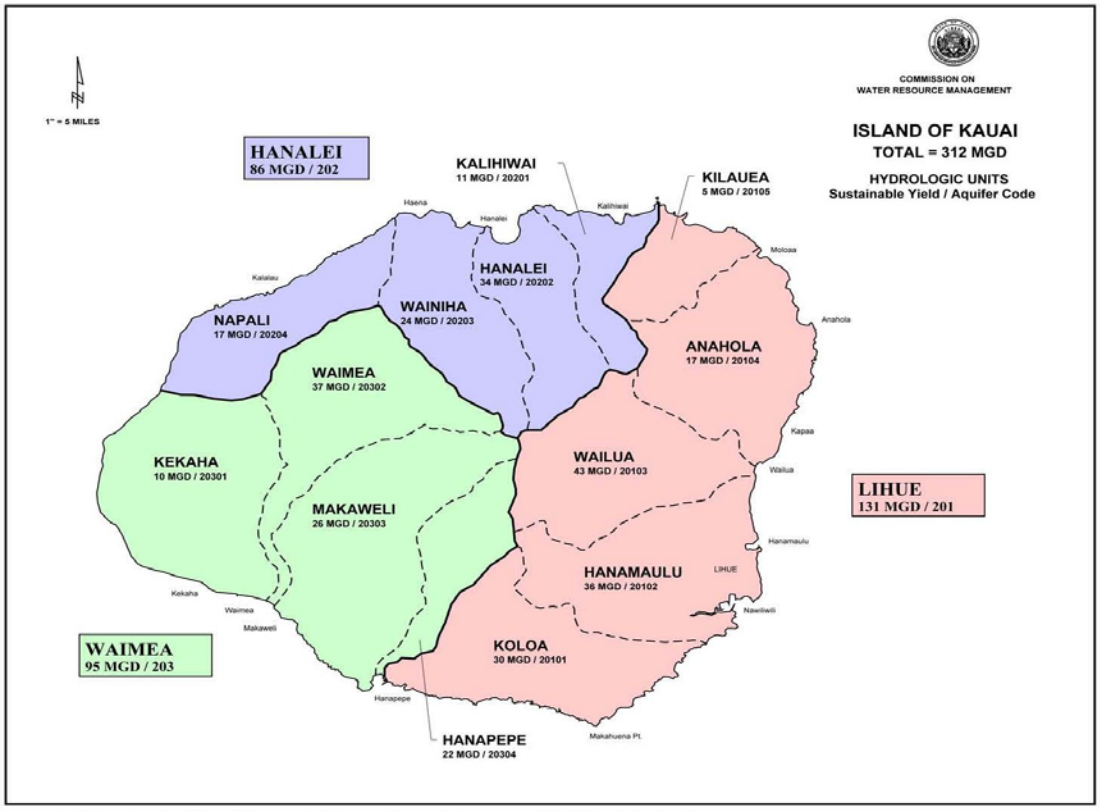

Figure 3-16: Island of Kauai Ground Water Hydrologic Units and 2008 Sustainable Yields

Map Projection: Universal Transverse Mercator

Surface Water

The Kauapea surface hydrologic unit is approximately 642.782 acres in size. An unnamed, intermittent stream is located in this surface hydrologic unit, along the western portion of the Property that is part of a gulch. The location of this stream is shown in Figure 5 and Figure 19. There are no diversions or monitoring gages associated with this intermittent stream. The mouth of this stream opens up to the upper most portion of the sand of Kauapea Beach. While conducting a site visit on November 23, 2010, there was water flowing in the stream. This water puddles on the sand before being absorbed. Additional photos of the stream and gulch can be found in Appendix A. The CWRM surface water hydrologic units for portions of Kaua'i are shown in Figure 17.

During the Draft EA comment period, no issues were raised for ground or surface water.

2.6.2: Potential Impacts

During pre-consultation with government agencies, the Army Corp of Engineers determined that a Department of Army (DA) permit is not required for the proposed action.

No adverse impacts to groundwater and surface water resources are anticipated as a result of the proposed action. The Property is not located in an area in which groundwater is being withdrawn. Little to no surface water reaches the ocean. Marine waters off of Kauapea Beach are not listed by the State of Hawai'i Department of Health as an impaired water body. Consultation with the appropriate governmental agencies will continue to be done to ensure that the existing improvements and maintenance, as well as the proposed fencing are in compliance with existing codes and regulations.

2.7: Air Quality

2.7.1: Existing Conditions

Air quality in the State of Hawai'i is generally characterized as clean and low in pollution. This is due to the northeast trade winds which typically carry air pollutants towards the ocean. However, large portions of the Big Island are continuously blanketed by volcanic fog (vog) due to the 20+ year eruption of Kīlauea. During periods of Kona weather, vog also reaches Kaua'i. The State of Hawai'i has adopted air quality standards equal to or exceeding National ambient air quality standards (NAAQS) established by the U.S. Environmental Protection Agency (EPA). State standards for sulfur dioxide, lead, and particulate matter of 10 microns (PM_{10}) and 2.5 microns ($PM_{2.5}$) are the same as EPA standards. State standards for carbon monoxide, nitrogen dioxide, and ozone are stricter than the EPA standards. Lastly, the State of Hawai'i has established standards for hydrogen sulfide while the EPA has not.

The State Department of Health (DOH) is in the process of establishing one (1) monitoring station on Kaua'i. This station will be located in Niumalu, along the southeastern portion of Kaua'i. It will be a Special Purpose Monitoring Station (SPM) for carbon monoxide, sulfur dioxide, particulate matter, wind speed, and wind direction to monitor cruise ships emission.

During the Draft EA comment period, no issues were raised on air quality impacts.

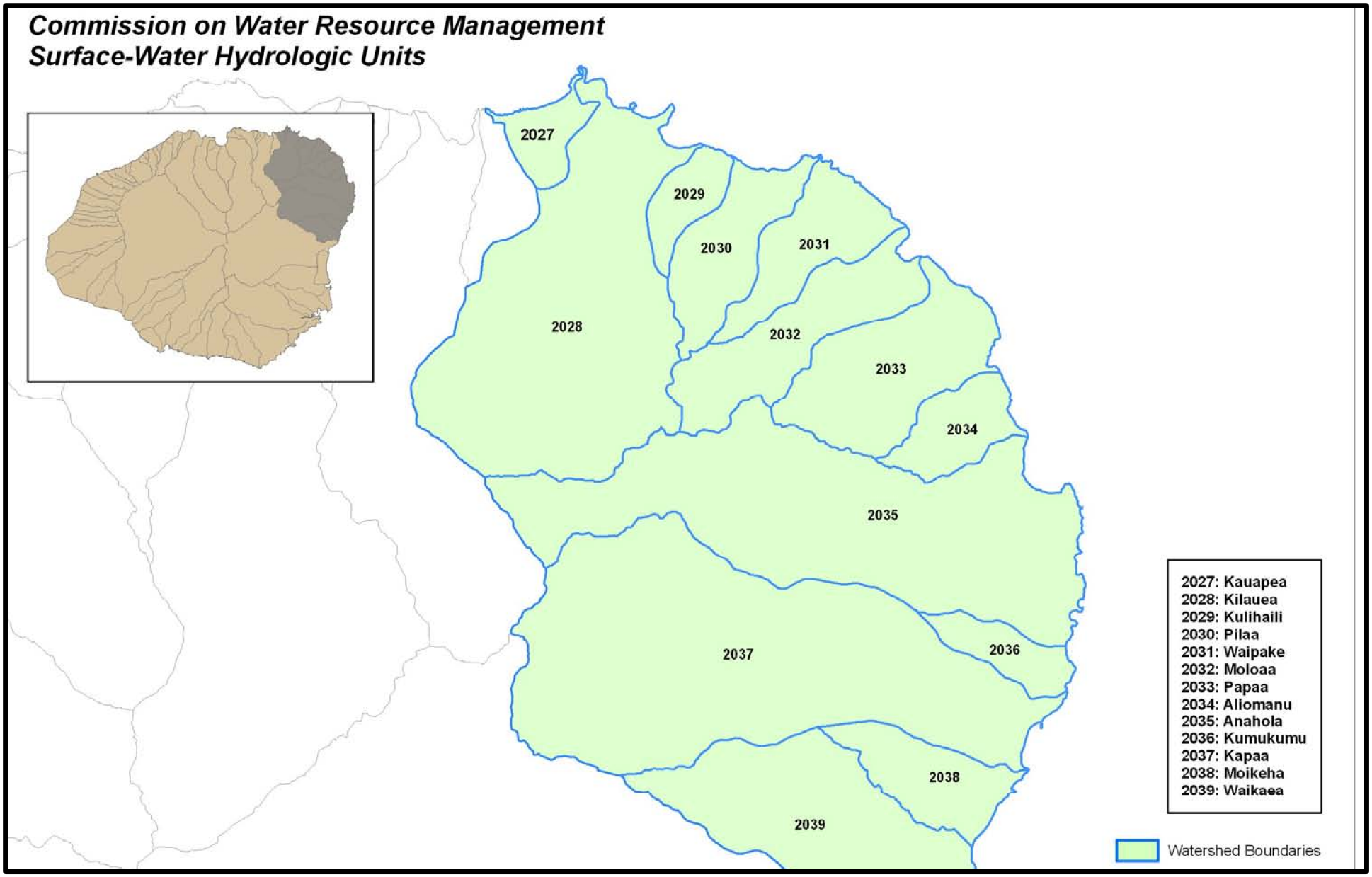

FIGURE 17

SURFACE WATER HYDROLOGIC UNITS

Secret Beach Properties, LLC
Sources: State of Hawaii Water Protection Plan

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2.7.2: Potential Impacts

No significant or adverse impacts to air quality are anticipated as a result of the proposed action. The existing improvements are located on the side of a heavily vegetated coastal bluff that directly faces the northeast trade winds.

There may be short-term impacts associated with construction of fencing along the mauka Property boundary. Appropriate measures will be taken to mitigate potential impacts from fugitive dust that may be generated. Overall, continued maintenance of the Property will generate little to no fugitive dust. Additionally, there may be minimal fugitive dust associated with the removal of unwanted vegetation. All activities will be done in compliance with Chapter 11-60.1 Air Pollution Control, HAR. Further, vegetation removal will be conducted in accordance with plans submitted to the DLNR-OCCL for review and approval**.**

2.8: Noise Quality

2.8.1: Existing Conditions

Noise is defined as excessive or unwanted sound and is measured in decibels (dB). There are different frequencies of sound. When sound is described in terms of frequencies humans are capable of hearing, decibels are written as "dBA".

The State of Hawaiʻi regulates excessive noise associated with stationary sources, agriculture, construction, and industrial activity. Further, noise quality standards have been developed to protect public health and welfare as well as the environment. Maximum permissible noise levels are regulated by the Department of Health for any location at or beyond the property line. These noise levels shall not exceed maximum noise levels by 10% of the time during any 20-minute period. The maximum noise limits have been developed as a function of time of day and zoning; it also takes into account background noise level. They are shown in Table 1 Maximum Permissible Sound Levels in dBA.

During the Draft EA comment period, no issues were raised.

Table 1: Maximum Permissible Sound Levels in dBA

Maximum Permissible Sound Levels in dBA			
Zoning Districts		Day Hours (7 AM – 10PM)	Night Hours (10PM – 7AM)
Class A	Residential, Conservation, Preservation, Public, and Open Space	55 dBA (exterior)	45 dBA (exterior)
Class B	Multi-Family Dwellings, Apartments, Business, Commercial, Hotel, and Resort	60 dBA (exterior)	50 dBA (exterior)
Class C	Agricultural, Country, and Industrial	70 dBA (exterior)	70 dBA (exterior)

Source: Chapter 11-46 Community Noise Control, HAR

2.8.2: Potential Impacts

No adverse impacts to noise are anticipated as a result of the proposed action. There may be short term impacts associated with trail maintenance, the removal of unwanted vegetation, and the installation of fencing along the mauka boundary of the Property. Certain swaths of the trail are covered with grasses that lend themselves to be maintained with a weed whacker.

All activities will be done in compliance with Chapter 11-46 *Community Noise Control,* HAR. For the removal of unwanted vegetation, this will be conducted in accordance with plans submitted to the DLNR-OCCL for review and approval. Existing ambient noise is associated with and limited to the surrounding areas such as the existing farm dwellings, trade winds blowing through the vegetation, the existing birds, and the breaking of the waves along Kauapea Beach.

During the Draft EA comment period, no issues were raised.

2.9: Visual Resources

2.9.1: Existing Conditions

The Property is a coastal bluff that is identified as an Important Land Form on the North Shore Planning District Heritage Resources Map. These maps are intended to document important natural, scenic, and historic features in relation to both urban and agricultural lands. Heritage resources identified as important landforms include mountains, stream valleys, gulches, bluffs, and other small coastal features that have ecological, recreational, cultural, and scenic values. These resources are shown in Figure 18.

From Kauapea Beach, the Property rises from mean sea level (msl) to approximately 250 feet above msl. This steep rise in elevation along with the existing forest provides a unique scenic backdrop to users of Kauapea Beach. From the top of the Pali the views are a mixture of the Pacific Ocean and tree tops. In several locations on the top of the Pali, vegetation has been cleared to provide an unobstructed view of the ocean.

During the Draft EA comment period concerns were expressed about potential impacts to visual resources from Kauapea Beach with the replacement of vegetation lower in height than the existing trees.

2.9.2: Potential Impacts

No adverse impacts to visual resources are anticipated as a result of the proposed action. However, should the installation of a fence along the mauka boundary occur, it will be designed to minimize any potential visual impacts. The existing trails and improvements are not visible from Kauapea Beach. An extensive portion of the lateral trail is located along the 150 foot elevation, approximately half way between the beach and top of the Pali, ands veiled by the coastal forest. The removal of dead and hazardous trees would have a beneficial impact on views of the coastal bluff. From the Pali, portions of the existing mauka-makai trails can be seen down slope. However, a majority of these trails are also hidden by the existing vegetation.

2.10: Historic, Archaeological, and Cultural Resources

2.10.1: Existing Conditions

An archaeological field inspection and literature report was prepared by Cultural Surveys Hawaiʻi, Inc. to identify potential cultural resources, historic properties, and provide recommendations related to the State of Hawaiʻi historic review process. The archaeological field inspection was conducted on December 20, 2010 on the 23.8 acre Property to record and document any surface archaeological features. Additionally, the field inspection assessed the potential for impacts to such sites.

Traditional and Historic Resources

The Property is located in the Namahana Ahupuaʻa. It is a small, atypical ahupuaʻa which extends inland approximately 6,000 feet from the coast and is approximately 3,500 feet wide. Kauapea Beach and an intermittent stream valley are the major lands located within this ahupuaʻa. Due to its unique configuration and location, it is thought that maybe Namahana may have been an ʻili that was subsequently divided from the northwest corner of the Kīlauea Ahupuaʻa.

During the Great Māhele, the entire ahupuaʻa was awarded to Miriam Kekauʻōnohi, the granddaughter of Kamehameha I and the wife of Kamehameha II. No kuleana awards were granted in the ahupuaʻa during this time.

There are no myths and legends in print referencing Namahana Ahupuaʻa. There is a passing reference to Kauapea in the *Legend of Kawelo*, however, it is not clear whether this reference is to Kauapea Beach. The neighboring Kīlauea Ahupuaʻa has a number of myths associated with it.

According to legend there are three long, ancient, parallel irrigation ditches that are remnant claw marks of a moʻo. The moʻo, named Ka-moʻo-koa (brave lizard), was ordered by Chief Mano-ka-lani-pō to open up the regions of upper Kīlauea for agricultural. There is ridge within the Makaleha Mountains named after Ka-moʻo-koa.

Pele, the volcano goddess, also left her mark in Kīlauea. There were three stones near the top of Kīlauea Crater that represented sisters encountered by Pele. It was on Kauaʻi that Pele met and fell in love with Lohiʻau. She began to create a home for the both of them at Kīlauea Crater, however was thwarted by her sister, Nā-maka-o-kahaʻi, goddess of the sea, who summoned the ocean to extinguish the eruption and break down the crater walls. Observing this scene and laughing were three sisters; Kalama, Pua and Lāhela. After asking their names, Pele then touched each sister and turned her into stone. These stones were a warning not to mock at Pele.

Another legend of Kīlauea is about the boulders lying in the ocean channel between the shore of Kīlauea Crater and Mokuʻaeʻae Island. It is said that these boulders were placed in the ocean channel by the Menehune one night. However, they abandoned this task just as they were able to touch the bottom of the channel with a paddle because morning broke.

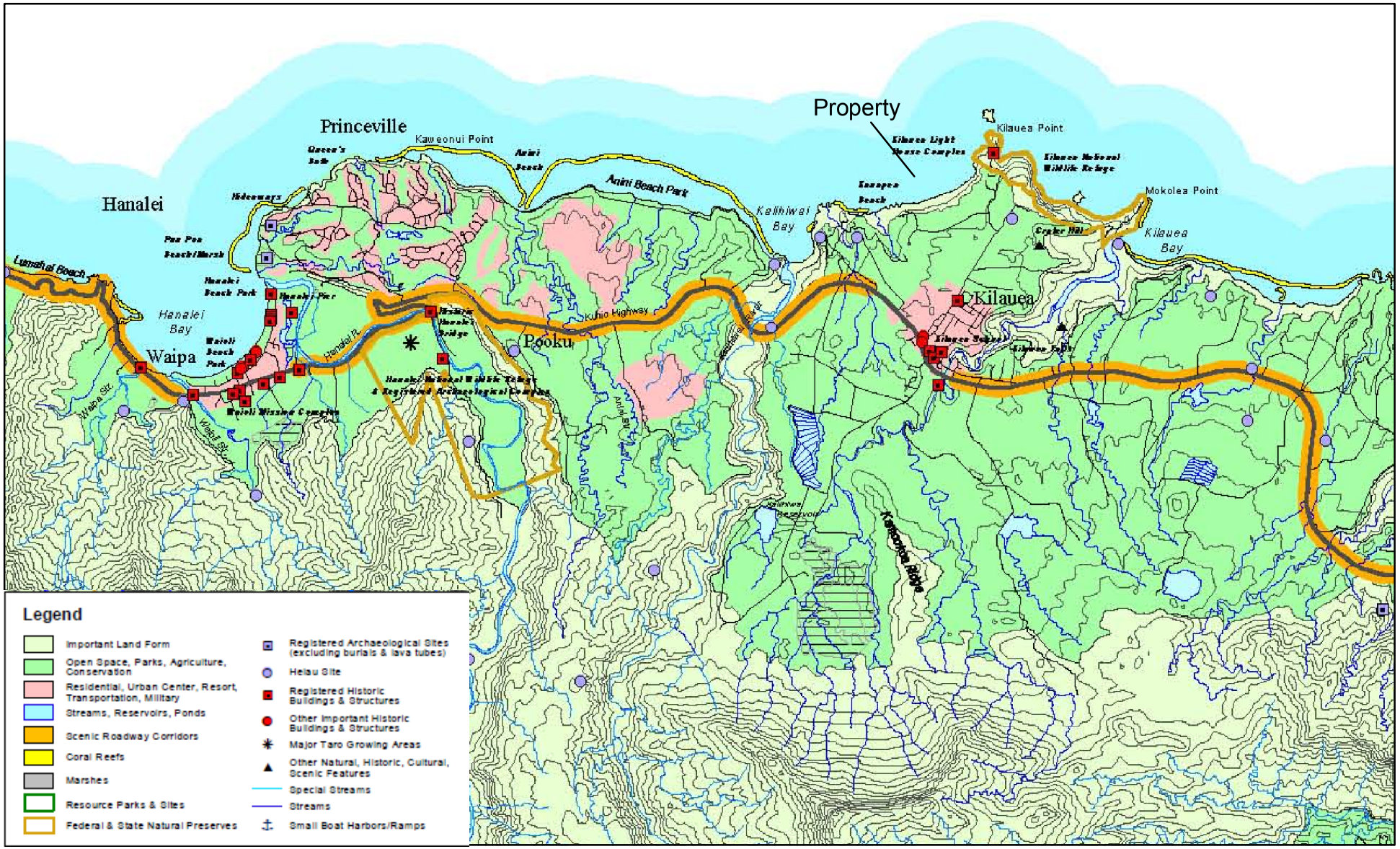

FIGURE 18

NORTH SHORE PLANNING DISTRICT HERITAGE RESOURCES MAP

Secret Beach Properties, LLC
Source: Kauai General Plan, November 2000

N

Not To Scale

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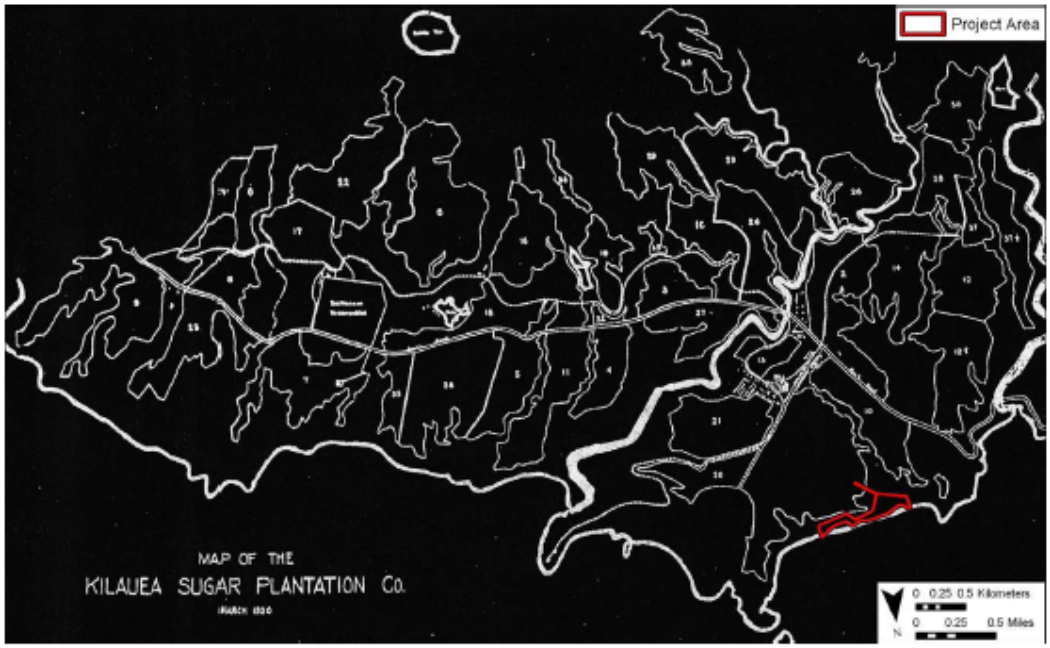
Lastly, Fornander shares a story about the ruling chief Lonoikamakahi. He was on Kaua'i traveling with companions in Kīlauea and Kalihi (Kalihiwai, Kalihikai) as well as eating the ripe flower/fruit of the pandanus tree. The emphasis of this story was placed on the great lauhala tracts as well as the heavy and windblown rain of these areas. This story identified the wind specific to Moku'ae'ae Island as "ae-kai" while the wind of Kīlauea is known as "wai-mo".

In 1863 the entire ahupua'a of Kīlauea was purchased by Charles Titcom. This was the beginning of the Kīlauea Plantation. In 1877 Kīlauea Plantation expanded as additional lands were purchased by Charles Titcom in partnership with Captain John Ross and Edwin P. Adams. In 1881, Kīlauea Plantation began the construction and operation of a railroad to transport sugar to and from Kahili landing. This railroad had 12 ½ miles of permanent track and five miles of portable track, 200 cane cars, six sugar cars and four locomotives. Eventually it was abandoned in 1942 as trucks were used to transport the harvested sugar cane.

Also in the 1880's, Kīlauea Sugar Company began the diversion of upland water. They developed their own water system utilizing a series of dams, reservoirs, flumes and ditches. C. Brewer and Company began the management of Kīlauea Plantation 1910. In 1948, they took over the controlling interest of the company. On December 31, 1971, sugar operations ceased.

Figure 19 is a 1930 map of the Kīlauea Plantation contains the sugar cane fields and associated infrastructure. Portions of the Property were utilized for sugar cane cultivation.

Figure 19: Kilauea Sugar Company Map (1930)



Map is not to scale.

Previous Archaeological Research

One previous archaeological survey has been conducted on a portion of the Property. This was the *Kīlauea Point National Wildlife Refuge Survey,* conducted by William Kikuchi in 1987. On "Figure 3 Area Surveyed" map, a large segment of the eastern portion of the Property was identified as an "Area Surveyed Outside of the Refuge Area". However, there are no specific details provided in Kikuchi's study on what was found (if anything), or why the area was studied.

There have been a total of ten archaeological studies conducted in the vicinity of the Property. Most of the finds in these studies are related to plantation agriculture. Of note are the studies conducted along the coastline as no pre-contact sites or deposits were found. Also, studies of valleys not bulldozed or less disturbed by plantation agricultural reported a number of permanent agricultural and habitation complexes.

Findings

No historic, archaeological, and cultural resources were identified during the literature review and field inspection. A majority of the Property consists of steep slope and/or cliff with little possibility for historic properties or cultural resources. No evidence of human modification or cultural material was observed. The presence of taro on steep cliffs is notable. It is thought that these may have grown from shoots washed down from above. No further archaeological study was recommended.

During the Draft EA comment period issues were raised on historic trails, cultural uses, fishing practices, and consultation with persons of the area as part of a cultural impact assessment.

2.10.2: Potential Impacts

No impacts to historic, archaeological, or cultural resources are anticipated as a result of the proposed action. There have been no historic properties identified by the field inspection or literature review. Further, none are believed to be present. Further, no historic properties have been impacted by the land altering activities that have occurred. The Office of Environmental Quality Control (OEQC) provides guidance for cultural impact assessments, including conducting interviews with community members. Due to the nature and scale of the existing and proposed improvements and based on the recommendations in the study, interviews to gather additional information on cultural practices were not warranted at this time. The existing report is sufficient to assess the cultural impacts of the proposed project at this time.

2.11: Biological Environment

2.11.1: Existing Conditions

A biological reconnaissance survey of the Property was conducted by AECOS, Inc and Rana Consulting Biologists on August 11, 2010 to identify biological resources on the Property. Figure 20 identifies the survey areas and general vegetation zones for the Property.

This biological reconnaissance study can be found in Appendix C: Biological Reconnaissance Survey.

Flora Resources

No federally and state listed threatened or endangered plant species were observed during the survey. The survey identified 121 plant species with ten (10) being indigenous to Hawaiʻi. An additional seven (7) plant species are Polynesian introduced.

Vegetation along the steep eastern "panhandle" is comprised of a mixed coastal forest along with small open areas dominated by grasses and/or shrubs. Ironwood and *hala* are the dominant trees in this portion of the coastal forest. Along the base of the "panhandle", is a coastal strand comprised of tropical almond, *ʻakiʻaki* and *naupaka kahakai*. On the western side, vegetation is comprised of floricultural areas, some coastal forest, and riparian vegetation along a small stream. Java plum, Christmas berry, tropical almond, and *hala* comprise this portion of the coastal forest.

During the Draft EA comment period, the U.S. Fish and Wildlife Service (USFWS) commented that the Property is federally designated as a critical habitat for the Federal and State listed endangered plant, Hilo ischaemum (Ischaemum byrone). This plant is a short-lived perennial member of the grass family that has been previously located along the lower portions of the coastal bluff. It is a coastal species that usually grows in close proximity to the ocean among on moist or wet basalt cliffs in windward coastal at elevations ranging from 0 to 623 feet. During the time that the biological assessment was conducted, the Hilo ischaemum was not seen adjacent to the existing improvements or in the vicinity of the existing improvements.

All persons working on this project and on the Property will learn how to identify the Hilo ischaemum to avoid inadvertently destroying individuals that may be present in the vicinity of the improvements. It is anticipated that there will be a need for the removal of dead trees and noxious vegetation in the future. This removal will be subject to the review and approval of the Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL).

Fauna Resources

One threatened and endangered bird and three (3) indigenous birds were observed on the Property. During the survey, two (2) Nēnēs *(Branta sandvicnesis)* were observed foraging on the Property. Nēnē, also known as the Hawaiian Goose, is listed by both the federal and state governments as threatened and endangered species. Both birds were banded. Upon further research it was discovered that these birds nest at the NWR.

The Wedge-tail Shearwater *(Puffinus pacificus)* and White-tailed Tropicbird *(Phaethon lepturus)* were observed on the Property; as well as their nests. They are indigenous seabirds that nest on the coastal bluffs and immediately inland from the bluff top. These species are abundant at the Kīlauea Point National Wildlife Refuge (NWR), their primary nesting site. Lastly, the Pacific Golden-Plover *(Pluvialis fulva)* was observed on the Property. It is an indigenous migratory shorebird that nests in the high Arctic during the late spring and summer, then returning to Hawaiʻi for the winter.

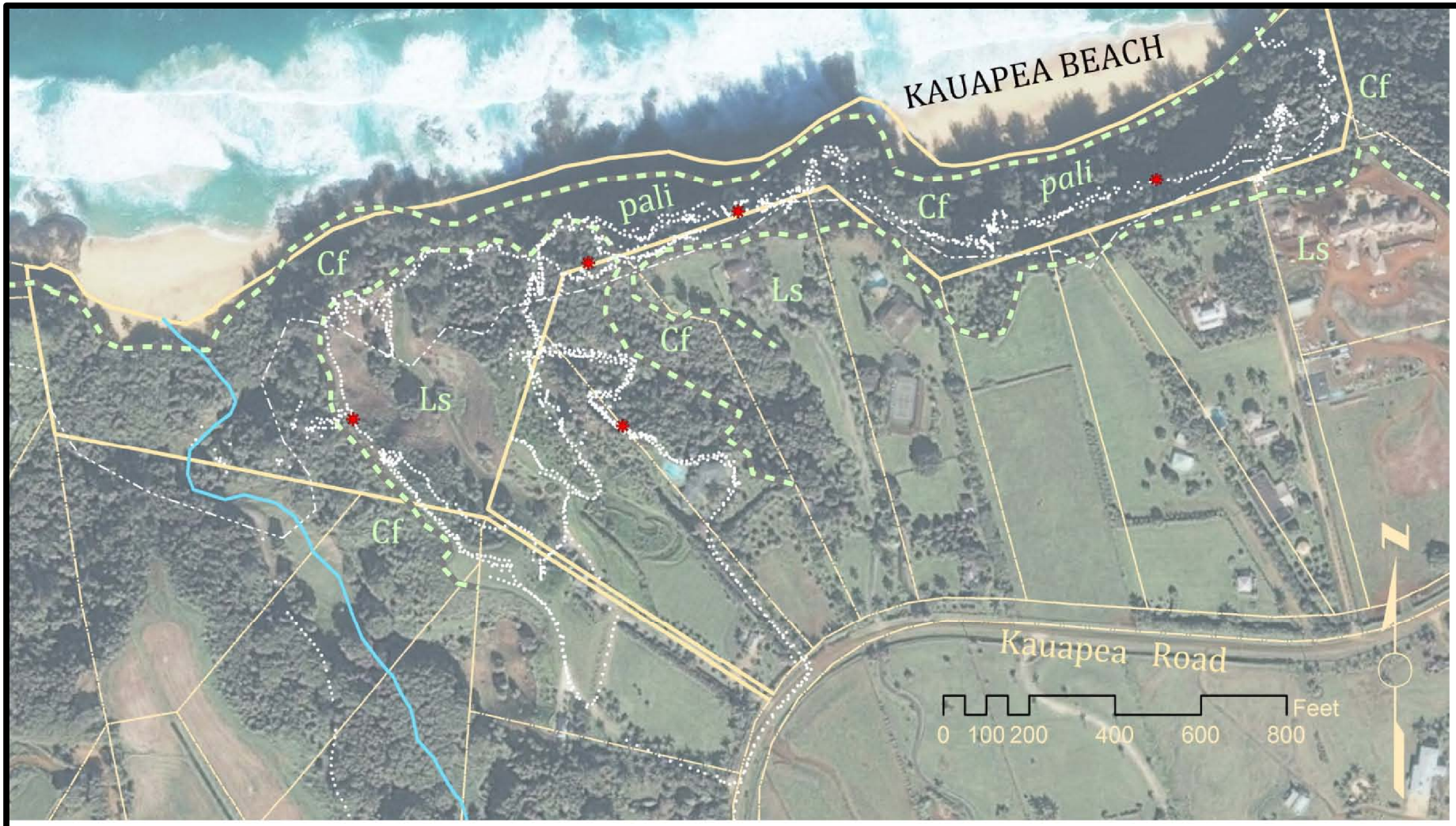


Figure 1. Map of TMK: 5-2-05: 036, Lot 11-A-15 (bold yellow outline) showing botany trek (white dots), bird count stations (red asterisks), Conservation District mauka boundary (fine white line), and general vegetation zones (green-grey lines; Cf = coastal forest, Ls = landscaped).

FIGURE 20

BIOLOGICAL SURVEY MAP

Secret Beach Properties, LLC
AECOS, HAWAII

N

Not to Scale

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During the Draft EA comment period, the USFWS commented that the White-tailed Tropicbird and Wedge-tail Shearwater are federally protected under the Migratory Bird Treaty Act. They further note that the nesting season for these birds is between March through November.

Mammal Resources

No federal and state listed threatened or endangered species were detected or observed during the survey. There were three mammals species detected during the survey; dog, pig, and cat.

Abutting the Property is Kauapea Beach and the Pacific Ocean. These marine waters are part of the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary). This Sanctuary was created by Congress in 1992 to protect humpback whales and their habitat in Hawaiʻi.

During the Draft EA comment period, the USFWS commented that the Federal and State listed Hawaiian hoary bat (*Lasiurus cinereus semontus*) has been observed in the vicinity of the Property. The Hawaiian hoary bats roost in both exotic and native woody vegetation and leave their young unattended in "nursery" trees and shrubs when they forage. If trees or shrubs suitable for bat roosting are cleared during the bat-breeding season (May to August), there is a risk that young bats could inadvertently be harmed or killed.

Further, we understand that should the future fencing on the mauka portion of the property be constructed, it is recommended that the use of barbed wire be avoided. The use of barbed wire may ensnare the Hawaiian hoary bat.

2.11.2: Potential Impacts

There is one federal and state listed threatened and endangered flora species on the Property, Hilo ischaemum. This grass was not observed during the biological survey. Also, one federal and state listed threatened and endangered species, Nēnē, and three indigenous migratory seabirds were observed on the Property. Nests were also discovered for the federally protected Wedge-tail Shearwater and the White-tailed Tropicbird. Lastly, no federal and state listed threatened and endangered mammal species were detected or observed on the Property. However, the Hawaiian hoary bat has been seen in the vicinity of the Property. The woody characteristic of the Property is similar to that used by the Hawaiian hoary bat for nesting. With the implementation of the following proposed mitigation measures, no adverse impacts to the biological environment are anticipated as a result of the proposed action.

- The installation of a fence along the mauka boundary is a "last resort" option should this activity as well as other illegal activities continue. Should this fence be required, it is recommended that it not be barbed wire as it may then snag Hawaiian hoary bats that are in the vicinity of the Property.
- In order to prevent inadvertently destroying plants that may be present, that all persons working on the property will be able to identify the Hilo ischaemum.
- In order to minimize impacts to the Hawaiian hoary bat during bat-birthing and pup-rearing season (May through August); woody plants greater than 15 feet tall will not be trimmed or removed.

- That prior to any construction or vegetation removal, the area should be searched to ensure there are no Hawaiian geese onsite. If a nest is found, all work in the vicinity of the nest should cease, and immediately contact the USFWS office.
- Should a Hawaiian goose appear in the area while construction or vegetation removal is being done, all work should cease until the bird leaves the area of its own accord.
- Any onsite projects, including vegetation removal, should occur outside of the nesting season for these seabird species (March through November). Prior to initiation of any work activity, the area should be searched to ensure that active nests or burrows are not present. If work must occur during the seabird breeding season, a 150 buffer from the active nest is recommended.
- To protect the productivity of active nesting sites, it is suggested that free movements of pets (*i.e.* dog's off-leash) be prohibited on the property. It is also recommended that the use of sturdy animal-proof garbage containers that reduce the attraction of the area to non-native and feral species, such as house mice, rats, and feral cats, which are known to prey upon eggs and chicks of seabird species.

Located northwest of the Kīlauea Point National Wildlife Refuge (NWR), the Property has similar characteristics as the western portion of the Refuge. The NWR was established in 1985 to conserve the populations and habitat of migratory seabird and the endangered Nēnē. An adjacent 15 acre parcel, TMK 5-02-004:071, has been identified for inclusion into the NWR. It is a coastal bluff area that provides the opportunity to increase native seabird nesting habitat that can be enhanced and protected from future encroachment and disturbance.

CHAPTER 3: EXISTING SOCIO-ECONOMIC ENVIRONMENT

3.1: Existing Conditions

Kaua'i County is the smallest county in the State of Hawai'i. It is comprised of four (4) islands, Lehua, Ka'ula, Ni'ihau, and Kaua'i with a combined land area of 622.2 square miles. The island of Kaua'i is the government, population, and economic center for Kaua'i County.

According to the Kaua'i Economic Outlook Summary for 2009, rising energy prices; the global financial crisis; and the departure of ATA Airlines, Aloha Airlines, and two interisland cruise ships greatly impacted the Kaua'i economy. The State of Hawai'i fiscal crisis will likely delay recovery. Further, the economic environment in the next two (2) years will be challenging, and, it is anticipated that the recovery of the U.S. and global economies will be weak.

3.1.1: Social Factors

In 1998, resident population for Kaua'i was 56,600 persons. It rose to 58,463 persons in the 2000 Census. As of July 1, 2009, the estimated population for Kaua'i County was 64,529 persons. The ADVP was 17,220 in 1998 and then rose to 18,041 in 2000. In 2008, the ADVP further rose to 18,690 persons.

As part of the Kaua'i General Plan update, the Kaua'i Planning Department (KPD) adopted planning growth ranges utilizing Average Visitor Daily Population (AVDP). This is the number of daily visitors on Kaua'i. As approximately 40 percent of the jobs on Kaua'i economy is based on the visitor industry, the AVDP was utilized as a barometer for growth. An AVDP range of 24,000 through 28,000 persons is utilized for the adopted planning growth ranges. Further, it is KPD's policy that the planning for public facilities should utilize the higher end of the planning growth ranges. These population projections and key employment sectors are shown in Table 2.

Table 2: Kauai 2020 Projection of Population and Key Employment Sectors

Kaua'i 2020 Projection of Population and Key Employment Sectors							
		General Plan 2020 Projections		Projected Growth Between 1998 - 2020			
				Low Range		High Range	
	1998 (actual)	Low	High	Absolute Change	Annual Growth	Absolute Change	Annual Growth
Average Daily Visitor Population	17,220	24,000	28,000	6,780	1.5%	10,780	2.2%
Total Jobs	32,300	40,370	45,010	8,070	1.0%	12,710	1.5%
Agriculture	1,000	2,200	3,100	1,200	3.6%	2,100	5.3%
High Technology	1,160	2,370	2,750	1,210	3.3%	1,590	4.0%
Non-Ag & Non Gov't Total	27,300	34,460,	37,750	7,160	1.1%	10,450	1.5%
Resident Population	56,000	65,260	74,320	8,660	0.6%	17,720	1.2%

Source: Kaua'i General Plan, Appendix B-2, Table B-2

3.1.2: Economic Factors

There were 24,900 wage and salary jobs in Kaua‘i County in 1997. Jobs rose to 26,550 in the 2000, and in 2009, the number of jobs in Kaua‘i County was 28,000. In 1997, the median household income for Kaua‘i County was $34,890. It rose to $51,378 in 2000. In 2008 the median household income for Kaua‘i County was $62,356.

During the Draft EA comment period issues related to resort development and affordable housing were raised.

3.2: Potential Impacts

No adverse impacts are anticipated as a result of the proposed action as it does not influence the amount of visitors, jobs, and income of Kaua‘i County. These existing improvements will allow the Applicant to monitor and maintain their Property.

CHAPTER 4: PUBLIC SERVICES AND UTILITIES

4.1: Solid Waste Facilities

4.1.1: Existing Conditions

The County of Kaua‘i Department of Public Works operates the Kekaha Landfill Phase II in West Kaua‘i. In addition to receiving residential and commercial solid waste, it is also a drop off point for recyclable waste. Additionally, there are four (4) refuse transfer stations that accept solid waste. It is then sorted and transferred for recycling, green waste processing, or disposal at Kekaha. The nearest refuse transfer station is located in Hanalei.

Adjacent to Kekaha Landfill Phase II is the Kekaha Debris Recycling Station. Also known as Kekaha Landfill Phase I, it processes white goods and scrap metal for recycling. Additionally, it serves as a recovery facility for segregated green waste. Island wide, there are eight (8) neighborhood recycling centers that accept newspaper, glass, aluminum, and paper products. The nearest neighborhood recycling center is located in Hanalei at the Hanalei Transfer Station.

During the Draft EA comment period, no issues were raised.

4.1.2: Potential Impacts

No adverse impacts to existing solid waste facilities are anticipated as a result of the proposed action. Trail maintenance will require the continued disposal of green waste. The location of the proposed action will not impact existing solid waste facilities or impede access to these facilities by the general public.

4.2: Recreational Facilities

4.2.1: Existing Conditions

Kauapea Beach, also known as Secret Beach, is located directly below the existing trails and is used for swimming and beachcombing. It is one of several long and wide sandy beaches along the North Shore from Kīlauea Point to Princeville.

Access to Kauapea Beach is by a pedestrian access easement that traverses the western portion of the Property. This access easement was established as a condition of approval for the Pali Namahana subdivision in 1978. It is one of is a series of access easements that begins from Kūhiō Highway and makes it way down towards Secret Beach. Additionally, access is also provided to adjoining land owners through the existing trails system that is part of this document.

There are a number of recreational facilities located in the North Shore Planning region. The nearest County Park facilities are Kīlauea Neighborhood Center and Kīlauea Park located in Kīlauea Town. These facilities provide both active and passive recreational activities. Additionally, the Kīlauea Neighborhood Center hosts the local farmers market twice a week.

The nearest State of Hawai‘i recreational facility is Hā‘ena State Park, a 65.7 acre scenic wild land park, located in Hā‘ena. It is located at the end of Kūhiō Highway and provides a number of ocean related

activities such as shore fishing and swimming at Kēʻē Beach. Hāʻena State Park is the location of the trailhead for the Kalalau Trail and the "wet caves.

Kīlauea Point National Wildlife Refuge (NWR) is a 203 acre refuge that is open to the public. Located at Kīlauea Point, it is part of the Kauaʻi National Wildlife Refuge Complex that also includes locations in Hanalei and Huleia. The NWR provides recreational opportunities such as education and interpretation programs related to the refuge such as native plants, bird watching, geology, and historic preservation.

During the Draft EA comment period public access to across the Property to Kauapea beach were raised.

4.2.2: Potential Impacts

No adverse impacts to existing recreational facilities are anticipated as a result of the proposed action. The location of the proposed action will not impact existing recreational facilities or impede access to these facilities by the general public.

4.3: Police Protection

4.3.1: Existing Conditions

Police protection is provided by the Kauaʻi Police Department, Hanalei District substation. It is located on Kūhiō Highway at the corner of Hanalei Plantation Road, adjacent to Prince Albert Park. The Hanalei District stretches from Olohena Road in Kapaʻa to Keʻe Beach and the beginning of the Na Pali Coast.

During the Draft EA comment period, no issues were raised.

4.3.2: Potential Impacts

A positive impact on police protection is anticipated as a result of the proposed action. The existing trails currently provide an alternative and faster access to Kauapea Beach for the police department during emergencies. Also, the location of the proposed action will not impact the existing Hanalei District substation or impede access to this facility by the general public.

4.4: Fire Protection

4.4.1: Existing Conditions

Fire protection is provided by the Kauaʻi Fire Department whose main station and administrative headquarters are located in Līhuʻe. The nearest fire station is located in Hanalei and provides fire protection and suppression, rescue (ocean and land), hazmat and emergency medical services. This fire station is adjacent to the existing Hanalei Police Substation.

The County of Kauaʻi Fire Department has provided the following breakdown of access across the Property to Kauapea Beach spanning the last five years in Table 3:

Table 3: Fire Department Response to Secret Beach

Inc #	Date	Inc. Type	Location	Situation	Trail Used
2757	7/29/2006	364	Secret Beach	Surf Rescue	Yes
2087	6/4/2007	361	Secret Beach	Swimmer in Distress	Yes
2571	7/7/2008	143	Trail to Secret Beach	Brush Fire	Yes
2619	7/18/2008	151	Secret Beach	Brush Fire	Unknown
431	7/31/2008	141	Secret Beach	Tree Fire	Unknown
616	2/19/2009	140	Secret Beach	Small Fire	No
3292	9/15/2009	140	Secret Beach	Tree Fire	Yes
3724	10/21/2009	364	Secret Beach	Swimmer in Distress	Yes
4545	12/23/2009	321	Secret Beach	Drowning	Unknown
4606	12/28/2009	321	Secret Beach	Swimmer in Distress	Yes
450	2/6/2010	342	Secret Beach	Surf Rescue	Yes
2815	8/6/2010	321	Secret Beach	Swimmer in Distress	Yes
3020	8/22/2010	321	Secret Beach	Swimmer in Distress	Yes
3782	10/17/2010	142	Secret Beach	Brush Fire	Unknown
4743	12/26/2010	321	Secret Beach	Near Drowning	Yes
248	1/19/2011	364	Secret Beach	Swimmer in Distress	Yes

During the Draft EA comment period the usefulness of the mauka-makai trail for emergency personnel was questioned.

4.4.2: Potential Impacts

A positive impact on fire protection is anticipated as a result of the proposed action. The existing trails currently provide an alternative and faster access to Kauapea Beach for fire fighters during emergencies. Additionally, the location of the proposed action will not impact the existing Hanalei Fire Station or impede access to this facility by the general public.

4.5: Educational Facilities

4.5.1: Existing Conditions

The Kaua‘i School District of the State Department of Education oversees public schools on Kaua‘i. Kīlauea is serviced by Kīlauea Elementary School, Kapa‘a Middle School, and Kapa‘a High School of the Kapa‘a Complex.

The nearest private school is the Kīlauea Christian Academy located on Kīlauea Road. During the Draft EA comment period no issues were raised.

4.5.2: Potential Impacts

No adverse impacts to existing educational facilities are anticipated as a result of the proposed document. Due to the nature of the proposed action, there will be no students to enroll into the existing schools. The location of the proposed action will not impact existing schools or impede access to these facilities.

4.6: Medical Facilities

4.6.1: Existing Conditions

Samuel Mahelona Memorial Hospital is an 87 bed facility providing routine, urgent, and emergency services. It is located in Kapa‘a and is part of the Hawai‘i Health Systems Corporation, a public benefit corporation, comprised of hospitals previously administered by the State of Hawai‘i. Additionally, there is Wilcox Memorial Hospital, located in Līhu‘e. It is a 110 bed facility that provides routine, urgent, and emergency services for Kaua‘i. It is part of Hawai‘i Pacific Health which also operates Kapi‘olani Medical Center, Pali Momi Medical Center, and Straub on the O‘ahu.

During the Draft EA comment period no issues were raised.

4.6.2: Potential Impacts

No adverse impacts to existing medical facilities are anticipated as a result of the proposed action. The Property is already being serviced by these existing medical facilities. The location of the proposed action will not impact existing medical facilities or impede access to these facilities by the general public.

4.7: Electrical and Communications Facilities

4.7.1: Existing Conditions

Electrical service is provided to the Property by Kaua‘i Island Utility Company (KIUC) through the Port Allen Generating Station and Wainiha Hydroelectric Plant. Telephone and cable television services are provided by Hawaiian Telcom and Oceanic Cable.

During the Draft EA comment period no issues were raised.

4.7.2: Potential Impacts

No adverse impacts to existing electrical and communication facilities are anticipated as a result of the proposed action. The Property is already being serviced by these facilities. The location of the proposed action will not impact existing electrical and communications facilities. Nor will it impede access to these facilities by the general public.

CHAPTER 5: INFRASTRUCTURE

5.1: Transportation Facilities

5.1.1: Existing Conditions

Kūhiō Highway is a State-owned, two-lane, two-way arterial highway connecting Kaua'i s North Shore with Līhu'e. In addition to serving regional traffic, Kūhiō Highway also serves local traffic by connecting North Shore communities from Moloa'a to Hā'ena. Access to the Property is provided by Kauapea Place, Kīlauea Light house Road, and Kūhiō Highway.

Līhu'e Airport is one of two airports on Kaua'i and is located one mile north of Līhu'e. It is a State air carrier facility providing inter-island and domestic commercial service. Additional general aviation operations include helicopter, commuter, cargo, and scenic tours. Located to the west of Kīlauea is Princeville Airport. It is a privately owned facility located in Hanalei that provides air taxi and helicopter services.

Nāwiliwili Harbor is one of two State commercial harbors facilities serving Kaua'i and is located approximately two miles south of Līhu'e. It is the primary commercial harbor for Kaua'i that services cargo ships, cruise ships, charter fishing boats, and recreational boats.

The Kaua'i Bus operates public bus services and paratransit services from Hanalei to Kekaha. These services are provided Monday through Saturday, with the exception of County holidays. Paratransit services are provided for senior citizens, residents with disabilities, individuals at the Wilcox Adult Day Care Center, and participants in certain agency programs.

During the Draft EA comment period no issues were raised.

5.1.2: Potential Impacts

No adverse impacts to existing transportation facilities are anticipated as a result of the proposed action. The Property is already serviced by these facilities. The location of the proposed action will not impact existing transportation facilities nor will it impede access to these facilities by the general public.

5.2: Wastewater Facilities

5.2.1: Existing Conditions

The Property is not serviced by the County of Kaua'i Division of Wastewater Management or by an individual wastewater system.

During the Draft EA comment period no issues were raised.

5.2.2: Potential Impacts

No adverse impacts to existing wastewater facilities are anticipated as a result of the proposed action.

5.3: Water Facilities

5.3.1: Existing Conditions

The Property is serviced by the County of Kaua'i Department of Water through the Kīlauea-Waipake-Kalihiwai system. This service area is comprised of Kīlauea Town and a number of agricultural subdivisions located both mauka and makai of Kūhiō Highway. Potable water for this system is provided from groundwater pumped through Kīlauea Well No. 1 and Kīlauea Well No. 2. There are no meters on the Property.

During the Draft EA comment period no issues were raised.

5.3.2: Potential Impacts

No adverse impacts to existing potable water facilities are anticipated as a result of the proposed action. The location of the proposed action will not impact existing potable water facilities or impede access to these facilities. Additionally, no meters are being requested for the Property.

5.4: Drainage Facilities

5.4.1: Existing Conditions

There are no drainage improvements on the Property. Water sheet flows over the Property into the existing gulches or in a northerly direction, and then travels down slope to the bottom of the coastal bluff. This water is then absorbed by the sand or soils. Sediments that may have been picked up by the water are deposited on top of the sand or soils at the bottom of the bluff or gulches.

As discussed earlier in this document, there is one intermittent stream, Niu Stream that traverses the western portion of the Property. The mouth of Niu Stream is located inland, approximately 80 feet, from the shore break. Seasonal flooding mainly occurs, with little to no fresh water flowing into the ocean.

The coastal waters off of Kauapea Beach are classified as "Class AA" waters by the State of Hawai'i Department of Health. These waters are listed as an open coastal water in the State of Hawai'i Water Quality Monitoring and Assessment Report of 2006. However, there is insufficient data available to determine compliance with the State of Hawai'i water quality standards.

The lower portions of the Property are located in flood hazard zones VE (EL 24), VE (EL 25), VE (EL 26), VE (EL 27), VE (EL 28), VE (EL 29), and X on Flood Insurance Rate Map (FIRM) No. 1500020060E issued by the Federal Emergency Management Agency (FEMA). Zone VE indicates a coastal flood zone with a velocity hazard (wave action) in which the base flood elevation has been determined. Zone X indicates an area determined to be outside of the 0.2% annual chance floodplain.

During the Draft EA comment the issue of additional run off was raised.

5.4.2: Potential Impacts

No adverse impacts on drainage facilities are anticipated as a result of the proposed action. There has been no change to the existing drainage patterns on the Property. Run off and sediments are captured by sand located at the bottom of the coastal bluff or by soils in the gulches.

CHAPTER 6: CUMULATIVE AND SECONDARY IMPACTS

6.1: Secondary Impacts

Secondary impacts, or indirect effects, are those which are caused by an action and later in time or farther removed in distance, but are still reasonably foreseeable. Secondary impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Due to the size and location of the proposed action no adverse secondary impacts are expected.

6.2: Cumulative Impacts

Cumulative impacts are effects on the environment which result from the incremental impact of a project when added to past, present, and reasonably foreseeable future actions. The cumulative impacts associated with the project includes assessing implementation of the project to evaluate it, and incorporate other known planned improvements within the study areas that would affect or be affected by the project.

Cumulative impacts of the proposed project are neutral to positive. The existing improvements will remain in place and continue to be compatible with the natural characteristics of the Property. Maintenance of these improvements will also be compatible with the natural characteristics of the Property. These improvements will allow Secret Beach Properties, LLC to walk, police, and maintain the Property. Landscape maintenance will ensure that the vegetation on the coastal bluff is retained and maintained to minimize potential erosion of the bluff. The proposed action will also allow for replacement of noxious species with native species that may be more compatible with the coastal forest and minimize potential for erosion. Lastly, the Property is a federally designated critical habitat for the Hilo ischaemum.the Property does provide habitat for the Wedge-tail Shearwater and the White-tailed Tropicbird, indigenous seabirds found at the nearby Kīlauea NWR. It is also a foraging ground for the Nēnē, a federal and state listed threatened and endangered species whose habitat is also the nearby Kīlauea NWR.

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CHAPTER 7: RELATIONSHIP TO GOVERNMENTAL PLANS AND POLICIES

7.1: Hawai'i State Plan

Chapter 226, Hawai'i State Planning Act, HRS, also known as the Hawai'i State Plan; serves as a comprehensive guide for the future long-range development of the State. It sets forth the overall theme, goals, objective, policies, and priorities for the State. Additionally it sets forth a statewide planning system to coordinate State and County activities as well as to implement the Hawai'i State Plan.

The proposed action is consistent with goals of the Hawai'i State Plan:

1. *A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawai'i's present and future generations.*
2. *A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well being of the people.*
3. *Physical, social, and economic well-being, for individuals and families in Hawaii, that nourishes a sense of community responsibility, of caring, and of participation in community life.*

The proposed action is also consistent with the following objectives and policies:

Objectives and Policies for the Physical Environment – Land-based, Shoreline, and Marine Resources

Objectives:

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

Policies:

- *Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.*
- *Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage.*

The proposed action is consistent with these objective and policies. The coastal bluff provides habitat for federally protected migratory seabirds and are a foraging ground for the federal and state listed Nēnē. These birds are also found at the Kīlauea Point NWR which is located northeast of the Property. One of the purposes for the establishment of the Kīlauea Point NWR is to provide habitat for the Nēnē as well as a number of federally protected migratory seabirds that nest along the coastal bluffs. With the majority of the improvements located at the 150 foot elevation, there are no impacts to the federally listed Hilo ischaemun, the shoreline, and to shoreline processes. Continued maintenance of and enhancement to the existing coastal forest will further minimize the potential of erosion of the bluff. The inclusion and implementation of a number of mitigation measures further ensures minimal impacts to Nene, federally protected migratory seabirds, the Hawaiian hoary bat, and Hilo ischaemun.

Objectives and Policies for the Physical Environment – Land, Air, and Water Quality

Objectives:

- *Maintenance and pursuit of improved quality in Hawai'i's land, air, and water resources.*
- *Greater public awareness and appreciation of Hawai'i's environmental resources.*

Policies:

- *Promote the proper management of Hawai'i's land and water resources.*

The proposed action is consistent with these objective and policies. Existing improvements blend in with and utilize the topography of the Property while landscape maintenance will continue to be an integral component to minimize potential erosion of the coastal bluff. Operations associated with maintenance will be conducted to minimize impacts to land, air, and water resources.

Future proposals for the removal of unwanted and dead vegetation will address erosion as well as the maintenance and enhancement of the coastal forest, including impacts on native flora and fauna. The construction of a mauka boundary fence is an option should unauthorized uses such as cutting and dumping of green waste continue.

7.2: State Land Use Districts

Chapter 205, HRS designates all lands in the State of Hawai'i into one (1) of four (4) districts: Agricultural, Conservation, Rural, and Urban. The Property is located within the State Agricultural and Conservation Districts. Existing floricultural uses and mauka-makai trails are permissible uses within the State Agricultural District.

7.3: State Conservation District

The Property is located within the limited (L) subzone. Secret Beach Properties, LLC has been cited by the Board of Land and Natural Resources for uses within the Limited subzone that require a permit from the Board of Land and Natural Resources.

Pursuant to Condition No. 4 of the Notice of Violation issued by the Board of Land and Natural Resources (BLNR) on March 12, 2010, the Applicant will submit a Conservation District Use Permit (CDUP) application to allow for existing trails, safety improvements, landscape maintenance, future removal of unwanted and dead vegetation, and the installation of a mauka boundary fence for the Property.

The proposed action is consistent with the following evaluation criteria set forth in Title 13-5-30, HAR:

1. *The proposed land use is consistent with the purpose of the conservation district;*
2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;*
3. *The proposed land use complies with provisions an guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management" were applicable;*
4. *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region;*

5. *The proposed land use, including building structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;*
6. *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;*
7. *Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and*
8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

These existing improvements , proposed plans to remove unwanted vegetation and installation of a mauka boundary fence will allow Secret Beach Properties, LLC to be able to conserve, protect, and preserve the coastal bluff and to minimize the potential for natural hazards such as soil erosion and landslides. The existing trails and safety improvements are compatible with the topography of the bluff and are generally located within the coastal forest so that they are not visible from either Kauapea Beach or the pali. Lastly, when there are emergency operations on Kauapea Beach, these trails can continue to be used by the State of Hawaiʻi and County of Kauaʻi emergency personnel as an alternative to the public access provided from Kūhiō Highway.

The proposed action is also consistent with the objective of the Limited subzone to limit uses where natural conditions suggest constraints on human activities. These improvements will allow for active maintenance as well as monitoring of activities on the property as the parcel fronts approximately 9 parcels on the mauka boundary.

Lastly, the proposed action provides a procedure for the removal of unwanted vegetation to address illegal tree-cutting activities that have occurred on the Property. Should unauthorized activities by adjacent landowners persist, then Secret Beach Properties LLC will commence with the construction of a fence along the mauka boundary of the property.

Pursuant to Title 13-5-23, HAR, both erosion control (L-3) and Landscaping and removal of noxious plants (L-4) are identified land uses within the Limited Subzone.

During the Draft EA comment period the issue of allowable/permitted uses in the Conservation District was raised.

7.4: Hawaiʻi Coastal Zone Management Program

The proposed action is located within the Coastal Zone Management Area as designated in Chapter 205A-1, HRS. The proposed action is in conformance with the following objectives and policies:

1. Recreational Resources

Objective: Provide Coastal recreational opportunities accessible to the public.

Policies:

(A) Improve coordination and funding of coastal recreational planning and management; and

(B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management are by:

I. *Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;*
II. *Requiring replacement of coastal resources having significant recreational value including, but not limited to, surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; ore requiring reasonable monetary compensation to the State for recreation when replacement is not feasible;*
III. *Providing and managing adequate public access, consistent with conservation of natural resources, to and along shoreline with recreational values;*
IV. *Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation*
V. *Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;*
VI. *Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible restore the recreational value of coastal waters;*
VII. *Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and*
VIII. *Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals of permits by the land use commission, board of land and natural resources, and county authorities; and crediting such dedication against the requirements of section 46-6.*

The proposed action is consistent with these objective and policies. Though adjacent to Kauapea Beach, the existing lateral improvements are located along a natural shelf, on the side of a coastal bluff, at an elevation of 150 feet msl. Should fencing be installed in the future, it will occur at an elevation of approximately 225 feet. Public access to Kauapea Beach is provided from a series of pedestrian easements that begins at Kūhiō Highway and terminates on the western portion of the Property. The proper maintenance of the existing improvements as well as the coastal forest will assist in minimizing potential soil erosion and runoff.

2. Historic Resources

Objective:

Protect, preserve, and where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

Policies:

(A) Identify and analyze significant archaeological resources

(B) Maximize information retention through preservation of remains and artifacts or salvage operations; and

(C) Support state goals for protection, restoration, interpretation, and display of historic resources.

The proposed action is consistent with these objectives and policies as there are no known historic resources on the Property. Existing improvements and future maintenance will mainly occur above ground. Further, it will not impact access to structures listed on the National and State Register of Historic Places: the Kīlauea Plantation Manager's House, Kung Lung Store, and the Kīlauea Point Lighthouse.

3. Scenic and Open Space Resources

Objective:

Protect preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.

Policies:

(A) Identify valued scenic resources in the coastal zone area;

(B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

(C) Preserve, maintain, and where desirable, improve and restore shoreline open space and scenic resources; and

(D) Encourage those developments that are not coastal dependent to locate in inland areas.

The proposed action is consistent with these objectives and policies. The Property has been identified as a heritage resource in the Kaua'i General Plan Heritage Resources Map for the North Shore Planning District. Existing trails and improvements are veiled by the coastal forest. When one looks up at the bluff from Kauapea Beach, the view is of the coastal forest. Should fencing be installed in the future, it will be shielded by the coastal forest. At the top of the pali, the main view is the coastal forest and the ocean. It is not anticipated to be impacted by the fencing. There is evidence that the preservation of the ocean view by adjacent neighbors has been the source of the illegal dumping of green waste on the Property.

4. Coastal Ecosystems

Objective:

Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

Policies:

(A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;

(B) Improve the technical basis for natural resource management;

(C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;

(D) Minimize disruption or degradation of coastal water ecosystems be effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and

(E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through

The proposed action is consistent with these objective and policies. The Property provides habitat for the Wedge-tail Shearwater and White Tropicbird, federally protected,indigenous migratory seabirds. Also observed foraging are the Golden Plover and Nēnē. The Nēnē is a federal and state listed threatened and endangered goose that is also theofficial bird of the State of Hawaiʻi. The continued maintenance of these improvements along with landscape maintenance will manage this existing habitat.

5. Economic Uses

Objective:

Provide public or private facilities and improvements important to the State's economy in suitable locations.

Policies:

(A) Concentrate coastal dependent development in appropriate areas;

(B) Ensure coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and

(C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:

I. Use of presently designated locations is not feasible;
II. Adverse environmental effects are minimized; and
III. The development is important to the State's economy

The proposed action is consistent with these objective and policies as the nature and scale of the existing and proposed improvements are appropriate for the Property.

6. Coastal Hazards

Objective:

Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.

Policies:

(A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;

(B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;

(C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and

(D) Prevent coastal flooding from inland projects.

The proposed action is consistent with these objective and policies. A majority of the improvements are located above the 150 foot elevation. However, the lower portion of the two (2) mauka-makai trails is most likely to be impacted by coastal erosion by a number of natural hazards. Lower portions of the Property are located within the special flood hazard zone with a base flood elevation ranging from 24 to 29 feet. Also as a shoreline parcel, there are potential impacts of coastal erosion. Annual erosion hazard rates have been developed for Kauapea Beach. An additional review will be conducted as part of the Conservation District Use Permit process and Special Management Area permit process. A Shoreline Setback Determination will be completed to identify applicable provisions of the Shoreline Setback Law. Lastly, applicable provisions of the county, state, and federal flood regulations will be complied with.

7. Managing Development

Objective:

Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

Policies:

(A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development.

(B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and

(C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

The proposed action is consistent with these objective and policies utilizing the Chapter 343, HRS process. This will allow governmental agencies, interested persons, and interested organizations to become aware of the proposed action. These reviews can then assist in the identification of outstanding or conflicting issues.

8. Public Participation

Objective:

Stimulate public awareness, education, and participation in coastal management.

Policies:

(A) Promote public involvement in coastal zone management processes;

(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities;

(C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

The proposed action is consistent with these objective and policies utilizing the Chapter 343, HRS process. This information will be provided as part of the Conservation District Use Permit process, the Special Management Area Permit process, and the Shoreline Setback Determination process.

On the evening of April 5, 2011, SSFM International Staff attended the monthly meeting of the Kīlauea Neighborhood Association held at the Kīlauea Community Center. SSFM International provided a presentation of the Draft EA and the answered questions.

9. Beach Protection

Objective:

Protect beaches for public use and recreation.

Policies:

(A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;

(B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities.

(C) Minimize the construction of public erosion-protection structures seaward of the shoreline.

The proposed action is consistent with these objective and policies as most of the improvements are located on a coastal bluff above a sandy beach. It does not interfere with the natural shoreline processes of Kauapea Beach or its use by the general public.

10. Marine Resources

Objective:

Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

Policies:

(A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;

(B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;

(C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;

(D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and

(E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

The proposed action is consistent with these objective and policies as there has been no change to existing drainage patterns. Runoff and sediments continues to travel to the bottom of the gulches and the coastal bluff where they are absorbed and or deposited on sand or soils.

7.5: State Environmental Policy

Chapter 344, Environmental Policy, HRS sets forth the State's policy and guidelines to conserve natural resources and enhance the quality of life. The proposed action is consistent with the following policy:

Environmental Policy

1. *Conserve the natural resources, so that land, water, mineral, visual, air and other natural resources are protected by controlling pollution, by preserving or augmenting natural resource,*

and by safeguarding the State's unique natural environmental characteristics in a manner which will foster and promote the general welfare, create and maintain conditions under which humanity and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of the people of Hawai'i.

2. *Enhance the quality of life by:*
3. *Setting population limits so that the interaction between the natural and artificial environments and population is mutually beneficial;*
4. *Creating opportunities for the residents of Hawai'i to improve their quality of life through diverse economic activities which are stable and in balance with the physical and social environments;*
5. *Establishing communities which provide a sense of identity, wise use of land, efficient transportation, and aesthetic and social satisfaction in harmony with the natural environment which is uniquely Hawaiian; and*
6. *Establishing a commitment on the part of each person to protects and enhance Hawai'i's environment and reduce the drain of nonrenewable resources.*

The proposed action is consistent with these policies. There will be neutral to positive impacts to natural resources and an enhanced quality of life for Kaua'i island residents. Nēnē, a federal and state listed threatened and endangered species forages on the Property. Two (2) federally protected, indigenous migratory seabirds also utilize the Property: the Wedge-tailed Shearwater and White Tropicbird for nesting. Further, the Property is listed by the USFWS as a critical habitat for the Hilo ischaemum, a member of the grass family. With the implementation of proposed mitigation measures, potential impacts to these species will be minimized. All improvements and maintenance will be done in compliance with existing governmental regulations.

7.6: County General Plan

The Kaua'i County General Plan (2000) sets forth the broad policies and implementing actions in graphics and text to guide the future development of Kaua'i County. It is intended to improve the physical environment in the County as well as the health, safety, and general welfare of Kaua'i's people. Guiding the General Plan is the vision for Kaua'i in 2020 as:

- a "garden island" of unsurpassed beauty;
- a rural environment of towns separated by broad open spaces;
- a vital modern society formed by the people and traditions of many cultures;
- an island of distinctly individual towns and communities, each with its own unique history and character;
- a community which cares for its land and waters, leading the way with best management practices in the development of roads and other public facilities and in its development and environmental regulations;
- an agricultural center, producing a wide range of crops, food, and forest products for local consumption and export;
- a resort destination where visitors are welcomed, supported with adequate facilities, and provided with a variety of cultural and recreational opportunities;

- a resort destination whose governmental and industry leaders respect the island's residents and their need to have a community life where visitors are not always present and who find effective ways to protect resident's customary use of special places for religious and cultural observances, fishing, gathering, hunting, and recreation; and
- an island whose government supports the labor force and small business owners, firmly holding to essential policies and regulations while eliminating unnecessary red tape.

The proposed action is consistent with the following General Plan policies and implementing actions:

Agricultural Lands

Policy

- *Lands included within the Agricultural designation shall be predominantly used for or held in reserve to be used in the future for agricultural activities. These activities include the breeding, planting, nourishing and caring for, gathering, and processing of any animal or plant organism, including aquatic animals and plants, for the purpose of producing food or material for non-food products; the commercial growing of flowers or other ornamental plants, the commercial growing of forest products; and the commercial breeding and caring for domestic animals and pets.*
- *The primary intent of the Agricultural designation is to conserve land and water resources in order to:*
    - *Insure an excellent resource base for existing and potential agricultural uses;*
    - *Assure a sufficient supply of land available for sale or lease at a cost that is economically feasible for agricultural enterprise; and*
    - *Promote and preserve open agricultural lands as a key element of Kaua'i s rural character and lifestyle, essential to its image as "The Garden Island" and to the continued viability and development of Kaua'i visitor industry.*
- *In administering zoning and subdivision regulations, the County shall seek to preserve important agricultural lands. Important agricultural lands include those designated "A" or "B" by the Land study Bureau evaluation or "Prime" or "Unique" by the Agricultural Lands of Importance to the State of Hawai'i evaluation; provided that these ratings shall be superseded at such time as the State of Hawai'i officially maps and designates Important Agricultural Lands, as mandated in the State Constitution.*
- *Lands designated Agriculture shall include: important agricultural lands; lands in active agricultural use; lands with potential for agriculture, silviculture or aquaculture; and other lands not suited for urban development because of location, topography, economy of public services, or other purpose related to general health, safety and welfare.*
- *The secondary intent of the Agriculture designation is to provide an opportunity for Kaua'i citizens to reside in an agricultural community. An "agricultural community" is an area that has both agricultural uses and residences. Typically, an agricultural community is established through subdivision of land and provision of roads and potable water service. Agricultural communities are generally located in outlying areas, do not have convenient access to County*

facilities, and may not receive the full range or highest level of services such as available to residential communities, towns, and urban centers.

- *The primary intent of the Agricultural designation shall take precedence over the secondary intent.*
- *To implement the Agricultural designation, specific controls on the subdivision and alteration of designated lands shall be formulated to prevent the dissipation of agricultural potential, the loss of rural character, and the dispersal of residential and other urban uses.*
- *The following principles shall be applied in the development of an agricultural community;*
    - *Maintain irrigation works and easements where feasible and beneficial to existing or potential agricultural uses within the site or downstream; and*
    - *Preserve wetlands and streams and provide a riparian buffer area to prevent land disturbance and to filter runoff.*

The proposed action is consistent with these policies. Approximately 6.5 acres of the Property zoned Agriculture is in active agriculture use.

Scenic Views

Policy

- *In developing public facilities and in administering land use regulations, the County shall seek to preserve scenic resources and public views. Public views are those from a public place, such as a park, highway, or along the shoreline.*
- *The County shall observe the following general principles in maintaining scenic resources:*
    - *Preserve public views that exhibit a high degree of intactness or vividness.*
        - *"Intactness" refers to both the integrity of visual patterns and the extent to which the landscape is free from structures or other visually encroaching features.*
        - *"Vividness" relates to the memorability of a view, caused by contrasting landforms which create striking and distinctive patterns. (Examples are the silhouette of Mt. Hāʻupu against the horizons, views of the Nounou Mountain from the valley and the coast, and the view of Hanalei Valley from the overlook).*
- *Preserve the scenic qualities of mountains, hills and other elevated landforms, qualities such as silhouette against the horizon and the mass and shape of the landform.*
- *Preserve the scenic qualities of lowland/open space features, such as the shoreline, the edge of a coastal bluff, a march, a fishpond, or a historic or cultural property. Structures should not impede or intrude upon public views of the feature and should not alter the character of the immediate area around the land feature, historic, or cultural property.*

The proposed action is consistent with these policies. The Property is a coastal bluff that provides spectacular scenic views from Kauapea Beach. Due to the nature and scale of the improvements, a majority of these improvements are hidden by the coastal forest. Only the lower portions of the two mauka-makai trails are visible from Kauapea Beach.

Coastal Lands

Policy

- *When developing public facilities or granting zoning, land use permits, or subdivision for development along the coast, the first priority shall be to preserve and protect sandy beaches.*
    - *Strips of land along the shoreline that have been placed in the State Conservation District or in the County Open zoning district are intended to serve as a buffer from coastal erosion. Structures should be sited inland of these coastal buffers on lands that are appropriately zoned.*
    - *When development is proposed along a sandy beach, hazards of long-term coastal erosion should be assessed and used to determine appropriate setbacks.*

The proposed action is consistent with these policies. The Property is located in both the State Conservation District and zoned Open by the County of Kaua‘i. A majority of the existing improvements are located at the 150 foot elevation of a coastal bluff and follows a natural shelf. However, the two (2) mauka-makai trails do meet the beach. Due to the nature and scale of the improvements, they do not affect beach processes. Should fencing occur in the future it will be located at an elevation of approximately 225 feet msl. Annual coastal erosion hazard rates have been developed for Kauapea Beach. A Shoreline Setback Determination application will be submitted to the County of Kaua‘i Planning Department for review and action.

Native Hawaiian Rights

Policy

- *Under the State Constitution and the County Charter, the County of Kaua‘i is empowered to promote the health, safety and welfare of all inhabitants without discrimination as to ethnic origin. As part of carrying out its responsibilities under the Constitution and the Charter, the County recognizes the rights of native Hawaiians and the laws concerning lands and waters that have been established through the State Constitution, State and Federal laws, and State and Federal court decisions. No County ordinance or rule shall modify or diminish these rights:*
    - *Native Hawaiian water rights provided under the State Water Code, HRS Chapter 174C.*
    - *Kuleana lands, water rights and access rights provided under the Kuleana Act of 1850, as recognized in current statutes, rules and court decisions.*
    - *Konohiki and hoa‘aina fishing rights provided under the 1839 Law of Kamehameha, as modified by subsequent legislative acts and court decisions.*
    - *Traditional and customary rights of Native Hawaiians, such as for access and gathering, provided under the State Constitution and Hawai‘i Revised Statutes, as interpreted by the courts (i.e., the PASH case).*
    - *Burial rights provided under the Hawai‘i Historic Preservation Act and the federal Native American Graves Repatriation Act.*

- *Preservation of historic properties and archaeological resources provided under the federal Archaeological Resources Protection Act of 1979; the National Historic Preservation Act of 1966: and the Hawai'i Historic Preservation Act.*

The proposed action is consistent with these policies. Secret Beach Properties, LLC are aware of these rights. Further, they will be reviewed as part of Chapter 343, HRS; Conservation District Use Permit application; and Special Management Area Permit application.

Open Lands

Policy

- *The intent of the Open designation is to preserve, maintain or improve the natural characteristics of non-urban land and water areas that:*
  - *are of significant value to the public as scenic or recreation resources;*
  - *perform essential physical and ecologic functions important to the welfare of surrounding lands, waters, and biological resources;*
  - *have the potential to create or exacerbate soil erosion or flooding on adjacent lands;*
  - *are potentially susceptible to natural hazards such as flood, hurricane, tsunami, coastal erosion, landslide or subsidence; or*
  - *form a cultural, historic or archaeological resource of significant public value.*
- *Lands designated Open shall include: important landforms such as mountains, coastal bluffs, cinder cones, and stream valleys; native plant and wildlife habitat; areas of predominantly steep slopes (20 percent or greater); beaches and coastal areas susceptible to coastal erosion or hurricane, tsunami, or storm-wave inundation; wetlands and flood plains; important scenic resources; and known natural, historic and archaeological resources. Open shall also include parks, golf courses, and other areas committed to outdoor recreation.*
- *Lands designated Open shall remain predominantly free of development involving buildings, paving and other construction. With the exception of kuleanas and other small lots of record, any construction that is permitted shall be clearly incidental to the use and open character of the surrounding lands.*

The proposed action is consistent with these policies. The nature and scale of these improvements blend in with the Property. They also allow for the maintenance of the Property to ensure that the "open space" qualities remain.

7.7: Development/ Community Plan

The North Shore Planning District is one of five Planning Districts guiding the implementation of the Kaua'i General Plan. The proposed action is located on lands designated Open and Agricultural on the North Shore Planning District Land Use Map.

The proposed action is consistent with the Open designation on the North Shore Planning District Land Use Map. Land designated Open are identified as important land forms, scenic resources, and

archaeological resources for preservation and to keep "predominately free of development". Land designated Agricultural is in active agricultural use.

7.8: Zoning

The proposed action is located on lands zoned Agricultural as well as not zoned at all by the County of Kaua'i. Approximately 6.5 acres of land located on the western portion of the Property is zoned Agriculture and is in active agriculture. In 2006, this portion of the Property was approved by the County of Kaua'i for agricultural dedication. This dedication is consistent with permissible uses with the Agricultural Zoning District.

Lands located in the State Conservation District are not zoned.

7.9: Special Management Area

The Property is located within the Special Management Area and subject to the provisions of Chapter 205A, HRS and the Special Management Rules of the County of Kaua'i, as amended. A Special Management Area Use Minor Permit application will be submitted with the Kaua'i Planning Department.

Pursuant to Chapter 205A-26, HRS and Section 4.0 of the Special Management Area Rules of Kaua'i County, no development shall be approved unless the authority has found:

- *That the development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;*
- *That the development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature; and*
- *That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required*

The proposed action is anticipated to have a positive environmental or ecological effect that is also in the public interest. This proposed action will allow for the active maintenance of the Property as well as provide a procedure for the removal of unwanted and noxious vegetation. Additionally, the proposed action is consistent with the objectives and policies of the Special Management Area. Lastly, is consistent with the Kaua'i General Plan as well as the North Shore Planning District Land Use Map designations of Open Space and Agricultural. The portion of the Property zoned Agricultural is in active agricultural use. An application for a Conservation District Use Permit will be submitted to the DLNR-OCCL for the portion of the Property located in the State Conservation District.

7.10: Shoreline Setback Area

The Property is located along the shoreline. As such, portions of the proposed action may be located within the Shoreline Setback Area, thus subject to Chapter 205A, HRS and §8-27 of the Kaua‘i County Code, as amended. A Shoreline Setback Determination application will be submitted to the Kaua‘i Planning Department for review and action.

The major challenge in the establishment of the Shoreline Setback Area is the topography of the Property. It is comprised of sand that then transitions to basaltic coastal bluff with a change in elevation of approximately 250 feet msl.

CHAPTER 8: SUMMARY OF POTENTIAL ENVIRONMENTAL EFFECTS

Maintenance activities associated with proposed action may result in short term impacts related to air and noise quality. Air quality will be impacted from fugitive dust during maintenance; depending on the type activity occurring. However, this will be localized and not affect surrounding properties. Noise quality will be impacted by a temporary increase in ambient noise associated with maintenance activities. Generally this will be power equipment associated with landscape maintenance. This may also include other equipment to maintain the existing trail and safety improvements. As with potential air quality impacts, this will also be localized and not affect surrounding properties. Air and noise quality will be mitigated through the use of appropriate best management practices.

The lower portion of the mauka-makai trails may be impacted by coastal hazards. This portion of the Property is located within the special flood hazard zone subject to coastal flooding through high wave action. During large storm events, this portion of the mauka-makai trails could be impacted by high wave action.

Lastly, construction activities associated with fencing on the mauka boundary of the Property in the future may also result in short term impacts related to air and noise quality. Air quality may be impacted by fugitive dust, depending on the type of construction required to install the fence. It is anticipated that fugitive dust will be localized and not affect surrounding properties. Noise quality may be impacted by a temporary increase in ambient noise during construction. It is also anticipated that this temporary increase will be localized and not affect surrounding properties. As with the ongoing maintenance activities will be mitigated through the use of appropriate best management practices.

The proposed action is not anticipated to create any long-term, adverse environmental impacts. The incorporation and implementation of proposed mitigation measures will minimize potential impacts to migratory seabirds, Nene, Hawaiian hoary bat, and the Hilo ischaemum.

A summary of potential environmental impacts from the proposed action is provided in the following table.

Table 4: Summary of Potential Impacts

Summary of Potential Impacts	
Categories	Potential Impact
Surrounding Land Uses	Minimal impacts to surrounding land uses. The majority of the trails and improvements do not abut adjacent parcels. Installation of a fence on the mauka boundary of the Property in the future will also have minimal impacts to surrounding land uses.
Land Use Designations	Minimal impacts to existing land use. Applications for a Conservation District Use Permit and a Special Management Area Minor Permit will be submitted to allow for the existing and proposed uses.
Geology, Topography, & Soils	Minimal impacts to geology, topography, and soils. The vast

	majority of the lateral trail is located along a natural shelf of a basaltic coastal bluff. Some erosion is occurring in areas previously disturbed through tree cutting and removal.
Natural Hazards	Minimal impacts from natural hazards. The lower portion of the mauka-makai trails could be impacted by coastal erosion resulting from high wave action.
Hydrology	No adverse impacts to hydrology. Groundwater underneath the property is not being withdrawn. The one stream is intermittent in nature and is not impacted by the existing improvements.
Air Quality	No adverse impacts to air quality. Trail and landscape maintenance may produce small quantities of fugitive dust for short durations. Installation of a fence on the mauka boundary of the Property in the future may also produce small quantities of fugitive dust for short durations.
Noise Quality	No adverse impacts to noise quality. Trail and landscape maintenance may produce a temporary increase in ambient noise. Installation of a fence on the mauka boundary of the Property in the future may also produce a temporary increase in ambient noise.
Visual Resources	No adverse impact to visual resources. The existing trails and improvements are not visible from Kauapea Beach. Installation of a fence on the mauka boundary of the Property in the future will also not be visible from Kauapea Beach.
Historic, Archaeological, & Cultural Resources	No adverse impacts to historic, archaeological, and cultural resources. None where identified by a field inspection and literature review.
Biological Resources	No adverse impacts to biological resources. The implementation of mitigation measures to maintain the Property will minimize impacts to Nēnē, Wedge-tail Shearwater, White-tailed Tropicbird, Hawaiian hoary bat, and Hilo ischaemum.
Socio-Economics	No adverse impacts to the socio-economic environment. The proposed action does not influence the number of visitors, jobs, or resident income of the County of Kaua‘i.
Solid Waste Facilities	No adverse impacts to solid waste facilities. Green waste will continue to be generated and disposed off.
Recreational Facilities	No adverse impacts to recreational facilities. Public access to and from Kauapea Beach will not be impeded.
Police and Fire Protection	Positive impacts to police and fire protection. The existing trails provide an alternative and faster access to Kauapea Beach during emergencies.
Educational Facilities	No adverse impacts to educational facilities. There will be no students to enroll into the existing facilities.
Medical Facilities	No adverse impacts to medical facilities. The existing medical facilities are already servicing the Property.

Electrical and Communications Facilities	No adverse impacts to electrical and communication facilities. These facilities are already servicing the Property.
Transportation Facilities	No adverse impacts to transportation facilities. The existing facilities are already servicing the Property.
Wastewater Facilities	No impacts to wastewater facilities as there are no wastewater facilities on the Property.
Water Facilities	No impacts to water facilities as there are no water improvements on the Property.
Drainage Facilities	No adverse impacts to drainage facilities as existing drainage patterns are maintained.

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CHAPTER 9: ALTERNATIVES TO THE PROPOSED ACTION

This proposed action is the preferred alternative identified by Secret Beach Properties, LLC. Retaining and maintaining the existing trails and safety improvements provides Secret Beach Properties, LLC access to the entire Property. Further, it proposes a procedure for the removal of unwanted vegetation to address illegal tree-cutting activities that have occurred on the Property. What began as a cleanup of illegal dumping of green waste onto the Property turned into the need to re-establish the existing lateral trail to obtain access to this illegal green waste. Lastly, should unauthorized uses on the Property persist, then a fence will be constructed along the mauka border of the Property as a "last resort".

9.1: No Action Alternative

The "no action" alternative would maintain the status quo with the existing improvements. As the Property is the subject of an enforcement action, this is not an acceptable resolution to Secret Beach Properties, LLC.

9.2: Remediation Alternative

The "remediation alternative" would require removing all existing improvements on the Property. Removing the existing lateral trail and associated safety improvements will make it much more difficult for Secret Beach Properties, LLC to access and maintain the entire Property. Due to the size and topography of the Property, trails are essential to maneuver in a safe manner and minimize impacts to the bluff.

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CHAPTER 10: AGENCY AND PUBLIC CONSULTATION

10.1: PRE-ASSESSMENT CONSULTATION

Letters providing project information along with a general location map were sent to various consulted parties on to solicit their initial comments and concerns associated with the project as part of the preparation of the Draft EA. A listing of agencies and organizations for which consultant letters were sent is provided below. Those providing written responses are identified with a "**»**" symbol. Copies of written comments received along with responses to them are included in Appendix B.

Federal Agencies

» Department of the Army, U.S. Army Engineer District, Honolulu
- Department of Environmental Protection, Honolulu
- Department of the Interior, Kaua'i National Wildlife Refuge

» Department of the Interior, Pacific Island Region Fish and Wildlife, Honolulu

Department of the Interior, Water Resources Division, U.S. Geological Survey

State of Hawai'i Agencies

» Department of Accounting and General Services
- Department of Business, Economic Development & Tourism
- Department of Business, Economic Development & Tourism, Office of Planning
- Department of Business, Economic Development & Tourism, Energy Office

» Department of Defense

» Department of Education
- Department of Hawaiian Homelands

» Department of Health

» Department of Land and Natural Resources
- Department of Land and Natural Resources, State Historic Preservation Division
- Hawai'i Housing Finance and Development

» Office of Hawaiian Affairs
- University of Hawai'i Water Resources Research Center

Kaua'i County Agencies

- Department of Finance
- Department of Parks and Recreation
- Department of Planning

» Department of Public Works

» Department of Water
- Fire Department
- Police Department

10.2: DRAFT ENVIRONMENTAL ASSESSMENT COMMENTS

The Draft Environmental Assessment (Draft EA) was published in the March 8, 2011 issue of the State Office of Environmental Quality Control' *The Environmental* Notice, initiating a 30-day public comment period that ended on April 6, 2011. Copies of the Draft EA were distributed to the following parties for review and comment by the Department of Land and Natural Resources Office of Conservation and Coastal Lands (DLNR-OCCL). Comment letters received by the DLNR-OCCL are identified with a "**»**" symbol. These comment letters were then forwarded to SSFM International for response and inclusion in the Final Environmental Assessment. DLNR-OCCL transmittal letter, comments letters received; along with responses letters are included in Appendix C. This Final EA has incorporated additional information in response to comments received on the Draft EA.

Federal Agencies

» Department of the Interior, Pacific Island Region Fish and Wildlife, Honolulu

State of Hawai'i Agencies

- Department of Health
» DLNR, Division of Forestry and Wildlife-Kaua'i Office
» DLNR, Division of Forestry and Wildlife-Honolulu Office
» Department of Land and Natural Resources, State Parks
» DLNR, Division of Conservation and Resource Enforcement
- DLNR, State Historic Preservation Division
» Office of Environmental Quality Control
» Office of Hawaiian Affairs

Kaua'i County Agencies

- Department of Planning
- Department of Public Works
- Fire Department
» Police Department

CHAPTER 11: FINDINGS AND ANTICIPATED DETERMINATION

In determining whether a proposed action may have a significant effect on the environment, the Approving Agency needs to consider every phase of the proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short-term and long-term effects of the action. An Approving Agency's review and evaluation of the proposed actions effect on the environment would result in a determination whether: 1) the action would have a significant effect on the environment, and therefore an Environmental Impact Statement Preparation Notion should be issued, or 2) the action would not have a significant effect and therefore a Finding of No Significant Impact (FONSI) is warranted.

What follows is a discussion of the results of the environmental assessment conducted for the Secret Beach Properties, LLC Project in relation to the 13 Significance Criteria pursuant to Chapter 200-11, HAR. This assessment considered the "significance" of potential environmental effects which includes the sum of effects on the quality of the environment along with the overall and cumulative effects. The findings are discussed below for each criteria.

11.1: Findings

1. *Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;*

The proposed action does not involve irrevocable commitment to loss or destruction of any natural or cultural resources. Maintenance of the Property will continue to provide habitat and foraging areas for the Nēnē, a federal and state listed threatened and endangered species; federally protected indigenous migratory seabirds; and federal and state listed *Hilo ischaemum*.

2. *Curtail the range of beneficial uses of the environment;*

The proposed action is anticipated to benefit the environment through regular maintenance. Further, the removal of unwanted vegetation will allow for the planting of native vegetation compatible with the area.

3. *Conflicts with the state's long-term environmental policies or goals and guidelines expressed in chapter 344, Hawai'i Revised Statutes, and any revision thereof and amendment thereto, court decisions, or executive orders;*

The proposed action is consistent with the State's Environmental Policy and Guidelines set forth in Chapter 344, HRS.

4. *Substantially affects the economic welfare, social welfare, and cultural practices of the community or State;*

The proposed action is very limited in scope and scale. It is not anticipated to affect the economic welfare, social welfare, and cultural practices of the community or State.

5. *Substantially affects public health;*

The proposed action will promote the public health, safety, and welfare by providing emergency personnel (fire, rescue, police, and DOCARE) with an alternative access to Kauapea Beach for emergency response.

6. *Involves substantial secondary impacts, such as population changes or effects on public facilities;*

The proposed action is very specific and limited in scope and scale. It is not anticipated to generate substantial secondary impacts to existing public facilities or changes to the population of the County of Kaua'i.

7. *Involves a substantial degradation of environmental quality;*

The proposed action will have a long term positive effect on environmental quality by allowing for the protection, conservation, and preservation of the coastal bluff. This will minimize the potential for soil erosion and landslides.

8. *Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;*

The proposed action will have a long term positive effect on the environment that will not require larger actions in the future.

9. *Substantially affects a rare, threatened, or endangered species or its habitat;*

Implementation of recommended mitigation measures will ensure minimal impacts to rare, threatened, or endangered Thus the proposed action will not affect the *Hilo ischaemum,* or the Nēnē, a federal and state listed species. Though the Property is listed as a critical habitat by the U.S. Fish and Wildlife Service of the *Hilo* i*schaemum*, none were observed in the vicinity of the existing and proposed improvements. The Nēnē, will still be able to forages on the Property. Lastly, there will not be a substantial affect for the federally protected Wedge-tailed Shearwater and White-tailed Tropicbird.

10. *Detrimentally affects air or water quality or ambient noise levels;*

Trail maintenance, landscape activities, the removal of unwanted vegetation, and the installation of fencing may minimally affect air quality and ambient noise levels. These activities will be conducted in compliance with existing governmental regulations.

11. *Affects or is likely to suffer damage by being located in an environmentally sensitive area such as flood plain, tsunami zone, beach, erosion prone area, geologically hazardous land, estuary, fresh water, or coastal waters;*

A small portion of the proposed action is located in a coastal flood hazard area as well as a high wave hazard area. All maintenance will be in compliance with all applicable governmental regulations.

12. *Substantially affects scenic vistas and viewplanes identified in county or state plans or studies; or*

The Property is designated as an Open Space resource on the North Shore Planning District Heritage Resources map. The proposed action will maintain the open space resource of the Property.

13. Requires substantial energy consumption.

The proposed action requires little to no energy consumption.

11.2: Determination

Based upon the information and result of the environmental assessment documented in this Final EA; a Finding of No Significant Impact (FONSI) determination is warranted for this Project. The findings supporting this anticipated determination are based upon the previous discussion of the proposed actions affect on the environment in relation to the Significance Criteria set forth in Chapter 11-200, HAR.

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CHAPTER 12: REFERENCES

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State of Hawaiʻi. Chapter 343, *Environmental Impact Statement,* Hawaiʻi Revised Statutes.

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Appendix A:

Photographs of the Lateral Trail and the Intermittent Stream Gulch

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Secret Beach Properties, LLC Trails

This is the western portion of Secret Beach Property. These lands are in active floriculture.

This is also the western portion of Secret Beach Property looking north, towards Kauapea Beach.

This same Property provides access to Kauapea Beach for emergency responders

Secret Beach Properties, LLC Trails

This is the beginning of the lateral trail. This is an example of the improvements made to the trail. Here we have Trex and fencing. Also note the fallen tree that is part of previous illegal cutting.

This highlights the extreme change in elevation that occurs on certain portions of the lateral trail.

Illegal tree cuttings.

Secret Beach Properties, LLC Trails

Existing trail improvements

Existing trail improvements

Trail improvements that also shows fencing that has been installed. Note the fallen tree landing on top of the fence.

Secret Beach Properties, LLC Trails

An example of fencing. The pcinic table has been at its present location for a period of time.

An example of previous illegal tree cutting and clearing on the Property.

An example of recent illegal tree cutting and clearing on the Property.

Secret Beach Properties, LLC Trails

Kauapea Beach looking towards the Kīlauea Point Light House .

Kauapea Beach looking towards Hanalei.

Coastal bluff, eastern portion of the Property, below Parcel No. 25.

Secret Beach Properties, LLC Trails

Coastal bluff, eastern portion of ther Property, below Parcel No. 26.

Coastal bluff, middle portin of the Property below Parcels No. 27 and 28.

Coastal bluff, middle portion of the Property below Parcels No. 29 and 30.

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Appendix B:

Pre-Consultation Packet and Responses

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SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

August 12, 2010 SSFM 2010_056.00

Dear

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for a Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Secret Beach Properties, LLC has existing trail improvements on their lands located at Tax Map Key (TMK) (4) 5-2-005:036 (Property). These trails provide both lateral and shoreline access across the Property.

A Draft Environmental Assessment (Draft EA) is now being prepared for this project to comply with State environmental regulations under Chapter 343, Hawai'i Revised Statutes (HRS) and Chapter 11-200, Hawai'i Administrative Rules (HAR). This letter and attachments are being provided to solicit comments, concerns, or regulatory requirements you may have in regards to this project so that it may be addressed in the Draft EA.

We would greatly appreciate your cooperation in providing us with any written comments within 21 days from the date of this letter. Please send your written comments to:

SSFM International, Inc.
Attn: Robyn Loudermilk
501 Sumner Street, Suite 620
Honolulu, Hawaii 96817

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk
Project Planner

Enclosures: Project Summary and Location Map

Secret Beach Properties, LLC: Existing Trails
Project Summary
August, 2010

Secret Beach Properties, LLC is initiating an Environmental Assessment (EA) to file for the necessary after the fact approvals for existing mauka-makai and lateral trails constructed on their land located at Tax Map Key (TMK) (4) 5-2-005:036 (Property). This Property is located on the North Shore of Kaua'i, between the existing agricultural lots makai of Kauapea Road and the shoreline of Kauapea Beach. (Exhibit A)

Elevation of the Property ranges from a high of approximately 250+ feet above mean sea level (msl) at the top of the pali, and then plunges sharply to the sandy shoreline. There are seven (7) parcels that border the portion of the Property in which the trails are located. This border is approximately 2365 feet in length.

There are a number of existing trails, including stairs, which were installed prior to when Secret Beach Properties, LLC purchased the Property in 2005. Subsequent improvements are comprised mainly of Trex® and wooden planks to shore up the earthen steps; rebars that have been driven into the soil in order to hold these planks in place; and hog wire fencing with metal t-posts along the more hazardous portions of the trails to ensure that persons walking do not slip and fall down the pali.

These improvements were initiated as a response to a complaint of tree cutting. This complaint was filed with the Department of Land and Natural Resources Office of Conservation and Coastal Lands (DLNR-OCCL) in 2007. Upon further investigation and an inspection of the Property, DLNR-OCCL determined that Secret Beach Properties, LLC did not conduct the tree cutting.

DLNR-OCCL also indicated that Secret Beach Properties, LLC could clean the Property of tree cutting debris. During this clean up, additional debris was encountered along a lateral trail that traverses the entire Property. Encountering this additional debris indicated that tree cutting on the Property from abutting landowners had been ongoing for many years.

In 2009, DLNR-OCCL responded to a complaint of tree cutting and trail building. Upon investigation, DLNR-OCCL recommended enforcement action. By letter dated March 15, 20 10, the Board of Land and Natural Resources (BLNR) issued a violation (ENF KA-08-06) to Secret Beach Properties, LLC for unauthorized landscaping (trail building).

The Property is located within the State Conservation District, Limited Subzone, and the County of Kaua'i Special Management Area. An after-the-fact Conservation District Use Permit (CDUP) will be filed with the DLNR-OCCL to: 1) allow for all existing trails on the Property to remain intact; 2) allow for all existing improvements and ongoing maintenance of existing trails; and 3) the removal of diseased, dying, or dead trees that pose a risk to public safety. Additionally, an after-the-fact Special Management Area Minor Permit will be filed with the County of Kaua'i Planning Department to allow for the same improvement and uses being requested for in the after-the-fact CDUP. Lastly, a Shoreline Setback Determination will be filed with the County of Kaua'i Planning Department to determine if any of the existing improvements are located within the Shoreline Setback Area.

FIGURE 1
PROJECT LOCATION
EXISTING TRAILS

Secret Beach Properties, LLC
Source: DeLorne

0 1,050 2,100 4,200 Feet

N

SSFM INTERNATIONAL

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

REPLY TO ATTENTION OF:

August 18, 2010

RECEIVED AUG 23 2010 FILE

Regulatory Branch

File Number POH-2010-0208

SSFM International, Inc.
Attention: Robyn Loudermilk
501 Sumner Street, Suite 620
Honolulu, Hawaii 96817

FILE COPY

Dear Ms. Loudermilk:

We have received your request for the Department of the Army to review and comment on the Pre-Assessment Consultation for a Draft Environmental Assessment (dEA) for the improvements to the existing trail at Secret Beach, TMK (4) 5-2-005:036, Kilauea, Island of Kauai, Hawaii. We have assigned the project the reference number **POH-2010-0208**. Please cite the reference number in any future correspondence concerning this project. We completed our review of the submitted document pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and Section 404 of the Clean Water Act (Section 404).

Section 10 requires that a Department of the Army (DA) permit be obtained from the U.S. Army Corps of Engineers (Corps) prior to undertaking any construction, dredging and other activities occurring in, over, or under navigable waters of the U.S., including the upper limit of adjacent wetlands. The line of jurisdiction extends to the Mean High Water Mark for tidal waters. Section 404 requires that a DA permit be obtained for the discharge (placement) of dredge and/or fill material into waters of the U.S., including wetlands. The line of jurisdiction extends to the Mean Higher High Water Mark for tidally influenced waters, the Ordinary High Water Mark for non-tidal waters and the approved delineated boundary for wetlands.

Based on the information provided, we understand the improvements to the existing trail are complete and the applicant is pursuing after the fact approvals for this action. As the project site abuts the Pacific Ocean, a navigable water subject to Corps jurisdiction, Section 10 authorization may be required for activities occurring in, over or under waters of the U.S. subject to the ebb and flow of tide. The lower reaches of the two unnamed streams traversing the property may be tidally influenced as their end termini are in the Pacific Ocean, whereby activities occurring within the tidal reaches of these water bodies would require Section 10 authorization as well. Be advised, the requirement for Section 10 authorization extends to activities occurring in, over or under adjacent estuarine wetlands. In addition, work activity including those activities for dewatering and excavating purposes in tidally-influenced water bodies, including streams, requires authorization under Section 10. Additionally, should that work result in discharge of fill material into the water body, authorization under Section 404 may be required. The two streams are waters of the U.S., subject to Corps jurisdiction and require a DA permit for any work that may result in the discharge of fill or dredged material below the OHWM of the water body.

The Pre-Assessment Consultation does not provide sufficient information to allow the Corps to determine if the project site encompasses additional unidentified waters of the U.S. or whether such waters are proposed for impact, which may require authorization under Section 10 and/or Section 404. When developing the dEA, we recommend you conduct a thorough aquatic resource survey, describing any wetlands, drainage ditches, gulches, gullies, streams, etc., on-site, especially those that may be

impacted by any of the proposed project components. In addition, include sufficient information concerning the scope of work, including the use of Best Management Practices, i.e. silt fences and sandbag berms within the vicinity and in close proximity to potentially regulated bodies of water.

Only the Corps of Engineers has the authority to determine if any of these aquatic features are or are not waters of the U.S., potentially subject to regulation under Section 10 and/or Section 404. As such, we encourage the applicant to submit a request for an approved jurisdictional determination (JD) for these water bodies. Your request to the Corps should include names (if known), and descriptions of aquatic features proposed for impact, including whether or not they are tidally influenced, flow duration of each feature and the flow path of each feature into navigable waters. For instance: "the unnamed ditch contains flow for two consecutive weeks annually and, from the project impact site, flows for 700 linear feet prior to discharge into X Stream. X Stream flows year-round and flows 1,200 feet prior to discharge into the Pacific Ocean. The lower 200 linear feet of X Stream is influence by the tide." For wetlands, you should submit a wetland delineation conducted in accordance with the Corps of Engineers 1987 Wetland Delineation Manual and the Hawai'i and Pacific Islands Regional Supplement. We recommend the applicant also provide a vicinity map, map of the water bodies and flow paths and on-site photographs so the Corps may prepare an approved JD, if necessary.

If any water bodies are determined to be waters of the U.S., the applicant must obtain authorization from the Corps prior to discharge of dredged or fill material into these water bodies. Fill material, permanent or temporary, may include, but is not limited to: rock, dirt, sand, sandbags and/or concrete. Dewatering effluent from dredging, including filtered and treated effluent, is also considered fill, requiring authorization under Section 404 prior to discharge in waters of the U.S. The applicant should contact the Corps to determine if any of the proposed work constitutes a "discharge of fill" and submit an application and associated drawings that meet our drawing recommendations found at *http://poh.usace.army.mil/EC-R/EC-R.htm*. The Corps will then review the application to ensure it complies with all necessary federal laws and regulations. Note that if the fill results in the loss of waters of the U.S. and/or associated functions, the applicant may be required to provide compensatory mitigation for any unavoidable impacts. A request for an approved JD can be submitted prior to, or concurrently with, an application for the proposed work.

Thank you for contacting us regarding this project and providing us with the opportunity to comment. Should you have any questions, please contact Ms. Jessie Pa'ahana at *808.438.9258* or via email at *Jessie.K.Paahana@usace.army.mil*. Please be advised you can provide comments on your experience with the Honolulu District Regulatory Branch by accessing our web-based customer survey form at *http://per2.nwp.usace.army.mil/survey.html*.

Sincerely,

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

Paahana, Jessie K POH

From: Robyn Loudermilk [rloudermilk@ssfm.com]
Sent: Wednesday, November 10, 2010 10:51 AM
To: Paahana, Jessie K POH
Subject: Secret Beach Pre-consultation comments: POH-2010-0208

Aloha Jessie,

Can you please provide me with a map identifying the location of the two unnamed streams.

This will ensure that you and I are talking about the same streams.

Mahalo

Robyn L. Loudermilk

SSFM International

501 Sumner Street, Suite 620

Honolulu, Hawaii 96817

Phone: (808) 531-1306

Direct: (808) 628-5854

Fax: (808) 521-7348

rloudermilk@ssfm.com

www.ssfm.com

From: [Robyn Loudermilk]
To: [Paahana, Jessie K POH]
Cc: [Dean Uchida]; [Cheryl Soon]
Subject: FW: Secret Beach Pre-consultation comments: POH-2010-0208 (UNCLASSIFIED)
Date: Tuesday, November 30, 2010 12:16:41 PM
Attachments: [Nov10Loudermilkrequest.pdf]
[Trail Photos.pdf]

Aloha Jessie,

Thank you for providing the requested map. Upon review, one of the unnamed streams is located within the project area, while one is not. I have noted this on the USGS map attached to the Nov10Loudermilkrequest.pdf email that is attached to this email.

I am also providing you with a packet of photographs taken of the one stream located within the project area.
The front page of this packet has two aerial photographs of the stream area. The first aerial photograph shows the relationship of the stream area to the Kauapea Beach and surrounding properties. The second aerial photographs provides a view of the stream area from Kalihiwai towards the Kīlauea Point Lighthouse. The second page is an index of the photographs and general location along the stream area. The remaining pages are the photographs with a brief description.

Please do not hesitate to contact me should you require additional assistance.

Mahalo,
Robyn

Robyn L. Loudermilk
SSFM International
501 Sumner Street, Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1306
Direct: (808) 628-5854
Fax: (808) 521-7348
rloudermilk@ssfm.com
www.ssfm.com

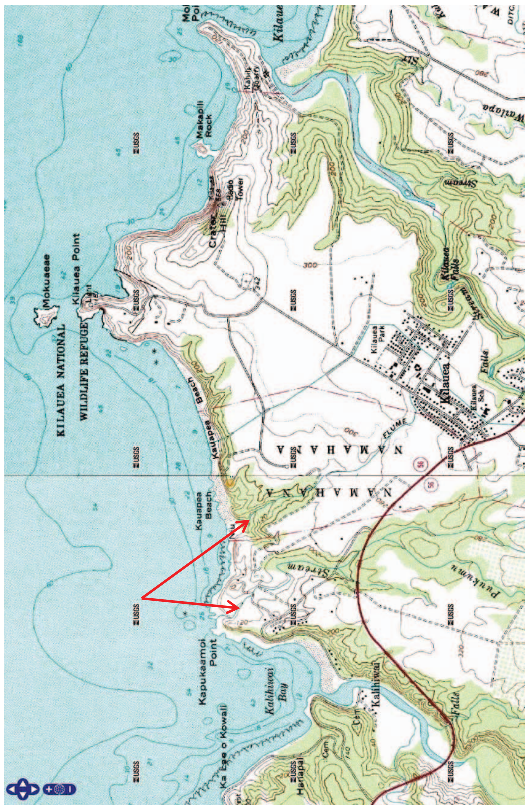
The photographs were taken on November 23, 2010.
-----Original Message-----
From: Paahana, Jessie K POH [mailto:Jessie.K.Paahana@usace.army.mil]
Sent: Monday, November 15, 2010 7:10 AM
To: Robyn Loudermilk
Subject: RE: Secret Beach Pre-consultation comments: POH-2010-0208 (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: FOUO

-----Original Message-----
From: Robyn Loudermilk [mailto:rloudermilk@ssfm.com]
Sent: Wednesday, November 10, 2010 10:51 AM
To: Paahana, Jessie K POH
Subject: Secret Beach Pre-consultation comments: POH-2010-0208

Aloha Jessie,

Kilauea, Kauai



POH-2010-00208 Secret Beach Trail ATF Improvements:
Per e-mail request dated November 10, 2010 by Ms. Robyn Loudermilk of SSFM: the 2 unidentified water bodies of concern for the Corps are identified with red arrows.

Source: US Geological Survey

Can you please provide me with a map identifying the location of the two unnamed streams.

This will ensure that you and I are talking about the same streams.

Mahalo

Robyn L. Loudermilk

SSFM International

501 Sumner Street, Suite 620

Honolulu, Hawaii 96817

Phone: (808) 531-1306

Direct: (808) 628-5854

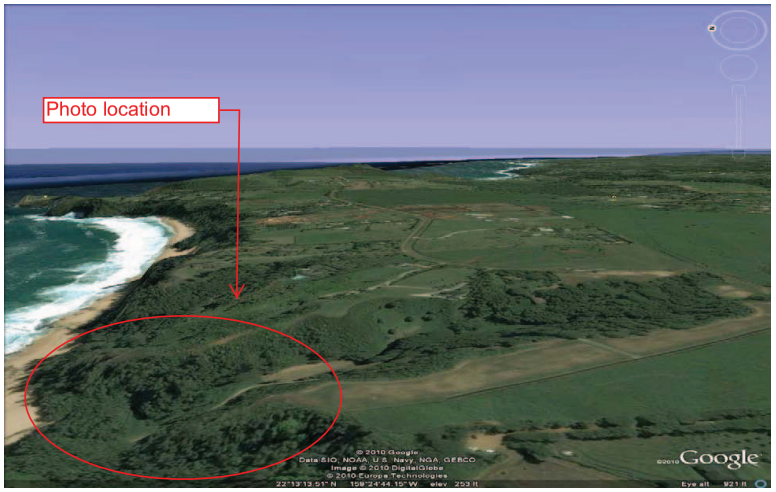
Fax: (808) 521-7348

rloudermilk@ssfm.com

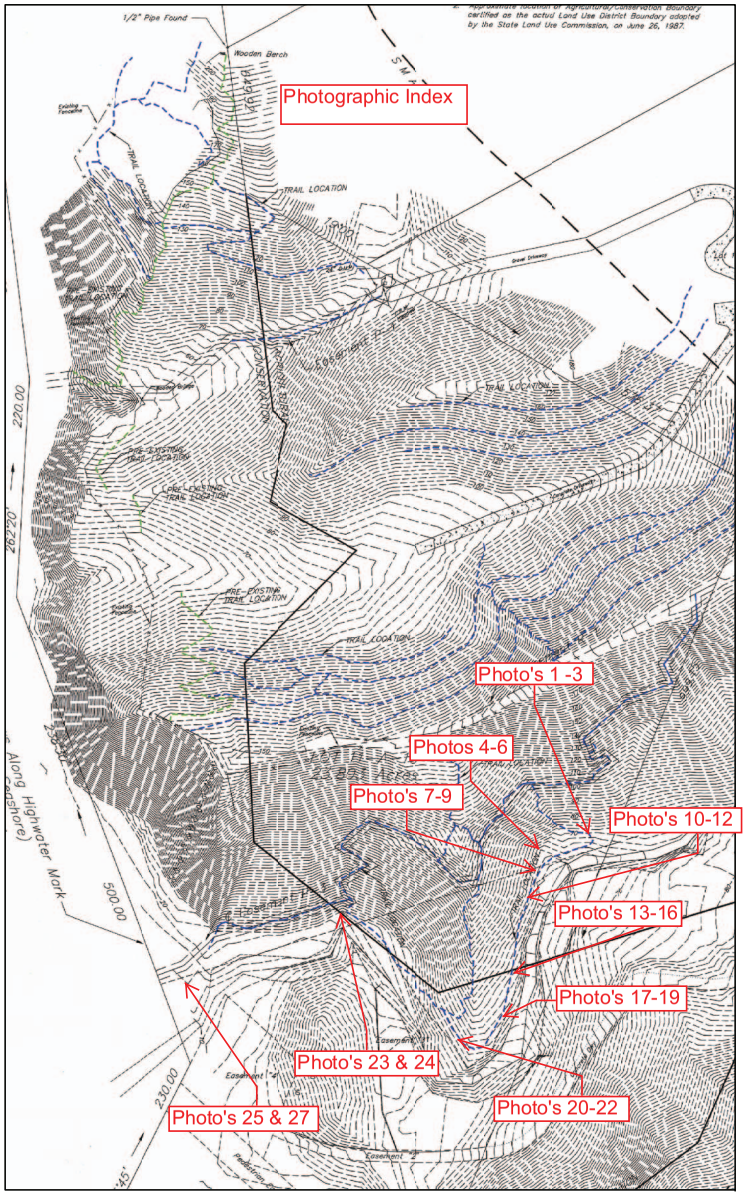
www.ssfm.com

Classification: UNCLASSIFIED
Caveats: FOUO

Secret Beach Properties, LLC Trails



The following photographs were taken on Tuesday, November 23, 2010 between the hours of 10:30 am and 12:45 pm.



N

Not to Scale

SSFM INTERNATIONAL

FIGURE 4

LOCATION OF EXISTING TRAILS PART 1

Secret Beach Properties, LLC
Source: Alan Hiranaka

Secret Beach Properties, LLC Trails

Photo 1

Existing trail improvements at an elevation of approximately 66 to 70 feet msl.

Photo 2

Bottom portion of trail improvements , along the side of the gulch, shown in Photo 1. Green vegetation on the right denotes abrupt change in elevation.

Photo 3

Another view of trail with botton step on the left side. Green vegetation on the left of the trail demotes an abrupt change in elevation.

Secret Beach Properties, LLC Trails

Photo 4

Continuation of trail looking in the makai direction. Green vegetation on the left of the trail denotes an abrupt change in elevation.

Photo 5

Close up shot of vegetation adjacent to the tree in Photo 4.

Photo 6

Continuation of trail improvements heading in the makai direction. Green vegetation on the left side of the trail denotes an abrupt change in elevation.

Secret Beach Properties, LLC Trails

Photo 7

Trail improvements looking makai. Green vegetation on left side of the trail denotes change in elevation.

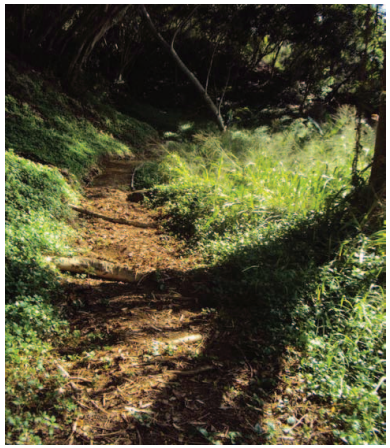


Photo 8.

Trail improvements looking mauka . This photo was taken behind the tree in the upper left corner of Photo No. 7. Green vegetation on the right side of the trail denotes an abrupt change in elevation.

Photo 9

Trail view of Photos 8 and 9 taken from the opposite side of gulch

Secret Beach Properties, LLC Trails

Photo 10

Continuation of trail looking makai. Green vegetation on the left of the trail denotes abrupt change in elevation.

Photo 11

Continuation of trail looking mauka . This photo was taken behind the banana tree in the left corner of Photo No. 10. Green vegetation on the right side of the trail denotes an abrupt change in elevation.

Photo 12

Trail view of Photos 10 and 11 taken from the opposite side of the gulch.

Secret Beach Properties, LLC Trails

Photo 13

Continuation of trail looking mauka. Green vegetation on the right of the trail denotes an abrupt change in elevation.

Photo 14

View from trail to the opposite site of the gulch. Trail is adjacent to the green vegetation on the bottom of this photo.

Photo 15

An additional view from the trail to the opposite side of the gulch. Trail is adjacent to the green vegetation on the bottom of this photo.

Secret Beach Properties, LLC Trails

Photo 16

One more view from the the trail to the opposite side of the gulch. Trail is adjacent to the green vegetation on the bottom of this photo.

Photo 17

Continuation of trail improvements looking makai.

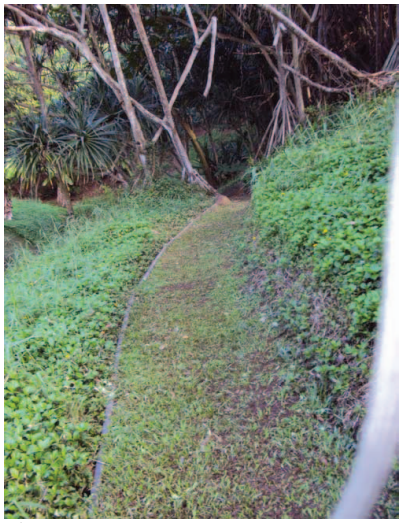


Photo 18

Trail improvements looking mauka.

Secret Beach Properties, LLC Trails

Photo 19

Trail view of Photos 17 and 18 taken from the opposite side of the gulch.

Photo 20

View of gulch looking mauka. The existing trail is on the left, outside of the picture.

Photo 21

View of Photo 20 taken from the opposite side of the gulch. Trail shown on upper portion of this photo.

Secret Beach Properties, LLC Trails

Photo 22

View of gulch looking makai. Trail is not shown in this photo. It is located further to the right of this photo Note the water in the lower portion of photo. There was water flowing to the beach.

Photo 23

View of trail improvements, looking up from an existing trail that traverses the side of the gulch. These improvements lead to the top of the gulch. All improvements along the side of the gulch end at here.

Photo 24

Lower reach of stream before Kauapea Beach.

Secret Beach Properties, LLC Trails

Photo 25

Stream mouth.

Photo 26

End of stream flow on Kauapea Beach.

Photo 27

View form the end of the stream flow in Photo No 26 looking makai. It is approximately 80 feet to the shorebreaks.

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

REPLY TO ATTENTION OF:

December 1, 2010

SSFM INTERNATIONAL, INC.
RECEIVED
DEC 06 2010
VII
FILE

Regulatory Branch

File Number POH-2010-0208

SSFM International, Inc.
Attention: Robyn Loudermilk
501 Sumner Street, Suite 620
Honolulu, Hawaii 96817

Dear Ms. Loudermilk:

This letter is in response to your e-mail dated November 30, 2010 to the U.S. Army Corps of Engineers (the Corps) providing requested additional information regarding the existing trail improvements at Secret Beach, TMK (4) 5-2-005:036, Kilauea, Island of Kauai, Hawaii. We completed our review of the submitted documents pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and Section 404 of the Clean Water Act (Section 404).

For your information, Section 10 requires that a Department of the Army (DA) permit be obtained from the Corps prior to undertaking any construction, dredging, or other activity occurring in, over, or under or affecting navigable waters of the U.S. For tidal waters, the shoreward limit of the Corps' jurisdiction extends to the Mean High Water Mark. Section 404 requires that a DA permit be obtained for the discharge (placement) of dredged and/or fill material into waters of the U.S., including wetlands. For tidally influenced waters, in the absence of adjacent wetlands, the shoreward limit of the Corps' jurisdiction extends to the High Tide Line, which in Hawai'i may be approximated by reference to the Mean Higher High Water Mark. For non-tidal waters, the lateral limits of the Corps' jurisdiction extend to the Ordinary High Water Mark or the approved delineated boundary of any adjacent wetlands.

We understand from the submitted documents and associated photographic evidence that the work involved with the Secret Beach trail improvements did not result in the discharge of fill material into a water of the U.S. Therefore after-the-fact approval and/or a **DA permit will not be required** for this project. To avoid any unintentional violation to Federal laws and regulations, we encourage the landowner consult with this office prior to any work in, over or under a navigable water or that results in the discharge or placement of fill and/or dredged material into a water of the U.S.

Thank you for contacting us regarding this project and providing us with the opportunity to comment. Should you have any questions, please contact Ms. Jessie Pa'ahana at *808.438.0391* or via email at *Jessie.K.Paahana@usace.army.mil*. You are encouraged to provide comments on your experience with the Honolulu District Regulatory Branch by accessing our web-based customer survey form at *http://per2.nwp.usace.army.mil/survey.html*.

Sincerely,

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

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

January 7, 2011

SSFM 2010_056.000

Mr. George Y. Young, P.E., Chief
Regulatory Branch
Department of the Army
U.S. Army Engineer District, Honolulu
Fort Shafter, Hawai'i 96858-5440

Dear Mr. Young:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for Draft Environmental Assessment
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i
TMK: (4) 5-2-005:036
File Number POH-2010-0208

Thank you for your letters dated December 1, 2010 and August 18, 2010 providing pre-assessment consultation comments for the preparation of the Draft Environmental Assessment (Draft EA) for the subject project. Additionally, pursuant to my email request of November 10, 2010, a map identifying the two unnamed water bodies in the August 18, 2010 letter was also provided.

We confirm that an after-the-fact approval and/or Department of Army permit will not be required for this project. We understand that this determination was based upon the submitted documents and photographic evidence that the work involved with the existing trail improvements did not result in the discharge of fill material into a water of the U.S.

A copy of the Draft EA will be provided when published.

If you have any questions on this matter, please contact me at 531-1308. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk
Project Planner
Email: rloudermilk@ssfm.com

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

SSFM INTERNATIONAL, INC.
RECEIVED
SEP 14 2010
rtt
FILE

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 10, 2010

FILE COPY

SSFM International, Inc.
501 Sumner Street Suite 620
Honolulu, Hawaii 96817

Attention: Ms. Robyn Loudermilk

Ladies and Gentlemen:

Subject: Pre-Assessment Consultation for Draft Environmental Assessment for Secret Beach Properties, LLC Existing Trail Improvements

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR), Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comment.

Other than the comments from Division of Forestry & Wildlife, the Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0433. Thank you.

Sincerely,

Charlene E. Unoki
for Morris M. Atta
Acting Administrator

NRH Section

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RECEIVED
LAND DIVISION
2010 AUG 24 P 3:02
DEPT. OF LAND & NATURAL RESOURCES STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 17, 2010

MEMORANDUM

TO: **DLNR Agencies:**
x Div. of Aquatic Resources
__ Div. of Boating & Ocean Recreation
x Engineering Division
x Div. of Forestry & Wildlife
__ Div. of State Parks
x Commission on Water Resource Management
x Office of Conservation & Coastal Lands
__ Land Division –
X Historic Preservation

FROM: Charlene Unoki, Assistant Administrator
SUBJECT: Pre-Assessment Consultation for Draft Environmental Assessment for Secret Beach properties, LLC Existing Trail Improvements
LOCATION: Island of Kauai
APPLICANT: SSFM International

Transmited for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by September 1, 2010.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

(X) We have no objections.
( ) We have no comments.
( ) Comments are attached.

Signed: Paul J. Conry
Date: AUG 19 2010
PAUL J. CONRY, ADMINISTRATOR
DIVISION OF FORESTRY AND WILDLIFE

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

January 7, 2011

SSFM 2010_056.000

Mr. Morris Atta, Acting Administrator
Department of Land and Natural Resources
Land Division
P.O. Box 621
Honolulu, Hawai'i 96809

Dear Mr. Atta:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for Draft Environmental Assessment
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i
TMK: (4) 5-2-005:036

Thank you for your letter dated September 10, 2010 providing pre-assessment consultation comments for the preparation of the Draft Environmental Assessment (Draft EA) for the subject project.

We confirm the Department of Land and Natural Resources has no comments to offer on the subject matter.

Division of Forestry & Wildlife

We note your Division has no objections to this project. A copy of the Draft EA will be provided when published.

If you have any questions on this matter, please contact me at 531-1308. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk
Project Planner
Email: rloudermilk@ssfm.com

LINDA LINGLE
GOVERNOR

RUSS K. SAITO
COMPTROLLER

STATE OF HAWAI'I
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

(P)1236.0

SEP - 2 2010

RECEIVED
SEP 03 2010

FILE

FILE COPY

Ms. Robyn L. Loudermilk
Project Planner
SSFM International
501 Sumner Street, Suite 620
Honolulu, Hawai'i 96817

Dear Ms. Loudermilk:

Subject: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for a Draft Environmental Assessment
Kilauea, Namahama, Hanalei,Kaua'i
TMK: (4) 5-2-005:036

Thank you for the opportunity to provide comments for the subject property. The proposed project does not impact any of the Department of Accounting and General Services' projects or existing facilities, and we have no comments to offer at this time.

If you have any questions, please call me at 586-0400 or have your staff call Ms. Gayle Takasaki of the Public Works Division at 586-0584.

Sincerely,

RUSS K. SAITO
State Comptroller

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

January 7, 2011

SSFM 2010_056.000

Mr. Russ K. Saito, State Comptroller
State of Hawai'i
Department of Accounting and General Services
P.O. Box 119
Honolulu, Hawai'i 96810

Dear Mr. Saito:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for Draft Environmental Assessment
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i
TMK: (4) 5-2-005:036

Thank you for your letter dated September 2, 2010 providing pre-assessment consultation comments for the preparation of the Draft Environmental Assessment (Draft EA) for the subject project.

We confirm that the proposed project does not impact any of the Department of Accounting and General Services projects or existing facilities, therefore, have no comments to offer at this time.

A copy of the Draft EA will be provided when published.

If you have any questions on this matter, please contact me at 531-1308. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk
Project Planner
Email: rloudermilk@ssfm.com

LINDA LINGLE
GOVERNOR

STATE OF HAWAI'I
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAI'I 96804

OFFICE OF THE SUPERINTENDENT

~~PATRICIA HAMAMOTO~~
~~DEPUTY SUPERINTENDENT~~
KATHRYN S. MATAYOSHI
INTERIM SUPERINTENDENT

SSFM INTERNATIONAL, INC.
RECEIVED
SEP 01 2010
rtt
FILE

FILE COPY

August 30, 2010

Ms. Robyn Loudermilk
SSFM International, Inc.
501 Sumner Street, Suite 620
Honolulu, Hawai`i 96817

Dear Ms. Loudermilk:

Subject: Secret Beach Properties, LLC Existing Trail Improvements Pre-Assessment Consultation for a Draft Environmental Assessment, TMK (4) 5-2-005:036, Kilauea, Namahama, Hanalei, Kaua`i

The Department of Education (DOE) has reviewed your early consultation request for the Secret Beach Properties, LLC Existing Trail Improvements Draft Environmental Assessment.

The DOE has no comment to offer.

Thank you for the opportunity to offer comment. If you have any questions, please contact Jeremy Kwock of the Facilities Development Branch at 377-8301.

Very truly yours,

Kathryn S. Matayoshi
Interim Superintendent

KSM:JK:jmb

c: Randolph Moore, Assistant Superintendent, OSFSS
William Arakaki, CAS, Kapaa/Kauai/Waimea Complex Areas

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

January 7, 2011

SSFM 2010_056.000

Ms. Kathryn Matayoshi
State of Hawaii
Department of Education
P.O. Box 2360
Honolulu, Hawai'i 96804

Dear Ms. Matayoshi:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for Draft Environmental Assessment
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i
TMK: (4) 5-2-005:036

Thank you for your letter dated August 30, 2010 providing pre-assessment consultation comments for the preparation of the Draft Environmental Assessment (Draft EA) for the subject project.

We confirm Department of Education has no comments to offer. A copy of the Draft EA will be provided when published.

If you have any questions on this matter, please contact me at 531-1308. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk
Project Planner
Email: rloudermilk@ssfm.com

LINDA LINGLE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

In reply, please refer to:
File:
EPO-I-3302

August 18, 2010

SSFM INTERNATIONAL, INC.
RECEIVED
AUG 20 2010
rtt
FILE

FILE COPY

Mr. Robyn L. Loudermilk, Project Planner
SSFM International
501 Sumner Street, Suite 620
Honolulu, Hawaii 96817

Dear Mr. Loudermilk:

SUBJECT: Pre-Assessment Consultation for a Draft Environmental Assessment for Secret Beach Properties, LLC Existing Trail Improvements, Kilauea, Namahama, Hanalei, Kauai, Hawaii
TMK: (4)5-2-005:036

Thank you for allowing us to review and comment on the subject document. The document was routed to the various branches of the Environmental Health Administration. We have no comments at this time, but reserve the right to future comments. We strongly recommend that you review all of the Standard Comments on our website: www.hawaii.gov/health/environmental/env-planning/landuse/landuse.html. Any comments specifically applicable to this application should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist). The Hawaii State Department of Health, Built Environment Working Group, recommends that State and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

If there are any questions about these comments please contact the Environmental Planning Office at 586-4337.

Sincerely,

GENEVIEVE SALMONSON, Acting Manager
Environmental Planning Office

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

January 7, 2011

SSFM 2010_056.000

Ms. Genevieve Salmonson, Acting Manager
State of Hawaii
Department of Health
P.O. Box 3378
Honolulu, Hawai'i 96801-3378

Dear Ms. Salmonson:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for Draft Environmental Assessment
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i
TMK: (4) 5-2-005:036

Thank you for your letter dated August 18, 2010 providing pre-assessment consultation comments for the preparation of the Draft Environmental Assessment (Draft EA) for the subject project.

We have reviewed the Standard Comments from the Department of Health Land Use Planning Review Program website. Attached are matrices of responses to the Standard Comments from the Environmental Planning Office, Clean Air Branch, Clean Water Branch, and Noise, Radiation and Indoor Air Quality Branch.

Further, we have reviewed the Healthy Community Design Smart Growth Checklist. Though this project is not a new development or redevelopment, several environmental quality best practices are being utilized by Secret Beach Properties, LLC. This checklist, with the applicable comments checked off, is also attached.

A copy of the Draft EA will be provided when published.

If you have any questions on this matter, please contact me at 531-1308. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk
Project Planner
Email: rloudermilk@ssfm.com

Environmental Planning Office Standard Comments / Areas of Concern Updated 9/15/05

COMMENTS	Response
Waterbody type and class	
Identify the waterbody type and class, as defined in Hawaii Administrative Rules Chapter 11-54 (http://www.state.hi.us/health/about/rules/11-54.pdf), of all potentially affected Water bodies.	Kauapea Beach is classified as "Class AA" Marine waters.
Existing water quality management actions	
Identify any existing National Pollutant Discharge Elimination System (NPDES) permits and related connection permits (issued by permittees) that will govern the management of water that runs off or is discharged from the proposed project site or facility. Please include NPDES and other permit numbers; names of permittees, permitted facilities, and receiving waters (including waterbody type and class as in 1. above); diagrams showing drainage/discharge pathways and outfall locations; and note any permit conditions that may specifically apply to the proposed project.	There are no known NPDES permits issued for the Property.
Identify any planning documents, groups, and projects that include specific prescriptions for water quality management at the proposed project site and in the potentially affected waterbodies. Please note those prescriptions that may specifically apply to the proposed project.	A review of the Kaua'i General Plan indicates no specific prescriptions for water quality management at or in the vicinity of Kauapea Beach.
Pending Water Quality Management Actions	
Identify all potentially affected water bodies that appear on the current List of Impaired Waters in Hawaii Prepared under Clean Water Act §303(d) including the listed waterbody, geographic scope of listing, and pollutant(s) (See Table 5 at http://www.hawaii.gov/health/environmental/env-planning/wqm/303dpcfinal.pdf).	There is no affected water
If the proposed project involves potentially affected water bodies that appear on the current List of Impaired Waters in Hawaii Prepared under Clean Water Act §303(d), identify and quantify expected changes in the following site and watershed conditions and characteristics: • surface permeability • hydrologic response of surface (timing, magnitude, and pathways) • receiving water hydrology • runoff and discharge constituents	The proposed project does not potentially affect impaired water.

• pollutant concentrations and loads in receiving waters • aquatic habitat quality and the integrity of aquatic biota Where TMDLs are already established they include pollutant load allocations for the surrounding lands and point source discharges. In these cases, we suggest that the submittal specify how the proposed project would contribute to achieving the applicable load reductions. Where TMDLs are yet to be established and implemented, a first step in achieving TMDL objectives is to prevent any project-related increases in pollutant loads. This is generally accomplished through the proper application of suitable best management practices in all phases of the project and adherence to any applicable ordinances, standards, and permit conditions. In these cases we suggest that the submittal specify how the proposed project would contribute to reducing the polluted discharge and runoff entering the receiving waters, including plans for additional pollutant load reduction practices in future management of the surrounding lands and drainage/discharge systems.	
Proposed Action and Alternatives Considered	
We suggest that each submittal identify and analyze potential project impacts at a watershed scale by considering the potential contribution of the proposed project to cumulative, multi-project watershed effects on hydrology, water quality, and aquatic and riparian ecosystems.	This will be part of the analysis in the relevant sections of the Draft EA.
We also suggest that each submittal broadly evaluate project alternatives by identifying more than one engineering solution for proposed projects. In particular, we suggest the consideration of "alternative," "soft," and "green" engineering solutions for channel modifications that would provide a more environmentally friendly and aesthetically pleasing channel environment and minimize the destruction of natural landscapes.	There will be no modification to existing channels or other natural features.

Clean Air Branch Standard Comments

COMMENTS	RESPONSE
Construction/Demolition Involving Asbestos	
If the proposed project includes renovation/demolition activities which may involve asbestos, the applicant should contact the Asbestos Abatement Office in the Noise, Radiation and Indoor Air Quality Branch at 586-5800	No asbestos are associated with this action.
Control of Fugitive Dust	
A significant potential for fugitive dust emissions exists during all phases of construction and operations. Proposed activities that occur in proximity to existing residences, businesses, public areas or thoroughfares, exacerbate potential dust problems. It is recommended that a dust control management plan be developed which identifies and addresses all activities that have a potential to generate fugitive dust. The plan, which does *not* require DOH approval, would help with recognizing and minimizing the dust problems from the proposed project.	This will be done should construction of the boundary fence occur.
Activities must comply with the provisions of Hawaii Administrative Rules, §11-60.1-33 on Fugitive Dust. In addition, for cases involving mixed land use, we strongly recommend that buffer zones be established, wherever possible, in order to alleviate potential nuisance problems.	Due to the nature of the action, minimal fugitive dust is anticated.
The contractor should provide adequate measures to control the fugitive dust from the road areas and during the various phases of construction. Examples of measures that can be implemented to control dust include, but are not limited to, the following: a) Planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing on-site vehicular traffic routes, and locating potential dust-generating equipment in areas of the least impact; b) Providing an adequate water source at the site prior to start-up of construction activities; c) Landscaping and providing rapid covering of bare areas, including slopes, starting from the initial grading phase; d) Minimizing dust from shoulders and access roads; e) Providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities; and f) Controlling dust from debris being hauled away from the project site.	Due to the nature of the action, minimal fugitive is anticipated.

Clean Water Branch Standard Comments August 22, 2008

COMMENTS	RESPONSE
Permit Issuance	
Any project and its potential impacts to State waters must meet the State's: 1) Antidegradation policy, which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected; 2) Designated uses, as determined by the classification of the receiving State waters; and 3) Water quality criteria (Hawaii Administrative Rules (HAR), Chapter 11-54).	The existing and proposed improvements are not anticipated to impact State waters. Existing runoff sheet flows into a gulch or down a coastal bluff where it is absorbed by soil or sand.
The Army Corps of Engineers should be contacted at (808) 438-9258 to see if this project requires a Department of the Army (DA) permit. Permits may be required for work performed in, over, and under navigable waters of the United States. Projects requiring a DA permit also require a Section 401 Water Quality Certification (WQC) from our office.	The Army Corp has been contacted as part of the pre-consultation process. They have determined that a DA permit is not required for this project.
National Pollutant Discharge Elimination System (NPDES) permits are required for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55). For the following types of discharges into Class A or Class 2 State waters, NPDES general permit coverage may be applied for by submitting a Notice of Intent (NOI) form: 1) storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi); 2) storm water associated with construction activities, including excavation, grading, clearing, demolition, uprooting of vegetation, equipment staging, and storage areas that result in the disturbance of equal to or greater than one (1) acre of total land area*; 3) treated effluent from leaking underground storage tank remedial activities; 4) once through cooling water less than one (1) million gallons per day; 5) hydrotesting water; 6) dewatering effluent; 7) treated effluent from petroleum bulk stations and terminals; 8) treated effluent from well drilling activities; 9) treated effluent from recycled water distribution systems; 10) storm water and certain non-storm water from a small municipal separate storm sewer system; and	The project does not meet any of the criteria listed.

11) circulation water from decorative ponds or tanks. **The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. An NPDES permit is required before the start of the construction activities.*	
A separate NOI form for each type of discharge must be submitted at least 30 calendar days prior to the start of the discharge activity, except when applying for coverage for discharges of storm water associated with construction activity. For this type of discharge, the NOI must be submitted 30 calendar days before to the start of construction activities. The NOI forms may be picked up at our office or downloaded from our website at http://www.hawaii.gov/health/environmental/water/cleanwater/forms/genl-index.html.	N/A.
For types of wastewater discharges not listed above or wastewater discharging into Class 1 or Class AA waters, you may need to obtain an NPDES individual permit. Class 1 waters include, but is not limited to, all State waters in natural reserves, preserves, sanctuaries, and refuges established by the Department of Land and Natural Resources (DLNR) under Hawaii Revised Statutes (HRS), Chapter 195, or similar reserves for the protection of aquatic life established under HRS, Chapter 195.	N/A.
An application for an NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge or start of construction activities. The NPDES application forms may be picked up at our office or downloaded from our website at http://www.hawaii.gov/health/environmental/water/cleanwater/forms/indiv-index.html.	N/A.
You must also submit a copy of the NOI or NPDES permit application to the State DLNR, State Historic Preservation Division (SHPD), or demonstrate to the satisfaction of the CWB that SHPD has or is in the process of evaluating your project. Please submit a copy of your request for review by SHPD or SHPD's determination letter for the project along with your NOI or NPDES permit application, as applicable.	N/A.
Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards.	N/A.
Monitoring	
Effluent discharge and/or receiving water monitoring may be required as conditions of Section 401Water Quality Certifications and NPDES General and Individual permits.	N/A.
Enforcement	
Noncompliance with water quality requirements contained in HAR, Chapter 11-54 and/or	N/A

permitting requirements specified in HAR, Chapter 11-55 may be subject to penalties of $25,000 per day per violation.	
Polluted Runoff Control Projects	
Projects addressing activities related to polluted runoff control as outlined in the State's Coastal Nonpoint Pollution Control Management Plan and/or Hawaii's Implementation Plan for Polluted Runoff Control may qualify for federal grants administered by our office. At a minimum, grant funds must be matched 100% with match funding or in-kind contributions from non-federal sources and are subject to the requirements of EPA 40 CFR Chapter 1 (7-1-98 Edition), Section 31.24 Matching or Cost Sharing. Request for Proposals to solicit qualified projects for grant funding are issued on an annual basis and interested parties can request to be placed on a mailing list to receive a copy of the RFP when it is issued. The deadline for submittal of a proposal is usually one (1) month from the date of the RFP. For more information, please read our website at: http://www.hawaii.gov/health/environmental/water/cleanwater/about/prc/index.html.	N/A

Noise, Radiation & Indoor Air Quality Branch Standard Comments Dated 3/2/04

SCOMMENTS	RESPONSE
Project activities shall comply with the Administrative Rules of the Department of Health:	
Chapter 11-39 Air Conditioning and Ventilating	N/A
Chapter 11-45 Radiation Control.	N/A
Chapter 11-46 Community Noise Control.	Are aware of these rules. There may be short term impacts during day light hours should weed whackers be required for landscape maintenance. This activity would occur during daylight hours and is not anticipated to exceed maximum sound levels.
Chapter 11-501 Asbestos Requirements.	N/A
Chapter 11-502 Asbestos-Containing Materials in Schools.	N/A
Chapter 11-503 Fees for Asbestos Removal and Certification	N/A
Chapter 11-504 Asbestos Abatement Certification Program	N/A

Healthy Community Design
Smart Growth Checklist

The Hawaii State Department of Health, Built Environment Working Group, recommends that State and County Planning Departments, developers, engineers and other professionals apply healthy built environment principles when they plan or review new developments or redevelopments. Government agencies should lead by example in their own projects. This checklist focuses on public health elements that would be integrated into land use and community planning and design. We ask you to share this list with others to increase community awareness of how to design healthier communities.

Healthy Built Environment Principles:

- Promote fitness through safe walking, biking, and other active transportation through connectivity of planned bikeways and paths with existing and adjacent networks, designing travelways that connect multiple destinations and encourage non-vehicular travel.
- Promote clean air by making transit convenient and comfortable, minimizing petroleum fueled car and truck use, and minimizing fossil energy use.
- Promote a healthy environment by buying green products, reducing, reusing & recycling, and minimizing waste in construction, operations, and demolition.
- Promote fitness and health by encouraging home and community gardens

Healthy Built Environment Best Practices:

Close Proximity to Existing/Future Development and Infrastructure

☐ Close to roadways, water and sewer service

☐ Located within growth/redevelopment area

☐ Walking distance to transit

☐ Next to or includes food/convenience/retail/services

☐ Next to or includes employment, recreation, entertainment

☐ Wide range of housing opportunities

Mix and Balance of Uses

☐ Multi-use buildings

☐ Multi-use districts

☐ Provide employment, housing, neighborhood serving retail/service

☐ Provide civic, educational, cultural recreation

☐ Provide street-level uses that maximize pedestrian activity

Site Optimization and Compactness

☐ Maximize allowable floor-area ratio

☐ Maximize dwelling unit/acreage density

☐ Maximize usable open space for gathering and recreation

☐ Maximize usable open space for home and community gardens

☐ Locate buildings at minimum setbacks or at "build-to" lines

Accessibility and Mobility Choices Provide:

☐ Shelters at transit stops and store fronts (e.g. awnings or arcades) and along paths and lanes.

☐ Pedestrian/bicycle/stroller/wheelchair facilities for and on transit

☐ Sidewalks, preferably on both sides of the street

☐ Walking and bike paths separate from roads (e.g. in greenways)

☐ Bike lanes in roads marked with paint and good signs

Content adapted from *Smart Scorecard for Development Projects* (Congress for New Urbanism and the US Environmental Protection Agency 2002) and *East Garrison Smart Growth Checklist* (Monterey, CA)

(*Continued on next page*)

Accessibility and Mobility Choices Provide:

☐ Shared paths & sidewalks marked to separate walkers and bicyclists. (paint, texture, signs)

☐ Bike racks, stroller storage

☐ Direct street connections, such as well-marked paths to front doors

☐ Parking lots & garages behind, above, or below buildings

☐ Connections to existing or planned parks, open space

☐ Raised or highly visible crosswalks near schools (paint and signs)

☐ Ramps, depressed curbs, and periodic breaks in curbs for people with disabilities

☐ Meet all ADA standards for accessibility

Healthy Designs for Indoor Areas

☐ Pleasant, wide central stairs provided to encourage walking

☐ Elevators stop on alternate floors (except ADA elevator)

☐ Bike/luggage/stroller ramps on stairs

☐ Indoor bicycle parking provided

☐ Showers and lockers provided at work sites

Community Context, Site Design, and Visual Appeal

☐ Preserve or re-use existing buildings/structures when feasible

☐ Incorporate buildings reflect local historic building materials, styles and/or design

☐ Include a map of the neighborhood and nearby street connections is included with plans

☐ Scale and mass of buildings relate to existing neighborhood structures

☐ Provide open access to all adjacent natural features such as coasts, streams, river-ways, mountains, forests, hiking, trails

☐ Create coastal, stream, and forest **green-ways** with walking and bike paths to town/village centers, parks, other destinations

☐ Insure automobile access makes minimum impact on pedestrian/bicyclist experience

☐ Create or enhance community spaces such as plazas, squares, parks, etc.

☐ Include open spaces and trails that provide opportunities for physical activity

☐ Provide play equipment in parks for children

☐ Include pedestrian/bicyclist–oriented landscaping and lighting

Fine - Grained Block, Pedestrian and Park Network

☐ Create street networks based on a grid system; avoid cul de sacs

☐ Incorporate short block lengths

☐ Design for traffic calming measures in and around residential areas

☐ Design pedestrian/bicycle systems to link with civic, cultural, retail/service destinations, and other paths

☐ A variety of park types and sizes

Environmental Quality

☐ Recycle materials from deconstruction of existing infrastructure

☐ Maximize energy efficiency of buildings

☐ Use green building materials when feasible

☐ Use energy conservation equipment, systems and/or programs

☐ Use water conservation systems

☐ Use rainwater on-site - provide storage, infiltration, irrigation

☐ Use on-site wastewater treatment & reuse or disposal where appropriate

☐ Use solar energy for heating and electricity

☐ Use wind energy

☐ Minimize artificial A/C, energy use, GHG emissions

☒ Protect, preserve and/or restore any on-site natural features such as steep slopes, wetlands, watersheds

☐ Create and maintain buffers around natural areas

☒ Plant native Hawaiian species

☐ Establish a recycling program for residents/ tenants

Content adapted from *Smart Scorecard for Development Projects* (Congress for New Urbanism and the US Environmental Protection Agency 2002) and *East Garrison Smart Growth Checklist* (Monterey, CA)

Variety and Range

☐ Include a variety of building types and styles

☐ Include locally owned businesses in project

☐ Provide a wide-range in pricing structure of units that will be sold or leased

☐ Insure at least 20% of the units will be priced for very low and moderate incomes

☐ Provide a variety of densities in both residential and commercial employment units

☐ Vary set backs

☐ Vary residential lot size

☐ Address need for community facilities

Re-Use and Redevelopment Options

☐ Install utility lines along access roads

☐ Install utility lines underground

☐ Master plans to show future/projected streets, blocks and development sites

☐ Include building types and structures that are adaptable to different uses

Process Collaboration and Predictability of Decisions

☐ Conduct pre-design workshops/Charrettes with stakeholders, agencies, and the public

☐ Provide public outreach regarding, input, project vision, goals, and timetable

☐ Provide a project model that serves as a visual representation of the project

☐ Contact State and county staff (planning, public works, etc) in all key departments in the planning phase of project development

☐ Develop Public/Private partnerships

☐ Align design plans with existing community and general plans

Content adapted from *Smart Scorecard for Development Projects* (Congress for New Urbanism and the US Environmental Protection Agency 2002) and *East Garrison Smart Growth Checklist* (Monterey, CA)

SSFM INTERNATIONAL, INC.
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PHONE (808) 594-1888

FAX (808) 594-1865

STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAI'I 96813

DEPT OF PLANNING
COUNTY OF MAUI
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FILE COPY

August 30, 2010

Robyn Loudermilk, Project Planner
SSFM International
501 Sumner Street, Suite 620
Honolulu, Hawai'i 96817

RE: Pre- Draft Environmental Assessment Consultation
Secret Beach Properties, LLC Existing Trail Improvements
Kīlauea, Hanalei District, Island of Kaua'i

Aloha e Robyn Loudermilk,

The Office of Hawaiian Affairs (OHA) is in receipt of your August 12, 2010 letter seeking comments ahead of a draft environmental assessment (DEA) being prepared for Secret Beach Properties, LLC (landowner).

Based on the information contained within your letter, this DEA is being prepared to facilitate an "after the fact" Conservation District Use Application (CDUA) and Special Management Area Minor Permit application (SMA). A Shoreline Setback determination will also be filed with the County of Kaua'i-Planning Department. Your letter details that the Board of Land and Natural Resources (BLNR) has taken an enforcement action against the landowner for unauthorized activities (landscaping and trail building) within the Conservation District. It is our understanding public access is not facilitated by the trails constructed on this property.

We have no specific comments at this time. We look forward to receiving the DEA and providing specific comments at that time. Should you have any questions, please contact Keola Lindsey at 594-0244 or keolal@oha.org.

'O wau iho nō me ka 'oia'i'o,

Clyde W. Nāmu'o
Chief Executive Officer

C: Kaua'i Island Community Resource Coordinator

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
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Fax: (808) 521-7348
www.ssfm.com

January 7, 2011

SSFM 2010_056.000

Mr. Clyde W. Nāmuʻo
Chief Executive Officer
State of Hawaiʻi
Office of Hawaiian Affairs
711 Kapiʻolani Boulevard, Suite 500
Honolulu, Hawaiʻi 96813

Dear Mr. Nāmuʻo:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for Draft Environmental Assessment
Kīlauea, Namahama, Hanalei, Kauaʻi, Hawaiʻi
TMK: (4) 5-2-005:036

Thank you for your letter dated August 30, 2010 providing pre-assessment consultation comments for the preparation of the Draft Environmental Assessment (Draft EA) for the subject project.

We confirm that Office of Hawaiian Affairs have no specific comments at this time. A copy of the Draft EA will be provided when published.

If you have any questions on this matter, please contact me at 531-1308. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk
Project Planner
Email: rloudermilk@ssfm.com

Department of Water
County of Kaua'i

Water has no substitute.....Conserve it

SSFM INTERNATIONAL, INC.
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September 10, 2010

UID #5156

FILE COPY

Robyn Loudermilk
SSFM International, Inc.
501 Sumner Street, Suite 620
Honolulu, HI 96817

Dear Robyn Loudermilk:

Subject: Pre-Assessment Consultation for a Draft Environmental Assessment, Secret Beach Properties, LLC Existing Trail Improvements on TMK: (4) 5-2-005:036, Kilauea, Hawaii

Dear Ms. Loudermilk,

This is in regards to your Pre-Assessment consultation for a Draft Environmental Assessment received by the Department of Water (DOW) on August 18, 2010. We have no objections to the Draft Environmental Assessment for the Secret Beach Properties, LLC Existing Trail Improvements. Request for additional water meters or an increase in water meter size will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.

If you have any questions please contact Mr. Heath Prow at (808) 245-5445.

Sincerely,

Gregg Fujikawa
Chief of Water Resources and Planning

HP:loo
5-2-005-036 Secret Beach-Loudermilk T-12456

4398 Pua Loke St., P.O. Box 1706, Lihue, HI 96766 Phone: 808-245-5400
Engineering and Fiscal Fax: 808-245-5813, Operations Fax: 808-245-5402, Administration Fax: 808-246-8628

SSFM INTERNATIONAL

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January 7, 2011

SSFM 2010_056.000

Mr. Gregg Fujikawa
Chief of Water Resources and Planning
Department of Water Supply
4444 Rice Street
Līhu'e, Hawai'i 96766

Dear Mr. Fujikawa:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for Draft Environmental Assessment
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i
TMK: (4) 5-2-005:036

Thank you for your letter dated August 10, 2010 providing pre-assessment consultation comments for the preparation of the Draft Environmental Assessment (Draft EA) for the subject project.

We confirm that you have no objections.

We would also like to note that the applicant does not intend to request additional water meters or to increase the size of the existing water meter.

A copy of the Draft EA will be provided when published.

If you have any questions on this matter, please contact me at 531-1308. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk
Project Planner
Email: rloudermilk@ssfm.com

BERNARD P. CARVALHO, JR.
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT

AN EQUAL OPPORTUNITY EMPLOYER
COUNTY OF KAUA'I
DEPARTMENT OF PUBLIC WORKS
4444 RICE STREET
MO'IKEHA BUILDING, SUITE 275
LĪHU'E, KAUA'I, HAWAI'I 96766-1340

DONALD M. FUJIMOTO
COUNTY ENGINEER
TELEPHONE 241-4992

EDMOND P.K. RENAUD
DEPUTY COUNTY ENGINEER
TELEPHONE 241-4992

SSFM INTERNATIONAL, INC.
RECEIVED
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FILE

August 24, 2010

SSFM International, Inc.
501 Sumner Street, Suite 620
Honolulu, HI 96817
Attention: Mr. Robyn Loudermilk

FILE COPY

SUBJECT: PRE-ASSESSMENT CONSULTATION FOR DRAFT EA TMK: 5-2-005-036,
SECRET BEACH PROPERTIES, LLC PW 8.10.075

Gentlemen,

We reviewed the subject project summary. We offer the following comments regarding the existing trail improvements to the property. The project summary is general and our comments are therefore general until more specific details are provided. As such, we wish to remain on your mailing list in receiving a copy of the draft environmental assessment:

1. From the project summary we understand that tree cutting and trail building has commenced. We are not sure whether a grading and/or grubbing permit will be required.
   - A grading permit is required if grading activities exceed more than a 100 cubic yards. Grading means any excavation or fill or any combination thereof.
   - A grubbing permit is required if the grubbed area exceeds more than one acre. Grubbing means any act by which vegetation or materials, including but not limited to trees, timber, shrubbery, plants, concrete or asphalt concrete is dislodged or uprooted from the surface exposing bare ground.
   - We do not consider tree cutting above the roots as grubbing.
   - A retro-active grading and/or grubbing permit may be required since the work has commenced. We wish to know the work that has commenced and the additional work that is being proposed.
   - Pursuant to Ordinance No. 808 known as the Sediment and Erosion Control Ordinance:
     - Section 22.7.5 (h) states "the use of soil as fill is prohibited within any shoreline areas, as defined by Section 205A-41, Hawai'i Revised Statutes, except for sand as defined in Section 22-7.4 of the Sediment and Erosion Control Ordinance". Our Planning Department needs to be consulted with regarding the shoreline area.
     - Section 22.7.5 (i) states "Any grading or mining of a coastal dune is prohibited, unless permits by the Board of Land and Natural Resources."

The Department of Land and Natural Resources needs to verify and confirm that grading or mining of the coastal dune is not occurring with this project.

- Regardless of whether a grading and/or grubbing permit is required, all grading and/or grubbing or stockpiling activities **shall** incorporate BMP's to the maximum extent practicable to prevent damage by sedimentation to streams, watercourses, natural areas and the property of others. It **shall** be the responsibility of the permitee's and/or property owner's responsibility to ensure that the BMP's are satisfactorily implemented.

2. Based on Panel No. 60E of the FIRM (Federal Insurance Rate Maps) dated September 16, 2005, the captioned property is susceptible to flooding from the Pacific Ocean. The flood zonings are a Zone VE with a corresponding base flood elevation that varies between 24' above mean sea level (MSL) to 29 feet MSL. Zone VE is described as tsunami flooding. The project may need to comply with the County's Flood Plain Management Ordinance No. 831.

Should you have any questions, please contact me at (808) 241-4891.

Very truly yours,

Wallace Kudo, P.E.
Chief, Engineering Division

CONCUR:

DONALD M. FUJIMOTO, P.E.
County Engineer

WK
cc: Design and Permitting
Wynne Ushigome w/attachments

SSFM INTERNATIONAL

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Fax: (808) 521-7348
www.ssfm.com

January 7, 2011

SSFM 2010_056.000

Mr. Wallace Kudo, P.E. and
Mr. Donald M. Fujimoto, P.E.
County of Kaua'i
Department of Public Works
4444 Rice Street
Moikeha Building, Suite 2785
Līhu'e, Kaua'i, Hawai'i 96766

Dear Mr. Kudo and Mr. Fujimoto:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Pre-Assessment Consultation for Draft Environmental Assessment
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i
TMK: (4) 5-2-005:036

Thank you for your letter dated August 24, 2010 providing pre-assessment consultation comments for the preparation of the Draft Environmental Assessment (Draft EA) for the subject project.

We have the following responses to your comments:

1. We understand that the Department of Public Works has not determined whether a grading and/or grubbing permit will be required. We will continue to work with your office so that a determination can be made.

   - All of the trail improvements are completed. There will be no additional work except maintenance.

   - There is approximately two miles of trails traversing the width of the Property with an average width of 2.5 feet. This is approximately 26,400 square feet of trail, or 0.5 acres. No grubbing permit is required for under one acre.

   - The existing lateral trail improvements are located along a natural shelf on the side of the coastal bluff, at an elevation of approximately 150 feet mean sea level (msl). Improvements include narrow swaths cleared of vegetation; Trex and wooden planks to shore up earthen steps; rebars that have been driven into the soil to hold these planks into place; and hog wire fencing with metal T-posts along the more hazardous portions of the trail to ensure that persons walking along the trails do not slip and fall down the pali. Secret Beach Properties, LLC confirms that no excavation occurred with these improvements.

- Future activities on the Property will consist of trail maintenance, landscape maintenance, and removal and replacement of dead trees and noxious vegetation. The removal and replacement of dead tress and noxious vegetation will be conducted in accordance with a plan that has been reviewed and approved by the Department of Land and Natural Resources Office of Conservation and Coastal Lands. Secret Beach Properties, LLC confirms that no fill has been brought on and used on the Property.

- Consultation has occurred with the County of Kaua'i Planning Department (KPD) regarding KPD permits that will be required. A Special Management Area (SMA) Minor Permit and a Shoreline Setback Determination are required. The Shoreline Setback Determination is required in order to delineate the shoreline areas as defined by Section 205A-41, HRS.

- There has been no mining or removal of soil from the Property.

- Consultation with the Department of Land and Natural Resources Office of Conservation and Coastal Lands (DLNR-OCCL) has also occurred.

- The preparation of the Draft EA is in support of a Conservation District Use Permit (CDUP) Application that will be processed by DLNR-OCCL.

2. We confirm that portions of the property are located in Food Hazard Zone VE with a base flood elevation ranging from 24 feet to 29 feet above mean sea level. We will continue to work with your office to ensure compliance with the County's Flood Plain Management Ordinance No. 831.

A copy of the Draft EA will be provided when published.

If you have any questions on this matter, please contact me at 531-1308. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk
Project Planner
Email: rloudermilk@ssfm.com

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Appendix C:

Draft Environmental Assessment Comments and Responses

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United States Department of the Interior
FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2011 MAR 29 A 9:37
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII
MAR 25 2011

In Reply Refer To:
2011-TA-0166

Mr. Samuel J. Lemmo, Administrator
State of Hawaii, Department of Land and Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, Hawaii 96809

Subject: Technical Assistance on a Conservation District Use Application for Secret Beach Trail Improvement, Landscaping and Erosion Control, Kauai

Dear Mr. Lemmo:

The U.S. Fish and Wildlife Service (Service) has reviewed the Conservation District Use Application (CDUA) including the Draft Environmental Assessment (EA) for the proposed Secret Beach trail improvement, landscaping and erosion control project. We received your letter soliciting comments on February 24, 2011. The project includes trail improvement, landscaping, erosion control and the removal of unwanted vegetation, including trees. For some of the actions, the applicant is seeking after-the-fact permits. The improvements are located on TMK 5-2-05:036 (23.8 acres) and the majority of the site is designated as Conservation land.

We have reviewed the project information you provided and pertinent information in our files, including data compiled by the Hawaii Biodiversity and Mapping Program and the Hawaii GAP Program. Our records indicate the Federal and State-listed endangered plant, Hilo ischaemum (*Ischaemum byrone*), is located within the project footprint, along with federally designated critical habitat. The Federal and State-listed endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) and Hawaiian goose (*Branta sandvicensis*), have also been observed in the vicinity of the proposed project. Additionally, the white-tailed tropicbird (*Phaethon lepturus*) and wedge-tail shearwater (*Puffinus pacificus*), both federally protected under the Migratory Bird Treaty Act (16 U.S.C. 703-712) (MBTA), are known to nest on the site. For actions that have not been completed, we recommend the applicant address potential project impacts to the listed species discussed below and include measures to avoid and minimize impacts to these resources in the Final EA and for approval of the CDUA.

Minimization and Avoidance Measures for Endangered Species
Hilo ischaemum is a short-lived perennial member of the grass family and has creeping underground and erect stems and can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned and two-flowered, and a two-

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or three-tiered inflorescence (O'Connor 1999). In 2008, 50 individuals of Hilo ischaemum were discovered growing on wet cliff faces of Kauapea Beach (Service 2010). We recommend anyone working on this project learn to identify Hilo ischaemum to avoid inadvertently destroying individuals that may be present. In addition, the Draft EA does not mention the Hilo ischaemum critical habitat occurring within the project footprint.

Hawaiian hoary bats roost in both exotic and native woody vegetation and leave their young unattended in "nursery" trees and shrubs when they forage. If trees or shrubs suitable for bat roosting are cleared during the bat-breeding season (May to August), there is a risk that young bats could inadvertently be harmed or killed. To minimize impacts to the endangered Hawaiian hoary bat, we recommend woody plants greater than 15 feet tall should not be removed or trimmed during the bat-birthing and pup-rearing season (May 1 through August 15). The Draft EA states that a fence may be installed to deter unauthorized users from accessing the site. The Service recommends avoiding the use of barbed wire, as Hawaiian hoary bats may become ensnared in the barbs.

The Draft EA notes that Hawaiian geese are known to nest at the nearby Kilauea National Wildlife Refuge and have been observed foraging on the project site. Prior to any construction or vegetation removal, the area should be searched to ensure there are no Hawaiian geese onsite. If a nest is found, project managers should contact our office immediately and all work in the vicinity of the nest should cease. If a Hawaiian goose appears in the area while work is being done, all work should cease until the bird leaves the area of its own accord.

Minimization and Avoidance Measures for Migratory Birds
Wedge-tail shearwaters and white-tailed tropicbirds have been observed nesting on the property. To avoid and minimize impacts to these and other federally protected seabird species, we recommend adding the following measures to the Final EA:

- Any onsite projects, including vegetation removal, should occur outside of the nesting season for these seabird species (March through November). Prior to initiation of any work activity, the area should be searched to ensure that active nests or burrows are not present. If work must occur during the seabird breeding season, we recommend a buffer of 150 feet to active nest sites.

- To protect the productivity of active nesting sites, we suggest that free movements of pets (*i.e.* dogs off-leash) be prohibited on the property. We also recommend the use of sturdy animal-proof garbage containers that reduce the attraction of the area to non-native and feral species, such as house mice, rats, and feral cats, which are known to prey upon eggs and chicks of seabird species.

We appreciate the opportunity to provide technical assistance in your environmental compliance and CDUA processes for this project and recommend you consider the impacts to listed species that may have occurred from the unauthorized actions prior to issuing the permit. If you have any questions regarding this letter, please contact Dr. Jeff Zimpfer, Fish and Wildlife Biologist,

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Consultation and Habitat Conservation Planning Program (phone: 808-792-9431; email: jeff_zimpfer@fws.gov).

Sincerely,

for Loyal Mehrhoff
Field Supervisor

References

O'Connor, P.J. 1999. Poaceae. Pages 1481-1603 *In* Manual of the flowering plants of Hawaii revised edition. (W.L. Wagner, D.R. Herbst, and S.H. Sohmer, eds.). University of Hawaii Press, Honolulu, HI.

U.S. Fish and Wildlife Service. 2010. Environmental Conservation Online System. *Ischaemum byrone*: Five year review. Accessed 24 March 2011 at http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=Q2BT

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June 9, 2011 SSFM 2010_056.00

Loyal Merhoff, Field Supervisor
U.S. Fish and Wildlife Service
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96830

Dear Mr. Merhoff:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Draft Environmental Assessment Comments (2011-TA-0166)
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated March 25, 2011 to Sam Lemmo providing technical assistance on Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your letter has been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (FEA)

We offer the following responses to your comments:

Minimization and Avoidance Measures for Endangered Species

1. The Final Environmental Assessment (FEA) will indicate that the property is a federally designated critical habitat for the Hilo ischaemum (*Ischaemum byrone*), a Federal and State-listed endangered plant that is a short-lived perennial member of the grass family.

   Additionally, the FEA will note that during the time that the biological assessment was conducted, the Hilo ischaemum was not seen adjacent to the existing improvements or in the vicinity of the existing improvements.

   Lastly, all persons working on this project and on the property will learn how to identify the Hilo ischaemum to avoid inadvertently destroying individuals that may be present in the vicinity of the improvements. Further, it is anticipated that there will be a need for the removal of dead trees and noxious vegetation in the future. This removal will be subject to the review and approval of the Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL).

   We will add the following measure to the FEA and any vegetation removal plan:

- In order to prevent inadvertently destroying plants that may be present, that all persons working on the property will be able to identify the Hilo ischaemum.

2. The FEA will be revised to note that the Federal and State-listed endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) has been observed in the vicinity of the property. Further revisions will include that the Hawaiian hoary bats roost in both exotic and native woody vegetation and leave their young unattended in "nursery" trees and shrubs when they forage. If trees or shrubs suitable for bat roosting are cleared during the bat-breeding season (May to August), there is a risk that young bats could inadvertently be harmed or killed.

   Further, we understand that should the future fencing on the mauka portion of the property be constructed, it is recommended that the use of barbed wire be avoided. The use of barbed wire may ensnare the Hawaiian hoary bat.

   We will add the following measure to the FEA:

   - In order to minimize impacts to the Hawaiian hoary bat during bat-birthing and pup-rearing season (May through August); woody plants greater than 15 feet tall will not be trimmed or removed.

3. The following measures related to the Federal and State-listed Hawaiian goose (*Branta sandvicensis*), will be added to the FEA:

   - That prior to any construction or vegetation removal, the area should be searched to ensure there are no Hawaiian geese onsite. If a nest is found, all work in the vicinity of the nest should cease, and immediately contact the USFWS office.

   - Should a Hawaiian goose appear in the area while construction or vegetation removal is being done, all work should cease until the bird leaves the area of its own accord.

Minimization and Avoidance Measures for Migratory Birds

1. The FEA will note that both the white-tailed tropicbird (*Phaethon lepturus*) and wedge-tail shearwater (*Puffinus pacificus*) are federally protected under the Migratory Bird Treaty Act. It will also include that the nesting season for these seabirds is a period between March through November.

2. To avoid and minimize impacts to these and other federally protected species, the following measures will be added to the FEA:

   - Any onsite projects, including vegetation removal, should occur outside of the nesting season for these seabird species (March through November). Prior to initiation of any work activity, the area should be searched to ensure that active nests or burrows are not present. If work must occur during the seabird breeding season, a 150 buffer from the active nest is recommended.

   - To protect the productivity of active nesting sites, it is suggested that free movements of pets (*i.e.* dog's off-leash) be prohibited on the property. It is also recommended that the use of sturdy animal-proof garbage containers that reduce the attraction of the area to non-native and feral species, such as house mice, rats, and feral cats, which are known to prey upon eggs and chicks of seabird species.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

NEAL ABERCROMBIE
Governor of Hawai'i

GARY HOOSER
Director

Telephone (808) 586-4185
Facsimile (808) 586-4186
Electronic Mail: oeqc@doh.hawaii.gov

STATE OF HAWAI'I
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
Department of Health
235 South Beretania Street
Leiopapa A Kamehameha, Suite 702
Honolulu, Hawai'i 96813

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STATE OF HAWAII

April 7, 2011

Samuel J. Lemmo
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809

Subject: Draft Environmental Assessment (DEA) for Conservation District (CDUA) KA-3586 for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control

Dear Mr. Lemmo:

The subject document was published in The Environmental Notice on March 8, 2011. After reviewing the Secret Beach DEA, I have these comments for the subject project.

Secret Beach Properties, LLC is applying for a number of after-the-fact permits to allow for existing trails, safety improvements, and landscape maintenance on lands located in the State Conservation District and Agricultural Districts.

The OEQC is concerned about the issuance of after-the-fact permits for trail improvements that appear excessive, and over-developed in a conservation district. The conservation district is intended to be preserved, protected and whenever possible left in its natural state. The OEQC is further concerned about the nature of future permitting and future actions given the history of unpermitted activity that has occurred in the past.

Please address the following concerns:

1. Please provide a more detailed description and justification for any landscaping being done within the conservation district.

2. Please provide historic data pertaining to the past use by the public on the "existing trails".

3. Please provide historical data pertaining to the historical use by native Hawaiians. Were these trails or other trails on or adjacent to this property used in the past by native Hawaiians to access the coastline or laterally traverse the ridge area?

4. Please provide information on whether public access will be improved, expanded or limited by the proposed actions.

5. Please provide information as to the landowners present use of the property and the future intent with regards to sale or other intended use of the property.

6. Has the property been utilized as a vacation rental? Is the property presently for sale?

7. Have the existing trails been promoted or advertised in any vacation rental materials or "for sale" materials as an added asset to the property, in the context of facilitating access to the beach?

8. Have adjacent and/or nearby property owners been offered the use of the existing trails?

9. Has any offer of the use of the existing trails by the applicant to others, been offered in exchange for something of value (such as a fee to purchase a trail easement or utilize the trails for beach access or recreational purposes)?

10. Historic Trails information, Cultural Uses and Fishing Practices in the area appear to be absent from the DEA. Pre-contact, historic and plantation era roads and trail information is also lacking, as are any considerations for or comments from any Hawaiians. Please address these issues.

11. The applicant is also seeking permission for the removal of "unwanted vegetation, including trees". The OEQC is concerned about this request and though it may be subject to "plans submitted to and approved by DLNR/OCCL" we would like to be informed as to the nature and type of vegetation/tree removal and what is intended to replace those removed.

12. The applicant proposes to possibly seek permission to replace existing trees with "lower-growing vegetation" as a means to increase the view planes from homes and thus decrease the incidence of illegal tree trimming. The OEQC is very concerned that this action could also result in changing the view plane of the ridge when viewed from the coast and from adjoining areas as structures would be increasingly visible as the height of existing vegetation is diminished. The OEQC is further concerned that permitting or encouraging the replacement of existing vegetation with "lower growing vegetation" for the purpose of increasing view planes is a possible precedent setting action in which future owners of conservation land located along other coastal ridge areas will follow, further exposing beach and coastal users to the view plane encroachment of homes "looking down" and consequently severely detracting from the experience and nature of conservation areas.

13. The applicant is also requesting approval for "future fencing" along the Mauka property boundary. The OEQC requests additional information as to the height, type and further description of the fencing for which approval will be sought. The OEQC has strong concerns about including the preapproval for "future fencing" without additional information.

Thank you for the opportunity to offer comments. Please feel free to contact me at (808) 586-4185 if you have any questions.

Sincerely,

GARY HOOSER
Director

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Gary Hooser, Director
Office of Environmental Quality Control
Department of Health
235 South Beretania Street
Leiopapa A Kamehameha, Suite 702
Honolulu, Hawai'i 96813

Dear Mr. Hooser:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated April 7, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC.

We offer the following responses to your comments:

1. The CDUA will allow Secret Beach Properties, LLC (SBP) to maintain the Property through the future removal of unwanted vegetation, including tress, subject to plans submitted to and approved by Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL). The use of the word "landscaping" is based upon the definition used within Title 13-5 Conservation District, Hawai'i Administrative Rules (HAR). Specifically, Section 13-5-23 L-4 LANDSCAPING, REMOVAL OF NOXIOUS PLANTS, (C-1) states: *Landscaping, defined as alteration (including clearing) of plant cover.*

   As unauthorized tree-cutting and disposal of green waste on the Property is done by adjacent landowners without SBP knowledge or consent, a proposed solution is to replace the existing non-native ironwood trees that are primarily responsible for blocking views with other lower-growing, native vegetation. However, DLNR-OCCL has expressed a desire to limit the removal of trees to non-native trees or those that may present a hazard.

   The preferred solution is to have SBP remove dead and hazardous trees and noxious plants based upon site specific plans submitted to DLNR-OCCL for review and approval. This solution is based upon the existing Conservation District Rules through the previously mentioned Section 13-5-24 L-4 and Section 13-5-22 P-12 TREE

REMOVAL (A-1) *Removal of dead or diseased: (1) Non-native trees; or (2) Native trees less than six inches in diameter measured at ground level.* (A-2) *Removal of trees which pose a hazard to public safety; provided however, that the landowner shall be required to provide documentation for the need to remove the tree if it was six inches or greater in diameter measured at ground level.*

These site specific plans will include proposed replacement vegetation and best management practices to be utilized to minimize potential erosion. Replacement vegetation would be limited to native species appropriate for the area. This will be done in consultation with DLNR-OCCL and utilizing information obtained from the biological reconnaissance survey conducted on the Property and located in Appendix C of the Draft EA.

2. The lateral trails were established in the early 1990's to address public health, safety, and welfare concerns in response to illegal camping (squatting) occurring on the Property. A previous landowner was cited by the State Department of Health (DOH) on July 13, 1990, and then issued a Notice of Violation (NOV) by DOH, on September 12, 1990, for not taking corrective action on the illegal camping. During the clean up process, a bulldozer that was used to clear a path, slid into a valley and could not be removed. A larger bulldozer then cut a roadway to retrieve the smaller bulldozer. On September 26, 1990, a DLNR inspector verbally ordered that no further work be done in the Conservation District without a use permit.

   On July 19, 1991, the Board of Land and Natural Resources (BLNR) granted a use permit, CDUP KA-2454, for roadway construction, general clean up, and fencing. The proposed road would assist in providing access for general clean up as well as provide easier access for law enforcement officials. General clean up encompassed the removal of rubbish and trash, contouring of certain areas, and removal of underbrush, and application of herbicide by a license person. The proposed fencing would encompass the entire Property boundary in order to prevent vagrants from entering.

   The existing mauka-makai trail fronting TMK 5-2-3:025 are permitted through CDUP KA-2966. No documentation has been encountered for the remaining two mauka-makai trails. There is no documentation of any formal arrangement with the existing and prior landowners that establishes formal public use of the trails.

3. An archaeological field inspection and literature report was prepared by Cultural Surveys Hawai'i, Inc. to identify potential cultural resources, historic properties, and provide recommendations related to the State of Hawai'i historic review process. The archaeological field inspection was conducted on December 20, 2010 on the 23.8 acre Property to record and document any surface archaeological features. Additionally, the field inspection assessed the potential for impacts to such sites.

   There have been a total of ten archaeological studies conducted in the vicinity of the Property. Most of the finds in these studies are related to plantation agriculture. Of note are the studies conducted along the coastline as no pre-contact sites or deposits were found. Also, studies of valleys not bulldozed or less disturbed by plantation agricultural reported a number of permanent agricultural and habitation complexes.

   No historic, archaeological, and cultural resources; including trails; were identified during the literature review and field inspection.

4. The proposed action will not impact the existing public access to Kauapea Beach located on the western side of the Property.

5. Approximately 6.5 acres along the western portion of the Property is in active agriculture. The remaining 17.3 acres of the Property is used as open space. There will be no change to the existing uses of the Property.

6. No, the Property has not been utilized as a vacation rental. The Property is not listed for sale; however, SBP will consider offers to purchase the Property.

7. No. As noted in Item 6, the Property has not been utilized as a vacation rental.

8. Yes. A right of access agreement is currently in place with the adjacent property owners for the existing mauka-makai trails.

9. Yes. Discussions to access Kauapea Beach with the existing trail system are occurring with the adjacent property owners. This discussion includes the purchase of an easement over the existing mauka-makai trails that would allow the adjacent property owners' access to Kauapea Beach.

10. As discussed in Item 3, based upon the information gathered and synthesized during an archaeological field inspection and literature report prepared by Cultural Surveys Hawai'i, Inc., no historic, archaeological, and cultural resources were identified on the Property. Further, as there were no anticipated cultural practices associated with the Property and surrounding lands, no interviews were conducted. As part of the Draft EA public review process, all comments were considered. We would like to note that none of the comment letters received by DLNR-OCCL on the Draft EA, or persons speaking at the Kīlauea Neighborhood Board meeting of April 5, 2011, identified themselves by a specific ethnic group, including Hawaiian.

11. As discussed in item 1, DLNR-OCCL recognizes the need to maintain the Property. The removal of dead and unwanted vegetation, within the existing framework of the conservation District, can address the illegal tree-cutting activities that have and

continue to occur on the Property. It also provides an opportunity to replace alien species with native species that are appropriate for this location

12. We also share your concern of potential changes to the existing view plane of the ridge from the coast with the removal of dead and unwanted vegetation. The use of native, lower growing trees has been identified as a proposed solution to replace the non-native ironwood trees that are responsible for blocking views to the ocean and are the main subject of illegal cuttings on the Property. Any proposed replacement vegetation will be appropriate for this location and enhance the existing coastal forest.

    The Property is a basaltic coastal bluff that has been identified as a heritage resource on the Kaua'i General Plan Heritage Resources Map for the North Shore Planning District. These maps are intended to document important natural, scenic, and historic features.

    From Kauapea Beach, the Property rises from mean sea level (msl) to approximately 250 feet above msl. This steep rise in elevation along with the existing coastal forest provides a unique scenic back drop to users of Kauapea Beach.

    No adverse impacts to visual resources are anticipated as a result of the proposed action. However, should the installation of a fence along the mauka boundary occur, it will be designed to minimize any potential visual impacts. The existing trails and improvements are not visible from Kauapea Beach. An extensive portion of the lateral trail is located along the 150 foot elevation, approximately half way between the beach and top of the Pali, and veiled by the coastal forest. From the Pali, portions of the existing mauka-makai trails can be seen down slope. However, a majority of these trails are also hidden by the existing vegetation.

13. As mentioned earlier, fencing of the Property was previously approved by the BLNR with the issuance of CDUP KA-2454 in 1991 as a means to keep vagrants, trespassers, and other unauthorized entry of the Property. The type and size of this fencing was not identified. The current fence request provides SBP an option in the event that discussions with the adjacent mauka landowners are not successful in preventing future unauthorized entry, dumping, and cutting on the subject property.

    As stated in the application, the subject property is privately owned and conservation zoned. The landowner is ultimately responsible for activities occurring on their property. The existing boundary between the mauka private properties and the subject property is currently unobstructed. Also, there appears to be uses on the adjacent mauka lands that may involve the subject property without the landowner's authorization. Attempts to resolve these issues have been on-going and ultimately will result in the installation of a fence along the property line if a satisfactory resolution is not reached.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

NEIL ABERCROMBIE
GOVERNOR OF HAWAI'I

GARY L. HOOSER
INTERIM DIRECTOR

STATE OF HAWAI'I
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
235 SOUTH BERETANIA STREET
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April 7, 2011

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources, State of Hawai'i
P.O. Box 621
Honolulu, Hawai'i 96809

Secret Beach Properties, LLC
P.O. Box 781
Kilauea, Hawai'i 96754

Dear Secret Beach Properties LLC, and Mr. Lemmo:

The Office of Environmental Quality Control has reviewed the draft environmental assessment (DEA) for the Secret Beach Properties, LLC, situated at Tax Map Key (4) 5-2-005: 036, in the judicial district of Hanalei on the island of Kaua'i. We offer the following comment for your consideration.

1. Page 34 of the DEA states in pertinent part that "… no … cultural resources were identified during the literature review and field inspection." In 1997, the Environmental Council issued guidance on assessing cultural impacts in the context of an environmental assessment. While literature reviews are an integral part of cultural impact assessment, emphasis is also placed on contacting persons familiar with the cultural landscape of the region. The Environmental Council recommended that preparers of assessments… "identify and consult with individuals and organizations with expertise concerning the types of cultural resources, practices and beliefs found within the broad geographical area … ." Coastal areas in the islands are generally the locus of human activity and cultural resources/practices. Please indicate in the environmental assessment the names of individuals and organization with expertise in cultural resources, practices and beliefs that were consulted.

Should you have any questions, please call me at (808) 586-4185.

Leslie Segundo
Environmental Health Specialist
Union Steward, Bargaining Unit 13, Hawaii Government Employees Association
Office of Environmental Quality Control
Department of Health – State of Hawaii
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June 9, 2011 SSFM 2010_056.00

Les Segundo, Planner
Office of Environmental Quality Control
Department of Health
235 South Beretania Street
Leiopapa A Kamehameha, Suite 702
Honolulu, Hawai'i 96813

Dear Mr. Segundo:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your email dated April 7, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your letter has been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We understand that the Environmental Council issued guidance in assessing cultural impacts in the context of and environmental assessment: including consulting with individuals and organizations knowledgeable of the area. Based upon the information gathered and synthesized in the archaeological field investigation there were no anticipated cultural practices associated with the Property and surrounding lands, therefore a formal Cultural Impact Assessment was not warranted.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

FEB 2 5 201

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
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NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

CDUA KA-3586

MEMORANDUM:

FEB 2 3 2011

To: DLNR
___ Historic Preservation Division
___ Division of Forestry and Wildlife
___ Division of Conservation and Resources Enforcement
___ Kauai District Land Office
___ State Parks Division
___ Office of Hawaiian Affairs
___ County of Kauai Planning Department/Public Works/Police/Fire
___ Department of Health
___ US Fish and Wildlife Service

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: REQUEST FOR COMMENTS – CONSERVATION DISTRICT USE APPLICATION KA-3586 for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control

TMK: (4) 5-2-005:036

LOCATION: Kilauea, Island of Kauai

Enclosed please find Conservation District Use Application (CDUA) KA-3586 and OCCL's Acceptance Letter for the proposed use

We would appreciate any comments your agency or division has on the application.

Please contact Staff Planner Michael Cain at 587-0048, should you have any questions on this matter.

If no response is received by the suspense date of March 24, 2011, we will assume there are no comments.

( ) Comments Attached Would fence installation on mauka property boundary affect emergency personnel access?

( ) No Comments

Signature Prevention Captain

Attachments: *CDUA KA-3586; Acceptance Letter*

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Randy Awo, Acting Administrator
Department of Land and Natural Resources
Division of Forestry and Wildlife
P.O. Box 621
Honolulu, Hawai'i 96809

Dear Mr. Awo:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your comment dated March 14, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comment has been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

The installation of the mauka boundary fence is an option of last resort should illegal activities continue to occur on the Property. Coordination and consultation will occur with emergency responders prior to the installation of this fence to ensure that access to Kauapea Beach will not be impacted.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

→ NAH - review & comments

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

Department of Land and Natural Resources
State of Hawaii

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY
WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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AND COASTAL LANDS
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DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

CDUA KA-3586

FEB 23 2011

MEMORANDUM:

To: DLNR
___ Historic Preservation Division
✓ Division of Forestry and Wildlife
___ Division of Conservation and Resources Enforcement
___ Kauai District Land Office
___ State Parks Division
___ Office of Hawaiian Affairs
___ County of Kauai Planning Department/Public Works/Police/Fire
___ Department of Health
___ US Fish and Wildlife Service

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: REQUEST FOR COMMENTS – CONSERVATION DISTRICT USE APPLICATION KA-3586 for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control

TMK: (4) 5-2-005:036

LOCATION: Kilauea, Island of Kauai

Enclosed please find Conservation District Use Application (CDUA) KA-3586 and OCCL's Acceptance Letter for the proposed use

We would appreciate any comments your agency or division has on the application.

Please contact Staff Planner Michael Cain at 587-0048, should you have any questions on this matter.

If no response is received by the suspense date of March 24, 2011, we will assume there are no comments.

( ) Comments Attached

NAH has A

(✓) No Comments

Signature

3/14/11

PAUL J. CONRY, ADMINISTRATOR
DIVISION OF FORESTRY AND WILDLIFE

Attachment: CDUA KA-3586; Acceptance Letter

*** PLEASE ATTACH CDUA App. to disk sent earlier ***

sent to Kauai DOFAW

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Paul J. Conry, Administrator
Department of Land and Natural Resources
Division of Forestry and Wildlife
P.O. Box 621
Honolulu, Hawai'i 96809

Dear Mr. Conry

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your comment dated March 14, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comment has been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We note that you have no comments on the CDUA and Draft EA.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
3060 Eiwa Street, Room 306
Lihue, Kauai, HI 96766

March 28, 2011

Sam J. Lemmo, Administrator
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, HI. 96809

Dear Mr. Lemmo,

We have reviewed CDUA KA-3586 and DEA for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control located at Kilauea, Kauai, Hawaii TMK (4) 5-2-005:036 and have comments below:

1. Because of the presence of nesting Wedge-tailed shearwater (*Puffinus pacificus*) within the Conservation district, there is a potential for a bird to strike the hog fence that runs alongside the mauka-makai trails causing injury or death. This may be corrected by replacing the fence with a post and rail. This would minimize the risk of a bird strike.

2. Other fences that may be within the Conservation district should be situated within or near plants or shrubs. This help birds such as the Laysan albatross (*Phoebastria immutabilis*) and the Hawaiian goose or nene (*Branta sandvicensis*) to avoid a striking the fence. Fences exposed in the open increases the likelihood of birds accidentally hitting it.

3. Within the Conservation district, the applicant replace some of the exotic plantings with common native coastal native plants such as beach naupaka (*Scaevola sericea)*, pohuehue (*Ipomea pes-caprae*), and Ilima (*Sida fallax*).

Thank you for the opportunity to comment on this. If you have any questions, please contact Mr. Thomas Ka'iakapu at 274-3433. Mahalo.

Sincerely,

Galen Kawakami
Kauai Branch Manager

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Galen Kawakami, Kaua'i Branch Manager
Department of Land and Natural Resources
Division of Forestry and Wildlife
3060 Eiwa Street, Room 306
Līhu'e, Hawai'i 96766

Dear Mr. Kawakami

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated March 28, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your letter has been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We have the following responses to your comments.

1. We would like to clarify that the existing hog wire fencing on the property is located along intermittent portions of the lateral trail within the Conservation district. There is no fencing along the existing mauka-makai trails, thus bird strikes will not occur. It is not anticipated that fencing of the mauka-makai trails will occur in the future.

2. The existing fence along the hazardous portions of the lateral trail is located on the side of a basaltic coastal bluff. It is also veiled by the existing coastal forest, this minimizing the potential for bird strikes. Should additional fencing be required in the future, we will ensure that it is not exposed in the open to minimize the potential for bird strikes.

3. We will incorporate your suggestion of replacing some exotic plants with common native plants such as beach naupaka, pohuehue, and Ilima.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

54634

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

CDUA : KA-3586

FEB 23 2011

MEMORANDUM:

To: DLNR
___ Historic Preservation Division
___ Division of Forestry and Wildlife
___ Division of Conservation and Resources Enforcement
___ Kauai District Land Office
✓ State Parks Division
___ Office of Hawaiian Affairs
___ County of Kauai Planning Department/Public Works/Police/Fire
___ Department of Health
___ US Fish and Wildlife Service

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: REQUEST FOR COMMENTS – CONSERVATION DISTRICT USE APPLICATION KA-3586 for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control

TMK: (4) 5-2-005:036

LOCATION: Kilauea, Island of Kauai

Enclosed please find Conservation District Use Application (CDUA) KA-3586 and OCCL's Acceptance Letter for the proposed use

We would appreciate any comments your agency or division has on the application.

Please contact Staff Planner Michael Cain at 587-0048, should you have any questions on this matter.

If no response is received by the suspense date of March 24, 2011, we will assume there are no comments.

( ) Comments Attached

(✓) No Comments

Signature

Attachments: *CDUA KA-3586; Acceptance Letter*

RECEIVED
STATE PARKS DIV
'11 FEB 23 A10:29
DEPT OF LAND &
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SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011

SSFM 2010_056.00

Daniel Quinn, Administrator
Department of Land and Natural Resources
Division of State Parks
P.O. Box 621
Honolulu, Hawai'i 96809

Dear Mr. Quinn

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your comments to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (DEA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment.

We note that you have no comments to offer on the CDUA and Draft EA.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

PHONE (808) 594-1888

FAX (808) 594-1865

STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAI'I 96813

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NATURAL RESOURCES
STATE OF HAWAII
HRD11/5191C

March 22, 2011

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809

Re: Conservation District Use Application KA-3586
Trails, Landscaping, Erosion Control and Fence Construction
Kilauea, Island of Kaua'i

Aloha e Samuel J. Lemmo,

The Office of Hawaiian Affairs (OHA) is in receipt of your February 23, 2011 request for comments on a Conservation District Use Application (CDUA) which will provide "after-the-fact approval" for approximately two miles of existing lateral trails and two mauka-makai trails on a 23.803 acre parcel (parcel) situated within the Conservation District (19.3 acres) and the Agricultural District (4.5 acres) owned by Secret Beach Properties, LLC (applicant). The CDUA also requests approval for future vegetation removal followed by replacement palntings which will be done following a plan approved by the Department of Land and Natural Resources-Office of Conservation and Coastal Lands (OCCL) and construction of a fence along the mauka (southern) property boundary to prevent unauthorized access. A draft environmental assessment (DEA) has been prepared to support the CDUA.

The two mauka-makai trails facilitate access to Kauapea (also known as "Secret") Beach for certain mauka private landowners. Certain improvements have been made to these trails for safety and erosion control. A third mauka-makai trail which is situated on the parcel is permitted by a separate Conservation District Use Permit (KA-2966) approved by the Board of Land and Natural Resources (BLNR) in 2000. The lateral trails facilitate maintenance and landscaping activities throughout the parcel.

In 2007, the OCCL investigated a complaint of trees being cut down on the parcel without the necessary permit approvals. The applicant denied or was unaware of these activities occurring and the OCCL was unable to determine the responsible parties. The DEA (Chapter 1.2) details that on March 11, 2010, the BLNR found the applicant in violation of applicable Hawaii Revised Statutes and Hawaii Administrative Rules (finding) by landscaping within the Conservation District within the necessary permit. It is unclear to OHA if this finding is related to the 2007 OCCL investigation or a separate incident which was reported and investigated. The CDUA (page 4) explains a belief that unauthorized tree cutting occurs "*for the purpose of*

preserving ocean views for adjacent mauka landowners". Thus, the applicant proposes two possible solutions to eliminate the need or desire for (remove the obstructive trees and replace them with lower growing vegetation) or completely restrict (construct a fence) unauthorized access to the parcel.

OHA concurs with the anticipated "finding of no significant impact" determination in the DEA. We have no objections to the CDUA providing "after the fact approvals" for existing trials and related improvements on this parcel. We will rely on assurances in both the CDUA and DEA that any vegetation removal and subsequent replacement plantings will be done in compliance with a plan approved by the OCCL.

OHA notes that while the existing mauka-makai trails do not allow for or facilitate public access to Kauapea Beach, they do facilitate law enforcement and emergency responder access to this remote location. The CDUA contains letters from the County of Kaua'i Fire and Police Departments confirming the applicant's willingness to allow them to use the trails when necessary. OHA sincerely appreciates this gesture which certainly benefits the entire community. We respectfully request that should Native Hawaiian individuals or organizations require access to the shoreline in this remote area, the applicant consider allowing them access via these mauka-makai trails on this parcel.

Your February 23, 2011 determination letter to the applicant (which is included with your request for comments to OHA) details a requirement that the applicant provide proof from the County of Kaua'i that the project is one of the following: 1. exempt from Special Management Area (SMA) requirements; 2. outside of SMA boundaries; or 3. the subject of an approved SMA use permit. We anticipate the applicant will provide this requested information to allow for processing of the CDUA to continue. Thank you for the opportunity to provide comments. Should you have any questions or concerns, please contact Keola Lindsey at 594-0244 or keolal@oha.org.

'O wau iho nō me ka 'oia'i'o,

Clyde W. Nāmu'o
Chief Executive Officer

C: OHA- Kaua'i Island COC

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011

SSFM 2010_056.00

Clyde W. Nāmauʻo, Administrator
Office of Hawaiian Affairs
711 Kapiʻolani Boulevard, Suite 500
Honolulu, Hawaiʻi 96813

Dear Mr. Nāmauʻo:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kauaʻi, Hawaiʻi

Thank you for your letter dated March 22, 2011 to Sam Lemmo providing comments on the Conservation District Use Application KA-3586 (Application) and Draft Environmental Assessment (DEA) prepared in support of the Application. Your letter has been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (FEA).

The FEA will note that the 2007 Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) investigation is directly related to the March 11, 2010 action by the Board of Land and Natural Resources (BLNR) finding Secret Beach Properties, LLC in violation of Hawaiʻi Revised Statutes (HRS) and Hawaiʻi Administrative Rules (HAR).

Additionally, we acknowledge that the Office of Hawaiian Affairs (OHA) concurs with the anticipated "finding of no significant impact" determination for the DEA.

If requested, Secret Beach Properties, LLC (SBP) will consider granting access to Native Hawaiian organizations or individuals over the mauka-makai trails to the shoreline.

Lastly, a Special Management Area Permit application will be submitted to the County of Kauaʻi Planning Department for processing and action.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

RECEIVED
FEB 24 2011
POLICE DEPARTMENT
COUNTY OF KAUAI

2011 MAR 15 PM 3:36

WILLIAM J. AILA JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

CDUA KA-3586

FEB 23 2011

MEMORANDUM:

To: DLNR
___ Historic Preservation Division
___ Division of Forestry and Wildlife
___ Division of Conservation and Resources Enforcement
___ Kauai District Land Office
___ State Parks Division
___ Office of Hawaiian Affairs
___ County of Kauai Planning Department/Public Works/Police/Fire
___ Department of Health
___ US Fish and Wildlife Service

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: REQUEST FOR COMMENTS – CONSERVATION DISTRICT USE APPLICATION KA-3586 for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control

TMK: (4) 5-2-005:036

LOCATION: Kilauea, Island of Kauai

Enclosed please find Conservation District Use Application (CDUA) KA-3586 and OCCL's Acceptance Letter for the proposed use

We would appreciate any comments your agency or division has on the application.

Please contact Staff Planner Michael Cain at 587-0048, should you have any questions on this matter.

If no response is received by the suspense date of March 24, 2011, we will assume there are no comments.

( ) Comments Attached
(X) No Comments

Signature 3-9-2011
Kauai Chief of Police

Attachments: *CDUA KA-3586; Acceptance Letter*

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Chief Darryl Perry
Chief of Police
County of Kauai
Police Department
3990 Kaana Street
Suite 200
Līhu'e, Hawai'i 96766

Dear Chief Perry:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your comment dated March 9, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comment has been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We confirm that you have no comments on the proposed project.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

FAX (808) 587-0322
7 PAGES
ORIGINALS ARE BEING FEDEX'D OVERNIGHT.

KILAUEA NEIGHBORHOOD ASSOCIATION
POST OFFICE BOX 328, KILAUEA, HI 96754

2011 APR 26 A 10: 29
STATE OF HAWAII

April 19, 2011

Michael Cain & Samuel Lemmo
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street, Room 131
Honolulu, HI 96813

Subject: Draft Environmental Assessment (DEA) for Conservation District (CDUA) KA-3586 for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control

Dear Mr. Cain & Mr. Lemmo:

Upon invitation extended by the Kilauea Neighborhood Association (KNA), the Planners (SSFM International) to the Applicant of the above listed project, attended KNA's General Monthly Community Meeting on April 5th 2011. The invitation was also extended to the Applicant, however the Applicant was unable to attend. At the meeting, SSFM gave a slide presentation overview of the project to the community in attendance. Based on community feedback gained from this meeting and beyond, the Board of the Kilauea Neighborhood Association has voted to oppose the above listed project and respectfully request the improvements comprising the modern trail be removed and restored based on the following reasons/concerns:

1. Secret Beach Properties, LLC (SBP) was given the conservation district rules by the DLNR, but chose to ignore the rules and build the modern trail anyway.

2. Modern trails of the type that was built are not allowed in the limited subzone of the conservation district . . . period.

3. The trail was built to enhance the financial value of the land where the trail is and the land owned by SBP's principals mauka of the trail parcel.

   a. This is evidenced by The Michele Hughes Company website for Secret Beach Hideaways and by internet testimonials from people who have stayed at Hughes' vacation rentals and referred to their use of the trail while at the rentals. See the following link: http://www.secretbeachkauai.com/sbh-villa.html (copies attached)

   b. This is also evidenced by the timing of the sale of the trail parcel and the mauka properties in advance of the key permit dates. See the following link: http://www.koakauai.com/blog/the-secret-is-out-exclusive-kauai-real-estate-offering.html (copies attached)

4. Permits and fines are not sufficient to address SBP's actions, because permits and fines are just part of the cost of doing business for an experienced real estate developer.

5. The property has not needed any maintenance in the past, does not need any maintenance now and will not need any in the future.

6. A modern lateral trail that runs through the approximate midpoint (along most of the length) of the Property is not needed to clean up tree cuttings that are located near the mauka border of the Property. A trail in the middle of the Property will not allow SBP to monitor activities on the Property by the people occupying the mauka parcels.

7. It is not practical or helpful for emergency personnel to use the lateral trails to access Secret Beach. We are not aware of emergency personnel using a mauka-makai trail to access the beach.

8. Granting SBP an after-the-fact conservation district use permit in this situation would set a very bad precedent for how the DLNR deals with landowners who violate DLNR rules.

9. Although the removal of noxious plants is allowed in the limited subzone, SBP has not identified any noxious plants on the property, including any that it intends to have removed.

10. Because the trail is being marketed and used for commercial purposes, a public hearing is needed in connection with SBP's Conservation District Use Permit application. See the following link: http://www.secretbeachkauai.com/sbh-villa.html

11. If the permit is granted and SBP is not required to remove the modern trail, then a contested case hearing will be requested by members of the community.

12. A Special Management Area (SMA) permit is required from the County of Kauai for the work that has been done on the property.

13. Rather than preserving or improving the existing physical and environmental aspects of the Property, the trail negatively impacts the existing physical and environmental aspects of the Property by removing vegetation and adding improvements.

14. Concern for the endangered species, and other wildlife, nesting in the area. A lateral trail negatively impacts their health by increasing the likelihood of direct human contact, general loss of habitat and overall privacy.

15. The lack of Engineering studies/plans and the extensive soil erosion that is already taking place. It is not a matter of "if" the erosion will be headed downhill to the ocean and reef, but "WHEN".

We thank you for the opportunity to offer comments. Should you have any further questions, please contact our Secretary, Donna Apilado-Schumacher at (808) 639-0118 or you may also email us at info@knakauai.org.

Sincerely,

John Constantino
President

C: Robyn Loudermilk, Planner to Applicant – SSFM International
Gary Hooser, Director - State of Hawaii Office of Environmental Quality Control
Lisa Ellen Smith, Planner - County of Kauai Planning Department
Wallace Kudo, Division Chief - County of Kauai – Dept of Public Works Engineering Division
Bernard P. Carvalho, Mayor - County of Kauai
Shannon Smith – Refuge Manager, Kilauea Point National Wildlife Refuge Complex
Michele & Justin Hughes - Secret Beach Properties, LLC

Enclosures: *Secret Beach Hideaway* – website home page
Koa Properties - blog page disclosing sale of property

[redacted] This fabulous secluded single story 3 bedroom, 4 b features slide away pocket doors which open to bri breathtaking views. Gaze across the pool and spa to north shore coastline of Kauai towards Bali Hai and t sun. A stunning, private 4+ acre ocean-bluff location wit that wind down through the jungle and bring you to m Secret Beach. 4 miles to the west is the renowned P Course at Princeville and one mile to the east is th Lighthouse. Sleeps 6.

Steps away from secluded Secret Beach, named one of the most beautiful beaches

The Villa boasts awe-inspiring panoramic views of lush mountains and sparkling azure

The Villa Amenities:

- Pool
- Soaking Pool
- Designer furnishings and accessories
- Unobstructed, spectacular views of blue azure waters, coastline, lush mountair valleys
- Private, outdoor garden with outdoor shower, spa and sitting area. Private lanai ocean and the perfect spot for enjoying romantic sunsets
- Outdoor gas barbecue and dining area
- Floor-to-ceiling sliding glass doors
- Bath with tiled interior shower with dual heads, fine European bath lin accessories and hair dryer
- Gourmet kitchen with state-of-the-art appliances and cookware, including over microwave, rice cooker, toaster oven, coffee maker, Sub Zero refrigerator fr icemaker, cooktop and dishwasher
- Fine table linens and Alessi Italian dinnerware
- Water purification system
- 2 King beds and 1 Queen bed with sumptuous European bed linens
- Telephone, fax, cable five TV's including HDTV in each bedroom and in living ro 52" Plasma TV in media room, DVD/VCR combo, high speed Internet acce system CD player
- Washer and dryer, iron/ironing board
- Beach chairs, mats and towels, beach umbrellas, & picnic coolers
- The Villa is a non-smoking property

Secret Beach Hideaway Amenities:

- Situated on 40 private, oceanfront acres
- Security gate entry
- Lush, tropical grounds and gardens
- Each accommodation has a private, tropical path to secluded Secret Beach
- Minutes from fine dining, cultural and recreational activities
- Massage therapist and catering available upon request

Secret Beach Hideaway luxury cottage and villa rentals provide private access to Secret Beach, a rer sands, where spinner dolphins and whales can be seen frolicking just off the shore.

Pamper yourself and your loved one at our Secret Beach Hideaway luxury Kauai accommodations id

private, romantic vacation in Hawaii. Our Kauai rentals are found off the beaten path, far from the cro everyday life. Click here for a guide to Romantic Experiences on Kauai. These special rentals on the Hawaii are offered to you by The Michele Hughes Company. We hope to see you soon!

Romantic Experiences

Contact us: info@secretbeachkauai.com

Secret Beach Hideaway **Anini Vista**

The Villa Hale Lani Hale Nanea Pueo Poin

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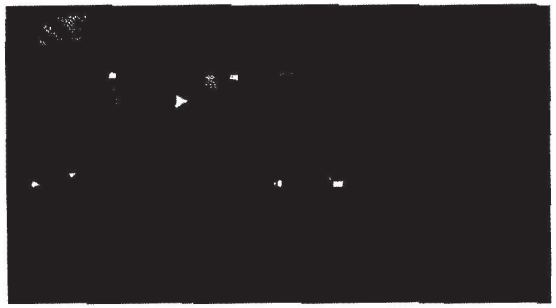
KOA Properties

http://www.koakauai.com/blog/the-secret-is-out-exclusive-kauai-real-estate-offering.html

THE SECRET IS OUT - Exclusive Kauai Real Estate Offering

Posted By: Debra Ryll **In:** Real Estate
Date: Thu, Mar 24th 2011 10:43 pm

Surfing. Shelling. Swimming with Dolphins... Secret Beach, where miles of silky white sand meets the turquoise sea.



Offered for the very first time in its entirety, this extraordinary 34-acre estate includes six beach and bluff home sites, three guest house sites, and **over 2/3 mile of sandy beach frontage**. Quite simply, there is *no other* comparable property in Hawaii.

Sought after by the most discriminating clientele in search of luxury island properties, this Secret Beach Hideaway has been featured in the *Wall Street Journal*, *the L.A. Times*, *Forbes*, and the *Robb Report*, among many others.

Accessed by three private gates on Kauapea Road—Kauai's "ultimate address"—the three-parcel estate offers **breathtaking ocean and mountain views** including legendary sunsets over *Bali Hai*, two exquisite guest homes, an office, an organic nursery, underground utilities, park-like acreage, ponds, waterfalls, and *miles* of beach trails. The Kilauea Lighthouse and Wildlife Sanctuary, quaint Kilauea and Hanalei towns, the five star St. Regis Hotel and the famed golf courses of Princeville are minutes away.

KOA Properties is proud to announce ***an exclusive pre-listing opportunity*** to purchase the **SECRET BEACH HIDEAWAY**, the crown jewel of The Michele Hughes collection. Time is of the essence: offers must be submitted by June 10, 2011 to be considered, and brokers are fully protected.

Secret Beach: Where stress turns into ***bliss***.

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

John Constantino, President
Kīlauea Neighborhood Association
P.O. Box 328
Kilauea, Hawai‘i 96743

Dear Mr. Constantino:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua‘i, Hawai‘i

Thank you for your letter dated April 19, 2011 to Sam Lemmo and Michael Cain on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We offer the following responses to your comments:

1. Secret Beach Properties, LLC (SBP) has indicated that there was a misunderstanding between SBP and DLNR-OCCL on what was allowed in order to remove dead, dying or hazardous trees, and maintain the Property. During the January 28, 2008 DLNR-OCCL site inspection, SBP was instructed by DLNR-OCCL Staff to remove dead, dying or hazardous trees and maintain the Property. SBP was further advised that these activities could be conducted without any type of conservation permit, as long as internal documentation of the work done was kept.

2. Trails are allowed within the Conservation District Limited subzone by DLNR-OCCL rules. Specifically, Chapter 13-5-23, *Identified Land Uses in the Limited* subzone, Hawai‘i Administrative Rules (HAR). This was confirmed by letter dated February 22, 2011 to Dean Uchida from DLNR-OCCL. In this letter DLNR-OCCL finds, “The proposed use is an identified land use in the Limited subzone of the Conservation District, pursuant to the Hawai‘i Administrative Rules (HAR) §13-5-23, L-3, EROSION CONTROL (D-1)Erosion control, flood control, and other hazards prevention devices or facilities and L-4, LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS (D-1), removal of noxious plants for maintenance purposes in an area of more than ten thousand square feet that results in significant ground disturbance (e.g., clearing or grubbing).

3. The lateral trail was re-established while SBP was clearing the Property in response to DLNR-OCCL January 28, 2008 site inspection. This trail provides access across the

Property so that it can be maintained in accordance with DLNR-OCCL rules to remove dead, dying, or hazardous trees. In September of 1990, a public health, safety, and welfare enforcement action was initiated by the state Department of Health (DOH) against the previous landowner for illegal camping on the Property. The general location of the lateral trail was established during this time to respond to maintenance concerns. The two mauka-makai trails were in existence when SBP purchased the Property.

4. Comment noted.

5. Since the 1990’s, maintenance of the Property has been an issue due to illegal squatters and trespassers. As noted in item 3, the general location of the lateral trail was established in the early 1990’s in response to maintenance concerns. In September 1990, the State Department of Health (DOH) initiated a public health, safety, and welfare enforcement action against the previous landowner for illegal camping on the Property. The DOH issued a Notice of Violation to the landowner as there was a large amount of squatters living on the Property and creating unsanitary conditions.

6. Comment noted.

7. Emergency responders have utilized the mauka-makai trails in the past and continue to use these trails. The County of Kaua‘i Fire Department provides the following breakdown of access across the Property to Kauapea Beach spanning the last five years:

Inc #	Date	Inc. Type	Location	Situation	Trail Used
2757	7/29/2006	364	Secret Beach	Surf Rescue	Yes
2087	6/4/2007	361	Secret Beach	Swimmer in Distress	Yes
2571	7/7/2008	143	Trail to Secret Beach	Brush Fire	Yes
2619	7/18/2008	151	Secret Beach	Brush Fire	Unknown
431	7/31/2008	141	Secret Beach	Tree Fire	Unknown
616	2/19/2009	140	Secret Beach	Small Fire	No
3292	9/15/2009	140	Secret Beach	Tree Fire	Yes
3724	10/21/2009	364	Secret Beach	Swimmer in Distress	Yes
4545	12/23/2009	321	Secret Beach	Drowning	Unknown
4606	12/28/2009	321	Secret Beach	Swimmer in Distress	Yes
450	2/6/2010	342	Secret Beach	Surf Rescue	Yes
2815	8/6/2010	321	Secret Beach	Swimmer in Distress	Yes
3020	8/22/2010	321	Secret Beach	Swimmer in Distress	Yes
3782	10/17/2010	142	Secret Beach	Brush Fire	Unknown
4743	12/26/2010	321	Secret Beach	Near Drowning	Yes
248	1/19/2011	364	Secret Beach	Swimmer in Distress	Yes

8. Comment noted.

9. This will be done on a case by case basis with the review and approval of DLNR-OCCL.

10. Comment noted.

11. Comment noted.

12. SBP will be applying for a Special Management Area Permit from the County of Kaua'i.

13. Comment noted.

14. A biological survey was conducted on the Property and confirmed the presence of migratory seabirds on the Property. The U.S. Fish and Wildlife Service (USFWS) reviewed the Draft EA and confirmed that migratory seabirds may utilize the Property. The following mitigation measures, to protect federally protected species, were provided by the USFWS and will be implemented by SBP.

    - Any onsite projects, including vegetation removal, will occur outside of the nesting season for these seabird species (March through November). Prior to initiation of any work activity, the area should be searched to ensure that active nests or burrows are not present. If work must occur during the seabird breeding season, a 150 buffer from the active nest is recommended.

    - To protect the productivity of active nesting sites, it is suggested that free movements of pets (*i.e.* dog's off-leash) be prohibited on the property. It is also recommended that the use of sturdy animal-proof garbage containers that reduce the attraction of the area to non-native and feral species, such as house mice, rats, and feral cats, which are known to prey upon eggs and chicks of seabird species.

15. There has been no change to existing drainage patterns. Existing runoff and sediments continues to travel to the bottom of the gulch and coastal bluff. No soil erosion has been observed on the existing trails; however, soil erosion is occurring on the eastern portion of the Property in locations previously cleared of trees.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

SIERRA CLUB Kaua`i Group of the Hawai`i Chapter
Post Office Box 3412, Lihu`e, Kauai, Hawai`i, 96766

April 21, 2011

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NATURAL RESOURCES
STATE OF HAWAII

Samuel J. Lemmo, Administrator
Office of Conservation & Coastal Lands
Department of Land & Natural Resources
P. O. Box 621
Honolulu, HI 97809

Robyn Loudermilk
SSFM International, Inc.
501 Sumner Street, Suite 620
Honolulu, HI 96817

Michele and Justin Hughes
Secret Beach Properties, LLC
P. O. Box 781
Kilauea, HI 96754

RE: After-the-Fact Conservation District Use Application CDUA-KA-3586; TMK (4) 5-2-005:036 and Draft Environmental Assessment, January 2011 for Secret Beach Properties, LLC.

To All Recipients:

The Sierra Club Kaua`i Group has many concerns with the Draft EA for Secret Beach Properties, LLC and strongly urges the Board of Land and Natural Resources to reject Conservation District Use Application CDUA-KA-3586. Both documents inadequately assess the existing conditions, uses and impacts of the project. Furthermore, it is unfortunate that Sierra Club was not invited to comment as part of the applicant's pre-assessment consultation for the DEA. Such consultation would have allowed our concerns to have been incorporated into the analysis at an earlier stage of the process.

The DEA and CDUA fail to provide specific, complete and adequate information for decision making, thwarting a fair and honest review process. We are concerned that there may be deliberate omissions and find it reprehensible that the DEA neglects to include the necessary documentation for two of the applicant's three proposed actions, specifically:
(a) plans for dealing with unwanted vegetation and tree removal; and
(b) proposed site plan and specifications for the installation of a mauka boundary fence (which may or may not be constructed).

But of greater concern is the fact that granting this after-the-fact CDU Permit would reward the applicant's willful violations of State regulations. In addition to this specific harm to the public interest, awarding a CDU Permit would incite other landowners to continue the practice of

circumventing State rules and regulations that protect the public interest, thereby causing further harm.

Both justice and the public interest require that the CDUA be denied and that the applicant be required to restore the land to its undeveloped state. In the alternative, the damage to the public interest might be mitigated by granting the CDU Permit subject to the condition that the public be guaranteed a perpetual easement along the trails through the Conservation District property to access Kauapea Beach.

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1. Neither the DEA nor the CDUA provides the full picture -- that the applicant's non-permitted trail work in the Conservation District was part of an extensive master plan to create a private, for-profit, commercial resort amenity on Conservation land, avoiding the required permit process.

   The CDUA and the legitimacy of granting a CDU Permit cannot be evaluated without examining the applicant's "carefully developed master plan" for "the ultimate accommodations" on agricultural lots adjacent to the CD, as stated in the Secret Beach Hideaway website at http://www.secretbeachkauai.com/sbh-index.html.

   The website's homepage also states: "The 50 acres of land owned by Michele and Justin Hughes is zoned agricultural but most of it is unsuitable for farming because of its location on the rocky bluff above Secret Beach and Anini Beach. **Despite the adversarial conditions, they have made, at considerable expense, a concerted effort to irrigate, add steps and trails for access, and plant the hillsides** and whatever small flat areas available." And… "Secret Beach Hideaway luxury homes and cottages provide **private access to remote beaches…**" Clearly, trail construction and the extensive landscape alternations in the Conservation District were intentional and profit-driven.

2. **The applicant's project is part of a larger project that indicates that the CDU Application is actually a commercialization of Conservation District lands.**

   To adequately understand the nature of the applicant's violations, consider the fact that several properties adjacent to the Conservation District are owned by the applicant as well. These properties comprise Secret Beach Hideaway -- luxury vacation rental accommodations on Agricultural District land. According to their website at http://www.secretbeachkauai.com/sbh-index.html these "luxury homes and cottages provide private access to remote beaches" (see attached website screenshots).

   The Hughes' commercial resort operations, Secret Beach Hideaways, allows exclusive use of the trail, which is not in the public's best interest. Their website advertisements provide evidence that the unpermitted Conservation District trails are being marketed as a resort

amenity. These resort properties are also for sale and quotes from the Bali Hai Realty website are advertising these privatized, unpermitted trails:

Bali Hai Realty's website for TMK 4-5-2-005-035-002 (3.55 acres) called **Secret Beach Estates Condo #2, Pali Namahana** (MLS 236386) which states: "Ocean Bluff acreage Home-site and rare Secret Beach vehicular and pedestrian access… The only private road on Kauai down to a very Secret Beach runs parallel to one side of the property providing exclusive, quick and easy vehicular or walking access to the stunning beach below. A walking trail can also be easily created from home-site through property to the beach." http://www.balihai.com/Kilauea_Real_Estate/Secret-Beach-Estates_236386.aspx

The adjacent property **TMK 4-5-2-005-035-004 (9.356 acres)** is described on Bali Hai Realty's website as **Secret Beach Estates Condo #4, Pali Namahana (MLS 240568)** http://www.balihai.com/Kilauea_Real_Estate/Secret-Beach-Estates_240568.aspx and states: *Lowest priced homesite at exclusive Secret Beach Estates behind the gates at the end of renowned Kauapea Road near the Kilauea Lighthouse… This unique offering includes PRIVATE, VEHICULAR access right down to remarkable Kauapea ("Secrets") Beach!* **The** photo of the roadway pictured below is found at:
http://www.kauaireale.com/Kilauea_Real_Estate/Secret-Beach-Estates_240568.aspx

Pali Namahana Condo #5 - MLS Number 233550 **Tax Key** 4-5-2-005-035-005 (3 acres) is posted on Neal Norman's Koa Properties Land & Homes LLC website at http://www.koakauai.com/listings/view/land/233550. **It states:** *There Is Deeded Access To A Stream And A Private Paved Road All Of The Way Down To The Sand At Secret Beach For The Exclusive Use Of These 6 Estates. This Is The Only Direct Roadway To The Sand At Secret Beach.*

We note that the Draft EA has omitted any reference to the nearby paved roadway to the beach which is owned by the applicant (pictured above), and listed for sale as MLS 240568. This illustrates the deep divide between public benefit and private interest. The paved roadway points to a disingenuous argument in the DEA that the illegal trail will be valuable to emergency responders (beach rescue and fire protection). Access via the paved driveway is clearly more practical for emergency responders to use.

To reiterate, the Conservation District trails are an amenity to enhance the value of the applicant's commercial resort/vacation rentals on State Agricultural District land, and to enhance the financial value of the property in preparation for its sale.

3. **Willful Nature of the Violations.**

The February 1991 Environmental Assessment and CDUA-KA-1/2/91-2454 from applicant Bruce Laymon for After-the-Fact Trails and Property Improvements for the <u>same</u> TMK as the Secret Beach Properties CDUA KA-3586 is a very relevant document for the Board to consider. On page 5, Mr. Laymon states he "acknowledges that the work within the Conservation District was performed without a use permit." And, the trail building and vegetation removal pertinent to this CDUA was also performed by Paradise Grounds Care (Mr. Laymon's company) and provides clear evidence that environmental stewardship has not been demonstrated. There can be no acceptable explanation for the multiple violations by the samae individual, on the same property, multiple times within two decades.

It clearly strains credibility to accept that such disregard was not intentional since the landowners and the landscaper have both been fined in the past, and have both been provided regulatory guidance by BLNR in the recent past, yet the Conservation District rules were disregarded.

4. **Adverse cultural and social impacts on residents and lifestyle have not been examined in the DEA or CDUA.** The DEA and CDUA fail to address the foremost concern of residents and Sierra Club members, which is public access to Kauapea Beach.

   a) Historically, beachgoers have accessed trails through the Conservation District from Kauapea Road. The absence of clear and safe public right-of-ways from Kauapea Road to Kauapea Beach is an infringement on residents' right to access this coastal recreational area.

   b) The public's health, safety and welfare are disregarded by diminishing the recreational opportunities enjoyed by Kilauea residents in the past. The loss of traditional access to Kauapea Beach forces residents to drive, walk or ride bicycles to and along Kuhio Highway to reach a county right-of-way at the far north end of Kauapea Beach.

c) Blocking access will curtail the beneficial uses of the environment and conflicts with the long-term environmental policies of Chapter 344 HRS "State Environmental Policy" set forth to conserve natural resources and enhance quality of life.

d) HRS 46-6.5 related to Public Access affords an opportunity for counties to dedicate land for public right-of-way or easements as a condition for subdivision approval. We believe that the applicant was able to bypass this requirement by strategically developing five subdivided parcels instead of six.

e) The Kauai County Public Access, Open Space & Natural Resources Preservation Fund Commission noted in its May 2005 Report to the County Council that securing access to Kauapea Beach was the top priority and generated the highest interest during the community input process. Subsequent Commission reports to Council have also noted strong public interest in access to Kauapea Beach.

f) The cumulative loss of access opportunities to Kauapea Beach is unacceptable and contrary to HRS 115 (Public Access to Coastal and Inland Recreation Areas). Why hasn't acquisition of a public right-of-way or public transit corridor providing safe transit been discussed as an alternative, as provided for in HRS 115-2 through 7?

g) We understand that Kaua`i County has been remiss in implementing the condition of subdivision that required the creation of a public access easement for another subdivision on Kauapea Road (also abutting the Conservation District). Can the DEA provide research to elaborate on the circumstances of this lost opportunity for public access?

h) It is inappropriate to consign these trails for exclusive private use in light of the Kilauea community's need for access to Kauapea Beach.

i) Public use of Kauapea Beach and the significant public interest in securing access through the Conservation District to the beach, in addition to decades of unrestricted access when Kilauea Plantation owned the property, strongly indicates the benefit of the State securing a perpetual beach access for the general public through the Conservation District as a condition for granting the after-the-fact permit. Without such a condition, the after-the-fact permit should be denied.

5. **<u>The DEA and CDUA Contain Other Significant Omissions, Raise other Concerns, and Neglect Adverse Impacts.</u>**

A. **A Landscape Plan or Vegetation Management Plan** "for future removal of unwanted vegetation, including trees" and replacement vegetation was omitted.

1) It is alleged that the illegal trails were constructed to access and maintain the property's gardens and planted areas in the conservation district which were also

unpermitted. A portion of the extensive vegetative clearing is shown in the DEA photo labeled Figure 2 in the Biological Survey on page 4 and depicts an expanse of gardens and planted areas that required significant vegetative clearing which was not approved by DLNR.
2) The clearing of plant cover, even if characterized as "noxious plants", has resulted in significant ground disturbance. Seabirds may no longer return to their nesting sites due to considerable alterations to the natural landscape.
3) The removal of trees that were not "diseased" was not quantified in the DEA.
4) Where is a list of targeted plant species and quantities for removal and a list of replacement species?
5) What herbicides, pesticides and spray volumes are anticipated?

B. **A site plan map for "future fencing of the property"** is not included in the DEA and is necessary to delineate the location of the fenceline they want to place along the mauka Conservation District property border.

C. **Threats to near shore waters from erosion is understated and coastal bluff erosion and drainage mitigation plans** are omitted in the DEA. Cutting of the hillside, removing healthy trees and inappropriate trail design and lack of engineering to address drainage issues will create environmental hazards. The steep elevation of the Conservation District warrants closer examination of the run-off and sediment that is displaced onto the sandy beach and inevitably finds its way to the ocean.

D. **Why was a Certified Shoreline omitted from the DEA?** The property is a shoreline property and it was noted that winter waves have washed onto the steps constructed at the base of the trail. Therefore, construction is in the public trust area. As such, it is critical to locate the Shoreline Setback Area based upon a current certified shoreline.

1) The CDUA fails to meet the criteria in HAR 13-5-30(c)(3) for obtaining a shoreline certification. Although maps indicate a shoreline located on 7-20-2010, it is not "certified" by DLNR .
2) A setback determination is predicated on a setback based on a current certified shoreline for it to have any meaning. How can the setback line be determined if there is no certified shoreline delineation to measure from?
3) Neither the State, nor the applicant should rely a Shoreline Setback Determination from the County of Kauai (which was noted by the applicant), in lieu of a certified shoreline.
4) We also understand that the coastal erosion rate for this area is ½ foot per year. However, Figure 8-Conservation District Subzone, only indicates on the map old shoreline boundaries from 1971 and 1979. Clearly, a current certified shoreline is needed to identify what portions of the proposed action are located in the Shoreline Setback Area.

5) We ask that the Board require a certified shoreline for the DEA. It is critical to locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion.

E. **The DEA Trail Maps (Figures 4-6) Lack Specificity.** Why hasn't the historic context about trail use through the Conservation District been presented in the DEA? DEA pages 8-10, show "topographic maps of the Property that delineates the location of the existing trails" in the Conservation District labeled Figures 4, 5 and 6 "Existing Trails". The basic legend notes "pre-existing trail", and "new trail", "trail-re-opened" without further explanation. This results in a void of understanding about historic trail use over the past decades. We ask that historic maps be provided and that the legend be defined in greater detail.

1) The maps fail to illustrate which segments of trail were cited by BLNR for past violations by this applicant and others. It is important to differentiate the unpermitted trail construction by the applicant from pre-existing trails used by the general public and this information should be included.

F. **Historic public access to Kauapea Beach through the Conservation District from Kauapea Road is not addressed**. The Archeological Field Inspection Report by Cultural Surveys Hawai`i does not specifically address historic trail use. We request that documentation on trail use, over the past several decades, be researched for inclusion in the Draft EA.

G. **Chemical Contaminants.** Regarding the hydrology documentation in the DEA, it would be beneficial to include the recent findings by the State of Hawai'i Department of Health from their investigation of concentrations of dioxin and arsenic on properties sited where Kilauea Plantation had pesticide-mixing operations. Has evidence of contamination of arsenic or dioxin contamination in the Conservation District been researched? We recommend that consultation with the appropriate government agencies to ensure that, in particular, the stream outfall area by the beach is measured for contaminants.

6. **Privatization of trails for commercial use is inappropriate in view of DLNR's Hierarchy of Use policy.** Currently, trail use is limited to Secret Beach Property's paying guests at the Secret Beach Hideaway unpermitted, high-end resort accommodations – parcels that abut the Conservation District. We also understand that trail access is provided to adjoining land owners through the existing trails system for a fee – is that correct? If so, it demonstrates the commercial nature of land use sought by the applicant for Conservation District land, but <u>not</u> stated in their CDUA. To exclude public access and allow private, commercial use of the trails is inappropriate.

Conclusion.

After-the-fact Permits. It must be acknowledged that the number of after-the-fact permits for private development is increasing because it is far easier to beg forgiveness and pay an inconsequential fine, than to ask permission and be required to comply with the conditions that would be associated with such permission. If only to deter this form of permitting, which is detrimental and undesirable in this case, the board is justified in denying this CDUA.

The DLNR Hierarchy of Use Policy (1998). The DLNR hierarchy of use policy directs DLNR to protect the resources first, allow public use second, and allow commercial use third if it doesn't conflict or interfere with public use and resource protection. The unpermitted trails are to benefit commercial interests.

Commercial Use. The CDUA is written in manner that avoids the "big picture" -- that the Conservation District trails are an amenity to enhance the value of the applicant's adjacent commercial resort properties located on State Agricultural District land, and to enhance the financial value of the property in preparation for its sale. Permanent trails were constructed as part of the applicants resort master plan as an amenity, which <u>is not an accessory use</u> in the Conservation District.

Willful intent to disregard land use permits is an abuse. Sierra Club has little confidence that the applicant will conserve, protect and preserve the coastal bluff without the strictest conditions and oversights in place. The multitude of omissions in the DEA and CDUA may be evidential of an attempt to hinder a fair review process.

The applicant has failed to meet its burden of demonstrating that the unpermitted trails in the Conservation District and the vegetation clearing will not cause harm. There are negative cultural and social implications of the project as well, impacting the public's historic use and access to Kauapea Beach from Kauapea Road. The project diminishes resident's access to recreational activities and well-being.

Guaranteed public trail access through the Conservation District could be a condition of CDUA approval. As well as conditions that require corrective action on the multitude of problems outlined herein. Otherwise, the reasonable, just and justifiable course of action is to deny the CDU Permit and to require restoration of the land to its former, undeveloped state. Obtaining a public pedestrian access easement to Kauapea Beach in perpetuity across the Conservation District trails would be far more meaningful and roughly proportional to the scale of the violations that have occurred to date. Such an easement would also ensure that the Conservation District trail use is not used solely for commercial purposes.

We strongly encourage the State to take this opportunity to secure beach access for the public and in turn, approve the after-the-fact permit application, with additional corrective actions to

provide a win-win scenario. Otherwise, deny the permit and ensure restoration of the Conservation District to its previous unspoiled state.

When this project is scheduled to come before the Board for a hearing, we request that the BLNR meeting be held on Kaua`i.

Respectfully submitted,

Rayne Regush Caren Diamond

Rayne Regush and Caren Diamond
On behalf of the Sierra Club Executive Committee
Kaua`i Group, Hawai`i Chapter

cc: Mayor Bernard Carvalho
Herman Texeira, County of Kaua`i Planning Commission Chair
Michael Dahilig, County of Kaua`i Planning Dept.

enclosure: Secret Beach Hideaway Website Screenshots (2)

HOME ULTIMATE ACCOMMODATIONS AREA RATES & RESERVATIONS WHO WE ARE CONTACT US

SECRET BEACH HIDEAWAY

LUXURY HOMES & COTTAGES ON KAUAI THE ULTIMATE ACCOMMODATIONS

The Secret Beach Hideaway is one of the most stunning properties on Kauai. Every tree and flower on the lushly landscaped and very steep terrain has been planted by the owners, Michele and Justin Hughes, who carefully developed a master plan that makes every effort to respect the rural heritage of Kauai.

For years the sugar industry dominated the economy of Kauai and much of the land was planted with sugar cane. Since the 1990's the sugar industry has all but disappeared and the island has struggled to replace sugar with alternative agricultural products. Coffee, trees and flowers, organic fruit and vegetables, taro, tea and hardwoods are some of the new crops.

The 50 acres of land owned by Michele and Justin Hughes is zoned agricultural but most of it is unsuitable for farming because of its location on the rocky bluff above Secret Beach and Anini Beach. Despite the adversarial conditions, they have made, at considerable expense, a concerted effort to irrigate, add steps and trails for access, and plant the hillsides and whatever small flat areas available.

While not large, their orchard and organic garden produce fruit and vegetables which they sell to local vendors or donate to the island's needy.

Their newest venture is **Pualani Gardens, LLC** which has 30,000 potted plants and numerous field stock plants which they intend to sell to local residents or other nurseries.

SECRET BEACH HIDEAWAY Nestled privately on the spectacular property are the farm dwellings called **The Villa**, **Hale Nanea** and **Hale Lani** which are available for rent to visitors to the island who enjoy being in such a rural setting and feeling the pulse of Kauai. Guests can participate in the agricultural activities and are invited to eat from the garden and pick the fruit and flowers. Most visitors leave with an expanded knowledge, respect and appreciation for what makes Kauai a unique destination.

PUEO POINT includes a 3 bedroom 3 bath unique home located on the bluff in the prestigious Anini Vista Estates. Purchased in 2006 Pueo Point features dramatic sunset views of Bali Hai and walking trails to gorgeous Anini Beach. The Michele Hughes Company has transformed a casual beach home into an elegant estate property. The property includes 9 acres of lush landscaping, and an additional home site. The home was featured on the cover of Luxury Homes Magazine and is available for rent and listed for sale.

Secret Beach Hideaway luxury homes and cottages provide private access to remote beaches of golden sands, where spinner dolphins and whales can be seen frolicking just off the shore.

Pamper yourself and your loved ones at our Secret Beach Hideaway and Pueo Point luxury Kauai accommodations, ideal for those desiring a private, romantic experience in Hawaii. Our Kauai rentals are found off the beaten path, far from the crowds and stress of everyday life. These special rentals on the Garden Island of Kauai, Hawaii are offered to you by The Michele Hughes Company . We hope to see you soon!

Romantic Experiences

Contact us: info@secretbeachkauai.com

HOME ULTIMATE ACCOMMODATIONS AREA RATES & RESERVATIONS WHO WE ARE CONTACT US

HOME ULTIMATE ACCOMMODATIONS AREA RATES & RESERVATIONS WHO WE ARE CONTACT US

SECRET BEACH HIDEAWAY

LUXURY HOMES & COTTAGES ON KAUAI THE ULTIMATE ACCOMMODATIONS

PUEO POINT

Pueo Point on prestigious Anini Vista Drive completely redefines the meaning of elegant island living. This property has quietly and yet with great command been transformed into a distinctive, tranquilly breathtaking, and meticulously presented masterpiece. With freshness and sophisticated design, The Michele Hughes Company, reinvented this 3 bedroom, 3 bath casual beach house into a lavish yet comfortable estate.

With refined taste and unparalled construction, this home presents the highest standards of quality in every detail. Pueo Point, perched on the bluff above Anini Beach, boasts 3 acres of exquisitely landscaped gardens and trails leading to the coveted beach below with the largest reef in all of Hawaii. You are certain to enjoy a swim in the calm lagoon beyond, or a quiet peaceful walk along the beach year round.

Revealing, regal and genuinely engaging, Pueo Point shows complete dedication to the finest qualities of life. Pueo Point was featured on the cover of Luxury Homes Magazine and is available for rent as well as listed for sale. For sales information please click here.

Pueo Point Amenities:

- 3 Bedroom, 3 Bath and Office
- Designer furnishings and accessories
- Unobstructed, spectacular views of lush mountains, tropical valleys and sparkling azure waters
- Secluded walk to Anini Beach
- Private, outdoor garden with outdoor shower, spa and sitting area
- Limstone lanai facing the ocean and the perfect spot for enjoying romantic sunsets
- Outdoor gas barbecue and dining area
- Floor-to-ceiling sliding glass doors in all rooms
- Fully equipped Office with telephone, fax and High Speed Internet Access
- Custom maple hardwood floors and teak cabinetry
- Gourmet kitchen with state-of-the-art appliances and cookware, including Wolf gas range, Sub-Zero refrigerator, blender, microwave, freezer and icemaker, Insta-hot, cooktop, rice cooker, toaster oven, blender and dishwasher

SSFM INTERNATIONAL

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June 9, 2011 SSFM 2010_056.00

Rayne Regush and Caren Diamond
Sierra Club Executive Committee
Kaua'i Group, Hawai'i Chapter
P.O. Box 3412
Lihue, Hawai'i 96766

Dear Rayne Regush and Caren Diamond:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated April 21, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We offer the following responses to your comments:

1. We would like to clarify that there is no "master plan" to create a resort amenity in the Conservation District. The lateral trail was re-established while Secret Beach Properties (SBP) was clearing the Property in response to DLNR-OCCL January 28, 2008 site inspection. The two mauka-makai trails crossing the Property to Kauapea Beach were in existence when SBP purchased the Property. SBP has granted a right-of-entry to adjacent property owners of the subdivision for the use of the existing mauka-makai trails. SBP does own two other properties in the subdivision, identified as TMK 5-2-005:31 and32, which border the western portion of the Property. It is through the right-of-entry agreement that allows visitors to these properties access to the existing mauka-makai trail to reach Kauapea Beach. These visitors do not use the lateral trail.

   The general location of the lateral trail was established in the early 1990's in response to a public health, safety, and welfare enforcement action initiated by the State Department of Health (DOH) against the previous landowner. This enforcement action was a result of illegal camping/squatting that was occurring on the Property. The trail was then incorporated in CDUA KA-2454, granted by the Board of Land and Natural Resources (BLNR) in 1991.

2. We would like to clarify that there proposed action is not part of a larger project for the commercialization of Conservation District lands. As noted in Item 1, SBP does own two other properties in the subdivision and that through a right-of-entry agreement, adjacent properties visitors are allowed access to the existing mauka-makai trails.

3. Secret Beach Properties, LLC (SBP) has indicated that there was a misunderstanding between SBP and DLNR-OCCL on what was allowed in order to remove dead, dying or hazardous trees,

and maintain the Property. During the January 28, 2008 DLNR-OCCL site inspection, SBP was instructed by DLNR-OCCL Staff to remove dead, dying or hazardous trees and maintain the Property. SBP was further advised that these activities could be conducted without any type of conservation permit, as long as internal documentation of the work done was kept.

4. The Draft EA does note that public access to Kauapea Beach is provided by an existing public access easement accessed by Kūhiō Highway. We are not aware of a formal public access across the Property from Kauapea Road to Kauapea Beach. There may have been informal arrangements with previous landowners who allowed such access over the Property.

   The remaining comments are noted. As they are specific to implementation of existing rules and regulations by the County of Kaua'i they are more appropriately addressed to the County of Kaua'i.

5. As noted in the Draft EA, DLNR-OCCL understands the need for SBP to be able to maintain the Property of noxious plants, dead trees, and trees that pose a hazard. However, DLNR-OCCL has expressed a desire to limit the removal of trees to non-native trees or those that may present a hazard.

   The preferred solution is to have SBP remove dead and hazardous trees and noxious plants based upon site specific plans submitted to DLNR-OCCL for review and approval. This solution is based upon the existing Conservation District Rules: Section 13-5-24 L-4 LANDSCAPING, REMOVAL OF NOXIOUS PLANTS, (C-1): *Landscaping, defined as alteration (including clearing) of plant cover*; and Section 13-5-22 P-12 TREE REMOVAL (A-1) *Removal of dead or diseased: (1) Non-native trees; or (2) Native trees less than six inches in diameter measured at ground level.* (A-2) *Removal of trees which pose a hazard to public safety; provided however, that the landowner shall be required to provide documentation for the need to remove the tree if it was six inches or greater in diameter measured at ground level.*

   These site specific plans will include the amount of trees and vegetation to be removed, why they are being removed, proposed replacement vegetation, and best management practices to be utilized to minimize potential erosion. Replacement vegetation would be limited to native species appropriate for the area. This will be done in consultation with DLNR-OCCL and utilizing information obtained from the biological reconnaissance survey conducted on the Property and located in Appendix C of the Draft EA.

   The Final EA will reference the exiting Tax Map Figure when describing the location of the proposed fencing. This is the same location as fencing previously approved by the BLNR in 1991 through CDUA-KA-2454.

   Threats to near shore waters were not understated with the Draft EA. Approximately 0.6 acres of land is utilized for the existing trail system. This trail system has not changed the existing drainage pattern of the Property: sheet flow over the Property into the existing gulches or sheet flow in a northerly direction down to the bottom of the coastal bluff. Allowing for the maintenance of the Property and trails will continue to ensure minimal impacts to near shore waters occur.

   The Final EA will clarify the legend associated with the trails as shown in Figures 4, 5, and 6 in the Draft EA. These trails have been further categorized as 1) pre-existing, 2) trail re-opened, and 3) new trail. Pre-existing trails are shown in green and no improvements were done. Trail re-opened are shown in brown and reflect the portion of the trail initially cleared as part of the 1991 clean up that was subject of CDUA KA-2454. Lastly, new trails are shown in dark blue and reflect improvements made by SBP to comply with DLNR's request to maintain Property. This information will be included in the Final EA.

   Historic trail use across the Property to Kauapea Beach is discussed in item 4.

   We will consult the DOH regarding potential contamination from Kīlauea Sugar Plantation activities.

6. As noted in Items 1 and 2, there are no commercial/resort uses on the Property. The lateral trail was initially established in the early 1990's so that the Property owner could clean up the Property in response to a DOH enforcement action. It is the three existing mauka-makai trails that provide access to Kauapea Beach. One of these trails, adjacent to TMK 5-2-005:25 are already permitted through a separate permit (CDUA KA-2966). It is unknown when the other two trails were constructed as they were in existence when SBP purchased the Property.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

Samuel J. Lemmo
Michael Cain
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2011 APR 26 P 3:26
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Subject: Draft Environmental Assessment (DEA) for Conservation District (CDUA) KA-3586 for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control

Dear Mr. Lemmo and Mr. Cain:

My comments are brief because so many others have provided cogent, extensive information.

The Draft Environmental Assessment (DEA) for Secret Beach Property's CDUA is long and has many maps and photos. However, this disclosure document is substantially deficient because it masks the purpose for the illegal trail work, tree removal (landscaping) and the existing and proposed fencing.

The purpose of this activity is not better maintenance of the conservation parcel. The actual purpose of all the construction and clearing is commercial: The trails provide access for renters of the owner's ongoing vacation rental operations, an "exclusive" amenity. Furthermore, the three parcels (two with vacation rental homes in the county agricultural zone (tmk 5-2-005:32 and 33) and the conservation zone parcel (tmk 5-2-005:36) are for sale – separately or as a whole. The trees have been removed to improve the landowner's views. The fence would increase the sense of security and privacy. All this work is intended to increase the sale value of the properties.

From SSFM International consultants' apparently stunned response to community comments at the Kilauea Neighborhood Association Meeting on April 5, 2011, it appears that they were inadequately or only partially informed by their client.

If this application is not withdrawn, substantial rewriting of the EA is needed. To provide more accurate contextual information, the final EA should address the history and current law regarding vacation rentals in the agricultural

district, including any permits pending or granted to Secret Beach Properties.

A more thorough discussion of the history of beach access at Kauapea is needed. Although there is only one recorded access at this time, the community is deeply frustrated. While it has lost long-used trails to the beach and along the plateau, landowners profit from use of the trails for high-end vacation rentals. The authors of the EA need to talk at length to longtime Kilauea residents, particularly to Linda Akana Sproat.

Finally, smaller but important changes and additions to the EA are needed:
Despite all the maps etc., it is unclear where the "improved" trails are located. These, and other existing trails, should be displayed on more than the topographical map.(Figures 4 & 6)

Similarly, Appendix A has photos and a map/key for the photos. This should be in the EA itself.

The consultants showed a map with the landowners at the Kilauea Neighborhood Association meeting. We couldn't actually see that at the presentation but this missing information must be included in a final EA.

Thank you for your attention.

Respectfully,

Beryl Blaich
PO Box 1434
Kilauea, HI 96754

CC: Robyn L. Loudermilk, AICP
SSFM International
501 Sumner Street, Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Direct: (808) 628-5854
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June 9, 2011 SSFM 2010_056.00

Beryl Blaich
P.O. Box 1434
Kilauea, Hawai'i 96754

Dear Ms. Blaich:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter received on April 26, 2011 by Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We offer the following responses to your comments.

- These activities are in response to the Board of Land and Natural Resources (BLNR) action of March 10, 2010 which found Secret Beach Properties, LLC (SBP) in violation of Chapter 183C, Hawai'i Revised Statutes (HRS), and Title 13-5, Hawai'i Administrative Rules (HAR) for landscaping in the Conservation District Limited subzone without a Conservation District Use Permit. A condition of this enforcement action required SBP to either remediate the trail and restore the lands to its original state or apply for an after the fact CDUA for the trails. SBP has applied for an after the fact CDUA.

- While we understand that there is keen interest regarding the history of vacation rentals in the agricultural district, this discussion will not be included in the Final EA. The Property is not used as a vacation rental. The proposed actions for the Property are limited to:

  - Uses associated with an existing trail system consisting of about two (2) miles of trails stretching across 23.8-acres of a parcel mostly within the State Conservation District and County Special Management Area.
  - Actions associated with land management activities to control the spread of invasive plants and replant affected areas with native vegetation.
  - Actions to remove dead, downed and hazardous ironwood trees.
  - Actions to construct a code-compliant barrier fence along the property boundary bordering neighboring properties.

- Comment noted.

- Comment noted.

- This map will be in the Final EA document. It will be located in an appendix for the Kīlauea Neighborhood Association Meeting held on April 5, 2011.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
DNLR
1151 Punchbowl St., Room 131
Honolulu, HI 96813

RECEIVED
OFFICE OF CONSERVATION AND COASTAL LANDS

2011 APR 26 A 10: 36

DEPT OF LAND & NATURAL RESOURCES STATE OF HAWAII

April 21, 2011

Dear Mr. Lemmo,

I (we) own property adjacent to the applicants property on Kauapea Road.
I (we) have spent considerable time reviewing the Application and the draft Environmental Assessment. In addition, I personally conducted a site visit of the subject "trails" to further educate myself with respect to the "lay of the land". I am writing today as a concerned citizen and member of the greater North Shore Community.

Based on my review of the facts and circumstances associated with the Application, I am of the opinion that the "public safety" benefits of the trail system far outweigh the purported burdens presented by an "after the fact" permit. Put another way, I would encourage the DNLR to consider the Application on its merits as if it were undertaken "before the fact", e.g., does the trail system enhance public safety for area residents and visitors of Secret Beach? I believe the answer to that question is "yes" and would suggest that prior to taking a final position on this matter, that the commission consider the Application from the perspective of public safety, including: (i) the provision of safe pathways for the community's first responders who undertake emergency rescues from Secret Beach; (ii) paths that facilitate the cleanup of the steep hillsides in the conservation district, including the removal of debris and "leaning" trees, which left unattended, pose legitimate health and safety concerns for area residents and visitors alike; and (iii) enhanced means of fire protection for area homeowners as well as the conservation district itself.

As a concerned citizen, I (we) respectfully request that the DNLR put "public safety" at the forefront of its analysis of the issue. During the past 2 years there have been numerous beach rescues and two fires in the conservation zone both of which could only be reached by accessing the trails under review.In fact I (we) have provided KPD with access through our property to facilitate the access for first time responders. Thank you for your time and consideration of this matter.

Respectfully,

Timothy C. Cleary
Misha Renclair

2840B Kauapea Rd
Kilauea, HI 96754

P

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June 9, 2011 SSFM 2010_056.00

Timothy Cleary and Misha Renclair
2840B Kauapea Road
Kilauea, Hawai'i 96754

Dear Mr. Cleary and Ms. Remclair:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated April 21, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (DEA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment.

We confirm that you support the project.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

04/25/2011

Sam J Lemmo/DLNR/StateHiUS
04/25/2011 08:11 AM

To Stephen M Cain/DLNR/StateHiUS@StateHiUS
cc
bcc
Subject Fw: Trails

Samuel J. Lemmo, Administrator ><)))>
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
Phn (808) 587-0377
Fax (808) 587-0322
www.hawaii.gov/dlnr/occl

----- Forwarded by Sam J Lemmo/DLNR/StateHiUS on 04/25/2011 08:11 AM -----

From: steven212@aol.com
To: sam.j.lemmo@hawaii.gov
Cc: steven212@aol.com
Date: 04/24/2011 06:13 PM
Subject: Fwd: Trails

This is also as an attachment

Dear Mr. Lemmo
It's been brought to my attention that there is total confusion and chaos over the trails below my property.
I have had property here for over 25 years, and I feel at this point I have to say something. It's a pity that 10's of thousands of dollars have been spent on this issue, however the trails do serve a purpose. These vertical trails have been here for over 20 years one even over 30 years.

For a good half of the year this is a very dangerous open ocean beach. Keeping the vertical trails that have been here for many years is important, as they facilitate first responders on a dangerous beach, especially in winter when there is no access from the public entrance. It is obvious that you should be interested in the safety issue (rescue). I would also like to point out that this is a beach that over the years has changed dramatically.

Unfortunately for many years as I'm sure you were aware at the time, this stretch of beach was a place that no one wanted to visit, it had become a place where vagrants and other undesirables chose to take up living quarters. When I first bought this property, I myself witnessed fornication right out in the center of the beach in an exhibition way plus other undesirable acts - to the point that I could not take my family to this beautiful beach. Vagrants were living on the hillside in make shift campsites, which meant defecation, urinating, rolls of nasty toilet paper and leaving their garbage wherever they pleased. It was disgusting to say the least.

To this point what I am saying is, that some of these trails have been necessary for not only rescue and fire, but they have allowed us to keep this kind of trespassing and vagrancy to a real minimum. Our dogs have chased such vagrants and undesirables off of property; they thought they had a right to walk right by my kitchen window along the bluff with their back backs.

04/25/2011

I hope this is helpful to you, as I take great pride in keeping this area safe, clean and beautiful.

Respectfully,
Steven Cohen

Steven
917-374-5768

SSFM INTERNATIONAL

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June 9, 2011 SSFM 2010_056.00

Steven Cohen
P.O. Box 1288
Kīlauea, Hawai'i 96754

Dear Mr. Cohen:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your comments dated April 25, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (DEA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment.

We confirm that you support the project.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

Re: DEA for CDUA KA3586

4920 Wailapa Road
Kilauea, HI 96754
April 21, 2011

To Samuel J. Lemmo
Office of Conservation and Coastal Lands
Department of Land and Natural Resources.
PO Box 621
Honolulu, Hawaii 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2011 APR 26 P 3:36
DEPT OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Lemmo,

Two wrongs don't make a right. Because the county of Kauai permitted the building of lavish short terms on agricultural land doesn't mean that now the state and the DLNR is somehow obligated to grant after-the-fact permits for planing and trail maintenance on conservation lands. These trails are described in the website of this short terms as "private trails" to give guests an amenity for their renting these homes as vacation accommodations. In effect this constitutes commercial use by private individuals of conservation lands.

I hope the state does not compound the wrong of the county and encourage such a "taking" of public lands for private use. It's wrong from whatever angle you look at it.

Sincerely,

Evelyn de Bruhn

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www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Evelyn de Buhr
4920 Wailapa Road
Kilauea, Hawai'i 96754

Dear Ms. De Buhr:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated April 21, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (DEA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment.

We note that you oppose the project.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

Caren Diamond
P.O. Box 536
Hanalei, Hawaii 96714
April 20, 2011

2011 APR 26 A 10: 29
STATE OF HAWAII

Samuel J. Lemmo
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809

Subject: Draft Environmental Assessment (DEA) for Conservation District (CDUA) KA-3586 for an After-The-Fact Approval for Two Miles of Lateral Trails, and Two Mauka-Makai Trails, and Landscaping, and Erosion Control

Dear Mr. Lemmo:

The information contained in the DEA is in conflict with the advertisements for these properties. Are the dwellings unpermitted resorts rather than farms? Are the requested after-the-fact trails private trails within the unpermitted resort? Portions of the link is to the Hughes website http://www.secretbeachkauai.com is shown below describing their commercial/resort uses on Ag lands.

Secret Beach Hideaway luxury homes and cottages provide private access to remote beaches of golden sands, where spinner dolphins and whales can be seen frolicking just off the shore.

"**SECRET BEACH HIDEAWAY** Nestled privately on the spectacular property are the farm dwellings called **The Villa**, Hale Nanea and Hale Lani which are available for rent to visitors to the island who enjoy being in such a rural setting and feeling the pulse of Kauai. Guests can participate in the agricultural activities and are invited to eat from the garden and pick the fruit and flowers. Most visitors leave with an expanded knowledge, respect and appreciate SECRET BEACH HIDEAWAY Nestled privately on the spectacular property are the farm dwellings called The Villa on for what makes Kauai a unique destination.

Secret Beach Hideaway luxury cottage and villa rentals provide private access to Secret Beach, a remote beach of golden sands, where spinner dolphins and whales can be seen frolicking just off the shore.

Pamper yourself and your loved one at our Secret Beach Hideaway luxury Kauai accommodations ideal for those desiring a private, romantic vacation in Hawaii. Our Kauai rentals are found off the beaten path, far from the crowds and stress of everyday life. Click here for a guide to Romantic Experiences on Kauai.

These special rentals on the Garden Island of Kauai, Hawaii are offered to you by The Michele Hughes Company. We hope to see you soon! Secret Beach Hideaway Amenities:

- Situated on 40 private, oceanfront acres
- Security gate entry
- Lush, tropical grounds and gardens
- Each accommodation has a private, tropical path to secluded Secret Beach
- Minutes from fine dining, cultural and recreational activities
- Massage therapist and catering available upon request

A stunning, private 4+ acre ocean-bluff location with two trails that wind down through the jungle and bring you to magnificent Secret Beach

The 50 acres of land owned by Michele and Justin Hughes is zoned agricultural but most of it is unsuitable for farming because of its location on the rocky bluff above Secret Beach and Anini Beach. Despite the adversarial conditions, they have made, at considerable expense, a concerted effort to irrigate, add steps and trails for access, and plant the hillsides and whatever small flat areas available."

The link, http://www.secretbeachkauai.com/mhc-index.htm is the website that advertises the sale of this property.

Please explain the conflicting information provided.

In addition, the project requests a fence, and the approval of steps onto the beach, yet fails to identify a certified shoreline from which to site these structures. Will a certified shoreline be required before any approval is given that may impact the public trust?

Finally, has this project been segmented to avoid full disclosure on the commercial/resort use of this property?

Mahalo,
Caren Diamond

Caren Diamond

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Caren Diamond
P.O. Box 536
Hanalei, Hawai'i 96714

Dear Ms. Diamond:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated April 20, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We would like to clarify that there are no vacation rentals on the Property. The information that you provided is for a separate property that is also owned by SBP.

A certified shoreline is not required for the processing of the CDUA or Final EA. SBP will work with the County of Kaua'i to determine whether a certified shoreline will be required for county approvals.

Lastly, there is no segmentation of this project as there is no commercial/resort use on the Property.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

Sam J Lemmo/DLNR/StateHiUS
04/25/2011 07:56 AM

To Stephen M Cain/DLNR/StateHiUS@StateHiUS
cc
bcc
Subject Fw: Environmental Assesment KA-3586

Samuel J. Lemmo, Administrator ><)))>
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
Phn (808) 587-0377
Fax (808) 587-0322
www.hawaii.gov/dlnr/occl

----- Forwarded by Sam J Lemmo/DLNR/StateHiUS on 04/25/2011 07:56 AM -----

From: Andy haas <ahaas2008@gmail.com>
To: Sam.j.lemmo@hawaii.gov, rloudermilk@ssfm.com
Cc: Andy haas <ahaas2008@gmail.com>
Date: 04/22/2011 08:45 AM
Subject: Environmental Assesment KA-3586

Samuel J. Lemmo, Administrator
Office of Conservation & Coastal Review
DNLR
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Lemmo

I am writing today as a member of the greater Kauai North Shore Community. Our home is located at 2840 Kauapea Road which is adjacent to the applicants property on Kauapea Road. I have spent considerable time reviewing the Application and the draft Environmental Assessment. The specific trail that extends from our property and is part of the CDUA has been in existance for more than 20 years and pre-dates the "modern trail" that was the subject of the original complaint to the DNLR.

Based on my review of the facts and circumstances associated with the Application, I am of the opinion that the "public safety" benefits of the trail system far outweigh the purported burdens presented by an "after the fact" permit. Put another way, I would encourage the DNLR to consider the Application on its merits as if it were undertaken "before the fact", e.g., does the trail system enhance public safety for area residents and visitors to Secret Beach? I believe the answer to that question is "yes" and would suggest that prior to taking a final position on this matter, that the commission consider the Application from the perspective of public safety, including: (i) the provision of safe pathways for the community's first responders who undertake emergency rescues from Secret Beach; (ii) enhanced means of fire protection for area homeowners as well as the conservation district itself; and (iii) paths that facilitate the cleanup of the steep hillsides in the conservation district, including the removal of debris and "leaning" trees, which left unattended, pose legitimate health and safety concerns for area residents and visitors.

As a concerned citizen, I respectfully request that the DNLR put "public safety" at the forefront of its analysis of the issue. During the past 2 years there have been numerous beach rescues and two fires in the conservation zone both of which could only be reached by accessing the trails

under review. In fact, I reported some of these events to the KFD and provided them the gate codes to facilitate the access for the first responders to the area. Thank you for your time to review this matter.

Andy Haas

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Andy Haas
Via email: ahaas2008@gmail.com

Dear Mr. Haas:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your comments dated April 25, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (DEA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment.

We confirm that you support the project.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

12 April 2011

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2011 APR 26 A 11: 47
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Hope and Tim Kallai
Malama Moloa`a
POB 655
Kilauea, HI 96754
lokahipath2@live.com

Michael Cain
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawai'i
1151 Punchbowl Street, Room 131
Honolulu, Hawai'i 96813

RE: Secret Beach Properties, LLC After-The-Fact Trail Construction CDUA 3586
Comments for Inclusion Draft Environmental Assessment
Kauapea, Namahana, Hanalei, Kauai, Hawaii
TMK (4) 5-2-005:036

Aloha e Mr. Cain:

Mahalo for the opportunity to include comments on this project of un-permitted construction of over 2 miles of un-engineered trails in the State Conservation District in Kapauea, Namahana ahupua`a`, Kauai. This project has significant impacts and is of great importance to the current Kilauea area community and the future quality of life in Kilauea. This project should not be given a Finding of No Significant Impact (FONSI). This is not a FONSI. This project, part of a luxury commercial resort development, is for sale. Trails go to resorts, not just residences.

1. ALL STREAMS IN HAWAII HAVE A NAME. The stream on the western side of Kauapea Beach is Niu. It is not unnamed. Niu Srream is named on most maps in this DEA, many times with the project boundary right over the name Niu (as shown below on Map from page 11 of DEA. Please name Niu Stream in the DEA.

The Niu Stream valley in Kauapea/Namahana supported a population of traditional native Hawaiians and their agriculture for hundreds of years. The near shore area from Kalihiwai to Kilauea was known for it's excellent fishery with akule being reserved as the kapu fish for the Konohiki. In the area from Hanalei to Kilauea (including Kalihikai, Kalihiwai, and Namahana) cattle displaced the people by the 1840's and kuleana were returned to the Crown because the cows ate all the crops and the houses.

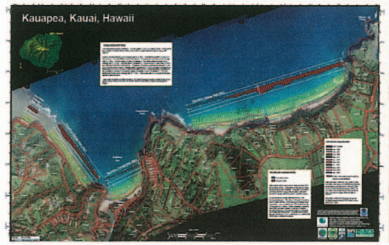
2. THERE NEEDS TO BE A CURRENT SHORELINE CERTIFICATION.

This DEA map extends the project to the public trust area of the sandy beach. The public has a right of safe transit along the makai portion of this project, under HRS 115-4 and 5 - along the beaaches known as Papaloa(First Beach), Keaheu (Second Beach) and Kamakau (Third Beach). These beaches experience high waves during winter swell and the rock outcroppings separating are not safe to walk on. There needs to be a current state shoreline certification, with the public's right of safe passage defined, before this project can continue the After-The-Fact attempt to permit 2 miles of trails to the beach.

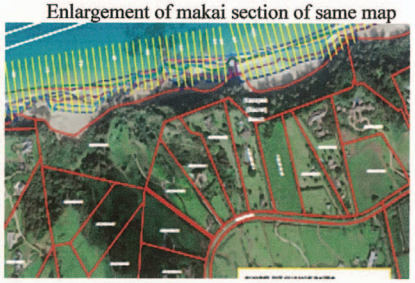
Map from Page 15, DEA: Why does the project extend so far into the sand?

These maps, prepared by USGS, SOEST, SeaGrant, UH and the listed agencies, have a different interpretation of the shoreline than the above map submitted by applicant.

SOEST Kauapea Map



Enlargement of makai section of same map



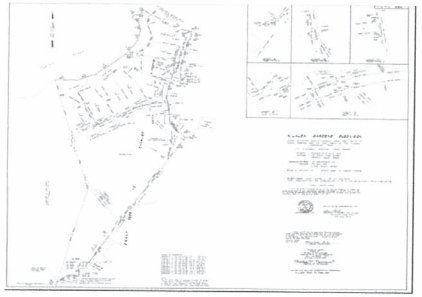
This area experiences high waves action and differing erosion rates. The location of the current shoreline must be determined by a state survey and certification before this project can continue the After-The-Fact permitting process for over 2 miles of un-engineered trails built without permits in the Conservation District. Rocky outcroppings separate the 1.5 mile beach into 3 segments. State Certification is needed.

3. THIS PROJECT DOES NOT PROVIDE FOR PUBLIC ACCESS

There always were several public accesses and trails throughout Kauapea - mauka/makai and lateral coastal trails. The Kauai County Code 1987, Ch 9 Article S Section 9-2.9 stipulates that public access intervals vary depending on the district zoning but should not be greater than 1500 ft. Kauapea beach is over a mile and a half long. There has been a cumulative loss of public access to public trails in Kauapea which must be considered before permitting exclusive, private trails.

The Kilauea Gardens Subdivision in Kauapea had a mauka/makai trail easement as a development condition. (TMK 5-2-5:71).

"This (Kauapea) is access that should have been opened to the public long ago,"
Mayor Baptiste said in 2004.



Mayor checking Kauapea beach access

Lester Chang, *The Garden Island* Saturday, June 19, 2004

Public Access That Falls Through the Cracks!

The Garden Island, June 19, 2004 LIHU'E — Saying he was taking another step in protecting public access, Mayor Bryan Baptiste said Friday his administration is looking into an "access issue" at Kauapea Beach in Kilauea, a beach also known as Secret Beach.

During a meeting with reporters at his office at the Lihu'e Civic Center, Baptiste said a development condition set 20 years ago for the Kilauea Gardens Investment Hui subdivision stipulated the county would be provided an easement to Kauapea Beach.

> The condition exists, Baptiste said, but was never enforced. One access point to the beach has been gated, he added.
>
> Baptiste said he has asked the Kaua'i County Attorney's Office to begin researching the easement issue, "to determine what can be done."
>
> Baptiste said administration officials and county attorneys will study "variables first" before considering any legal action, if need be.
>
> "The county wants to test the concept of fulfillment of conditions," Baptiste said.
> Questions have been raised about the access because of "the lack of recordation of beach access," Baptiste said. The confusion may rest partly with the county, or it may be something that has "fallen through the crack," Baptiste said.
>
> "This is access that should have been opened to the public long ago," Baptiste said. "It is our responsibility to the community to determine the facts of this case and move forward."

There are Public Access easements on TMK 5-2-5:35 and 5-2-5:36 as well as 5:2-4:71 (Kilauea Gardens Subdivision Lot 10C).

From the 1991 Kauai Beach Access Inventory Update

APPENDIX G

LISTS OF BEACH ACCESS SITES FROM THE 1991 KAUAI BEACH ACCESS INVENTORY UPDATE

List 1 = Existing (Pages 1 – 4)
List 2 = Potential (Pages 5 – 6)
List 3 = Desirable (Pages 7 – 8)
List 4 = Excluded (Page 9)

The following lists of beach accesses are from the 1991 Kauai Beach Access Inventory. The list was developed by the Keith & Company for the County of Kauai in 1991.

[illegible]	DESCRIPTION OF FIELD
ID	Identification number per ArcView 3.2 GIS database
Name	Name of beach access
Code	Identification code per 1991 Kauai Beach Access Inventory "E" is "Existing" public access. "P" is "Potential" public access. These are accesses for which, in 1991, there were permit conditions of approval with provisions for public access to or along the shoreline, but that legal documents have not been executed or recorded, or there was a case in which a permit applicant had agreed to provide access but no legal documentation was required as a condition of permit approval. Refer to Inventory for description for specific sites. "D" is "Desirable" access. These are accesses which, at least up until 1991 (or even to today) were (or are) being used by the public with or without enhancement or restriction, along with areas which would be desirable to obtain for public access. "X" is "Excluded" access. These are accesses which were recommended to be excluded from the Inventory for various reasons, such as hazards (natural or otherwise).

Existing Beach Access

LIST 1 - EXISITING PUBLIC BEACH ACCESSES - From the 1991 Kauai Beach Access Inventory Update

73	148	Secret Bch	E5.11	452010035	Kaupea Bch 1	Howard & Joan Yamaguchi

Potential Beach Access

LIST 2 - POTENTIAL PUBLIC BEACH ACCESSES - From the 1991 Kauai Beach Access Inventory Update

25	120	Shepard	P6.01D	445004012		Anthony & Joan Shepard
26	147	Secret Bch	P6.10A	452004071	Kaupea Bch 2	Blazer Enterprises

What has happened to the beach access at Kauapea?
Why are private trails being considered through a Conservation District?

You Have A Right to Beach Access!

Excerpted from Kahea.org

1. In 1995, the Hawai'i Supreme Court decided a landmark case that confirmed all of Hawai'i's beaches are open to the public and cannot be privately owned.

(See, Public Access Shoreline Hawai'i (PASH) vs. Hawai'i County Planning Commission). This decision was confirmed most recently by the high court in Diamond vs. Hawai'i (2006).

2. State law guarantees the public's right to beach access.

Hawai'i Revised Statutes §115 states that "the purpose of this chapter is to guarantee the right of public access to the sea, shorelines, and inland recreational areas, and transit along the shorelines, and to provide for the acquisition of land for the purchase and maintenance of public rights-of-way and public transit corridors." This law also clearly states that: "miles of shorelines, waters, and inland recreational areas … are inaccessible to the public due to the absence of public rights-of-way; "the absence of public rights-of-way is a contributing factor to mounting acts of hostility against private shoreline properties and properties bordering inland recreational areas;" "the absence of public access to Hawaii's shorelines and inland recreational areas constitutes an infringement upon the fundamental right of free movement in public space and access to and use of coastal and inland recreational areas."

3. Hawai'i's beaches are public.

Hawai'i's Supreme Court has repeatedly upheld the public's right to go to the beach based on our unique political and cultural history as an independent nation. For generations, people of Hawai'i lived and thrived by the beach. But, today, beach-front properties, military installations, private gates, and trespass signs all stand where paths once led people to the beach. It is up to us to confront the challenges of a growing population, dwindling resources and a long history of poor development planning to find creative ways of ensuring we can all live in harmony.

4. It is increasingly difficult to get to the beach.

From high parking fees to no parking at all, private gates to shoreline shrubbery, poor signage to vacation rentals, beach-front resorts to military installations, access to Hawai'i's beaches is in serious danger. On O'ahu, there are only some 86 public access ways for over two hundred miles of coast line.

5. Beach access is cultural practice.

Many Hawaiian cultural practitioners actively visit the beach as part of traditional and customary practices, including surfing, gathering, and religious observances. Cultural access is a fundamental right protected by law. But, as access to the beach becomes more difficult, so too will it become more difficult to perpetuate Hawai'i's unique culture. (KAHEA)

6. Incorrect and misleading signage deters regular public use of our beaches.

We have all seen them all over our shorelines: "No Trespassing," "No Beach Access," "Tow Away Zone," "Private Property," "Go Away." "Bird Sanctuary."

7. Gates don't ensure safety.

Beach-front property owners often justify their gates as a way to deter littering, vandalism, and crime. But gates actually turn the beach into an isolated, dark area - more prone to illegal activity because those areas are no longer frequented by families, fishers, surfers, joggers, halau, paddlers, and many other ocean lovers in Hawai'i. Plus, gates prevent first-responders from attending to beach emergencies quickly. This isn't safer for any of us.

8. Our beaches are shrinking.

Most of Maui's shoreline loses more than 1 foot a year to erosion. In fact, 8 miles of beach have been lost due to shoreline armoring. On O'ahu, 17 miles of beach have been lost due to this armoring (construction of sea walls, jetties, etc). In fact, beaches in front of seawalls are 50-70% narrower than natural beaches. (State of the Beach Report by Surfrider Foundation)

9. Hawai'i's economy earns at least $800 million a year from ocean-based recreational activities – including everything from surfing rentals and lessons, to fishing trips and nature tours.

Impeding access to the beach undermines this vital aspect of our island economy.

10. Easy access to the beach is a basic quality of life issue.

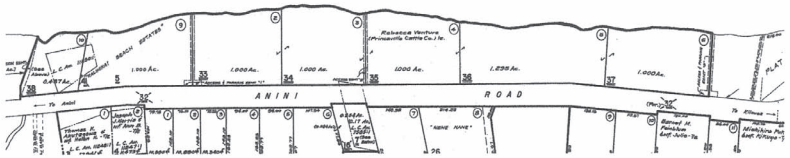
Many people rely on the beach for recreation, exercise, and stress relief. When getting to the beach becomes a stress in itself, people are less likely to go.

11. Inadequate beach access is an indication of bad development-planning.

Improper coastal development is spurring massive beach erosion, which leads to more seawalls, sedimentation, and the destruction of surf breaks. Poor planning is also the reason we have sorely inadequate parking, sewage treatment, and affordable housing – all of which compromise the public's ability to access and enjoy the beach.

Excerpted from Kahea.org

Cumulative loss of Kauapea Beach public access must be considered.



Anini Beach has many beach accesss easements in a much shorter distance.

The privitazation of Kauapea access by this project must be considered.

Revocable private access to Kauapea Beach is granted by Secret Beach Hideaways LLC on these un-permitted trails to adjacent neighbors on a 30 day basis, with threats of future access costs of <u>millions of dollars</u> on trails and roads that were created without permits in the CD. There are allegations of Kauapea trail rights being sold for millions of dollars. This is a commercial use of the Conservation District and must not be allowed. This is not right.

On Kauai beach access is guaranteed every 1,5000 feet, even at Kauapea.

Public access in Hawaii Revised Statutes (HRS)

[§46-6.5] Public access. (a) Each county shall adopt ordinances which shall require a subdivider or developer, as a condition precedent to final approval of a subdivision, in cases where public access is not already provided, to dedicate land for public access by right-of-way or easement for pedestrian travel from a public highway or public streets to the land below the high-water mark on any coastal shoreline, and to dedicate land for public access by right of way from a public highway to areas in the mountains where there are existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding, and other recreational purposes, and where there are existing mountain trails.

(b) These ordinances shall be adopted within one year of May 22, 1973.

(c) Upon the dedication of land for a right-of-way, as required by this section and acceptance by the county, the county concerned shall thereafter assume the cost of improvements for and the maintenance of the right-of-way, and the subdivider shall accordingly be relieved from such costs.

(d) For the purposes of this section, "subdivision" means any land which is divided or is proposed to be divided for the purpose of disposition into six or more lots, parcels, units, or interests and also includes any land whether contiguous or not, if six or more lots are offered as part of a common promotional plan of advertising and sale.

(e) The right-of-way shall be clearly designated on the final map of the subdivision or development.

(f) This section shall apply to the plan of any subdivision or development which has not been approved by the respective counties prior to July 1, 1973. [L 1973, c 143, §2]

§115-1 Findings and purpose. The legislature finds that miles of shorelines, waters, and inland recreational areas under the jurisdiction of the State are inaccessible to the public due to the absence of public rights-of-way; that the absence of public rights-of-way is a contributing factor to mounting acts of hostility against private shoreline properties and properties bordering inland recreational areas; that the population of the islands is increasing while the presently accessible beach, shoreline, and inland recreational areas remain fixed; and that the absence of public access to Hawaii's shorelines and inland recreational areas constitutes an infringement upon the fundamental right of free movement in public space and access to and use of coastal and inland recreational areas. The purpose of this chapter is to guarantee the right of public access to the sea, shorelines, and inland recreational areas, and transit along the shorelines, and to provide for the acquisition of land for the purchase and maintenance of public rights-of-way and public transit corridors. [L 1974, c 244, §1; am L 1977, c 164,

§115-2 Acquisition of lands for public rights-of-way and public transit corridors. When the provisions of section 46-6.5 are not applicable, the various counties shall purchase land for public rights-of-way to the shorelines, the sea, and inland recreational areas, and for public transit corridors where topography is such that safe transit does not exist. [L 1974, c 244, §2; am L 1977, c 164, §4]

[§115-3] Criteria for public rights-of-way. A distance at reasonable intervals taking into consideration the topography and physical characteristics of the land the public is desirous of reaching is established as the maximum between public rights-of-way for the purposes of this chapter. [L 1974, c 244, §3]

§115-4 Right of transit along shorelines. The right of access to Hawaii's shorelines includes the right of transit along the shorelines. [L 1974, c 244, §4; am L 1991, c 37, §2]

[§115-5] Transit area and public transit corridor defined. The right of transit along the shoreline exists below the private property line which is defined as being along the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves. However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline below the private property lines, the counties by condemnation shall establish along the makai boundaries of the property lines public transit corridors which shall be not less than six feet wide. [L 1974, c 244, §5]

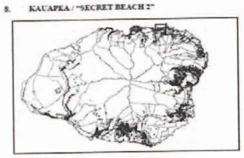
[§115-7] State and county co-sponsorship of programs. The department of land and natural resources shall enter into agreements with the council of any county providing for the acquisition of public rights-of-way and public transit corridors pursuant to this chapter; provided that the county shall match the funds which have been appropriated by the legislature. The development and maintenance of the rights-of-way and public transit corridors shall be the responsibility of the county. [L 1974, c 244, §7]

4. PUBLIC INTENTION HAS ALWAYS BEEN FOR EXPANSION OF PUBLIC ACCESS TO KAUAPEA BEACH. In the May, 2005 Final Report to the Kauai County Council by the Public Access, Open Space & Natural Resources Preservation Fund Commission, securing the additional access at Kauapea Beach was **THE TOP PRIORITY** for the island of Kauai (not Black Pot).

As noted below:

> This access generated the highest interest during the community input process. An existing pedestrian easement for public access is indicated on the County's TMK. However, the condition for the creation of a public access easement that was part of the original subdivision agreement for parcels in this area was never implemented.

It is time to implement the conditions of this easement.


8. KAUAPEA / "SECRET BEACH 2"

DESCRIPTION

Location	North Eastern Shore, Kaupea, Kilauea
Tax Map Key & Ownership	(4) 5-2-004:071 Blazer Enterprises
Proposed Project	Acquisition of existing pedestrian easement for beach access or the creation of a new pedestrian easement; and parking
Listed on the 1991 Kauai Beach Access Inventory Update?	Yes, as a Potential public access – P6.10A
Success of Project Implementation?	Unknown with existing funding
Costs Associated with Acquisition	Purchase of land, shoreline survey, metes and bounds confirmation, creation of parking lot; preparation of documents, other.
Cost of Surveying Easement	$5,000 - $15,000

ZONING, FLOOD, AND PHYSICAL HAZARDS

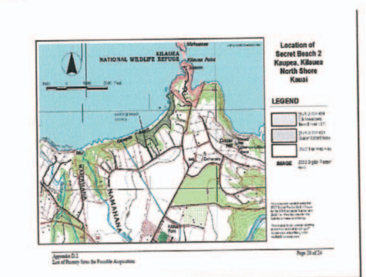
State Land Use Designation	Conservation, Agriculture
County Zoning	Open
Within the Special Management Area?	Yes, portion of coast
Within the Flood Zone?	Yes, small portion of coast
Physical Hazards on Property?	High tide hazards during winter season.

NATURAL OR OTHER RESOURCES

Archaeological and Cultural Sites Present?	None or unknown on parcel
Wetlands, such as Estuaries Present?	Yes, directly makai of parcel
Coral Reefs Present?	None directly makai of parcel
Other Resources	Possible native flora and fauna and nearshore resources. Recreational opportunities.

NOTES
This access generated the highest interest during the community input process. An existing pedestrian easement for public access is indicated on the County's TMK. However, the condition for the creation of a public access easement that was part of the original subdivision agreement for parcels in this area was never implemented.

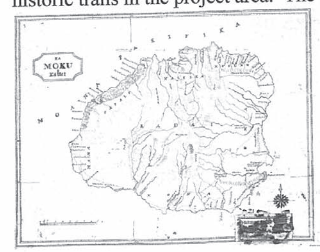
Appendix D.2.
List of Priority Sites for Possible Acquisition
Page 19 of 24

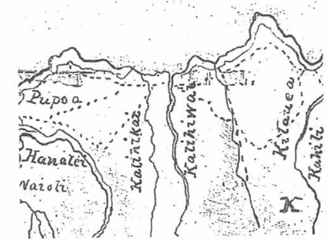


Acquisition of this easement is an immediate priority. Other public accesses at Kauapea must be clarified and secured before this AFT permit can continue. Cumulative access restrictions must be considered.

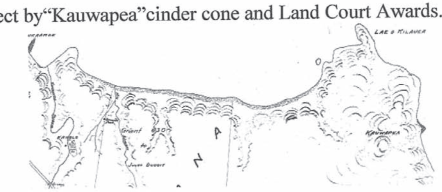
5. THE EXISTING TRAILS NEED TO BE EXPLAINED. This DEA considers over 2 miles of un-permitted trail construction in the state Conservation District. Many eras of trails are included in these maps, from ancient to modern.. Ancient fishing trails need to be identified. Historic plantation era trails need definition, Approximate age of the trail and builder of trail needs to be identified, as well as violations and dates cited, fines, prior submissions to the BLNR about these properties and other actions on the particular trail segments. Much work has been performed without permits by developers and landscape contractors who should have known better. Cumulative trail construction and ATF permitting in this area need consideration.

Registered Map 432 from 1833, (almost 60 years before the 1892 Highways Act made trails public) shows historic trails in the project area. The two trails come together for the ferry crossing at Kalihiwai Stream.,

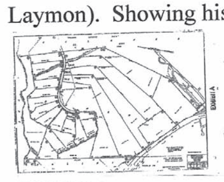


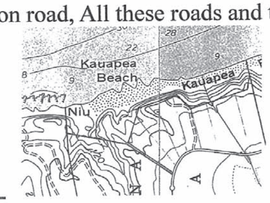


Registered Map 1971 also shows the project by"Kauwapea"cinder cone and Land Court Awards.



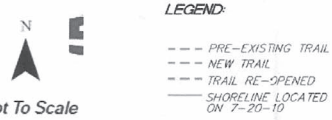
From the 1991 02-0-23 FEA Shiraishi After-The-Fact Constructed Roadway (Bruce Laymon). Showing historic plantation road, All these roads and trails need explanation.





sea level (msl). The mauka access for one of the mauka-makai trails is on TMK 5-2-005:032, an adjacent parcel owned by the Applicant. For the second mauka-makai trail, the mauka access is from two (2) adjacent parcels: TMK 5-2-005:027 and 028, owned by Sophia Farm and David Smith, respectively. A third mauka-makai trail was permitted by the Board of Land and Natural Resources in 2000 (CDUP KA-2966).

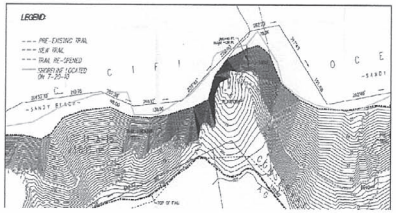
The following maps in the DEA show 2 miles of un-permitted trail construction at Kauapea. They are not to scale or stamped by a surveyor. It is impossible to age these trails by these maps or to figure which trail was made when or trail composition. How much new trail is Trek?



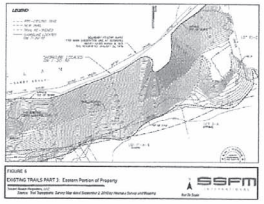
- Which of these trails are historic? Which are ancient? Which are modern? Who built them?
- Which were considered by the 1991 violation/ATF Permit?
- Which considered by the 2000 violation/ATF Permit?
- Which were considered by the 2007-2008 violation?
- Which were considered by the 2009 complaint?
- Which are considered by this 2011 DEA and ATF CDUA?

Page 17 of DEA:

Page 18 of DEA



Page 19 of DEA



6. PROJECT AREA WAS NOT A SIGNIFICANT PART OF KILAUEA SUGAR PLANTATION.

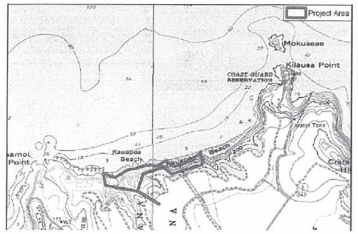
There has been an over-emphasis of Kilauea Sugar Plantation importance on this project, without considering the real plantation uses of the area:

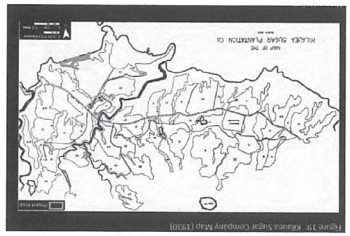
- Access roads
- Drainage dumps

There were plantation era roads going down to the beach. The "drainage swale" through the plateau terminates at the mouth of Niu Stream at Kauapea Beach. This area was used to dump bagasse - so much that the bagasse was sometimes 5-10 feet deep at Kalihiwai bay and everything else from the Mill, into the flume, the ditch, then Niu Stream and the Pacific Ocenan.

Figure 19: Kilauea Sugar Company Map (1930)

The 1963 U.S. Geological Survey map (Figure 8) does not indicate any structures within the project area but does show an unimproved road extending along the seaward edge of the table lands quite close to the top of the sea cliff (and cutting through the access corridor at the south side of the project area). The modern alignment of Kauapea Road is not shown at that time.





Project area had plantation era roads but was not part of active cane plantings. Drainage area of flume, ditch and Niu Stream need consideration.

7. PROJECT AREA HAD A SIGNIFICANT HAWAIIAN PRESENCE. The coast and the stream valleys of the area were occupied by hundreds of Hawaiians for hundreds of years, surrounded by lo`i kalo and other plantings. The area from Kalihiwai to Kilauea was famous for the quality of the near shore fishery.

There was also a significant presence in Namahana of significant characters of Hawaiian history - Richard Charleton and Jules Dudoit.

Richard Charleton, first British consul appointed to the Hawaiian Islands in 1824, met Liholiho in London before he died. He arrived in the islands with news of the King and Queen's death. He then became a close associate of Kauikeaouli, (at least for for a few years) and partners with Boki, then leased lands from ali`i Kauikeaouli from Hanalei to Kilauea for cattle and pigs, in exchange for wood. Charlton was supposed to supply 6,000 board feet of timber to Kauikeaouli There were no fences; the 100 head of cattle became 400 then 1500 and caused trouble in the neighborhood. Charleton also tried to build a wharf in Oahu on land claimed by Ka`ahumanu (later Kina`u) and was instrumental causing in the Paulet affair. His land dealings (the "Cattle Dispute") were continued in court (3 years of testimony!) and showed cultural conflict of the era - after kama`aina shot maurading cattle. Charleton submitted a petition by 61 Briitish subjects for protection from the king. Kauikeaouli questioned why his kapu was not respected and wondered if the situation had been reversed, the Hawaiians would have received the same punishment. Charleton was later sued for slander and fined $10,000!

The agricultural kuleana of Kupihea and Kahikuokolo were returned because the Kaholo area was over run by cattle owned by Charlton and Dudoit.

Kupihea, filed for Kuleana 9221, Royal Patent 4634,

These lands Nos 1 & 2 were given Claimants by the Konohiki in the days of Kaahumanu & have been held in peaceable possession till this time. The lot No. 3 containing 15 lois has been held for a long time up to 1850 by Hipa. On Hipa's death in 1850 these lois came into the full possession of his son Kupihea. There is no food in these 15 lois because of the depredations of hogs & cattle.

Section 1 and section 2 from the Konohiki at the time Kaahumanu was yet alive and the fifteen lois had been for Kupihea's father, Alahipa. Kupihea's father died on 15. Feb. 1849. These lands have not been developed because of problems derived from hogs and cattle.

Kuleana No 9141, Kahikuokolo, from Kilauea, Kauai, stated Jan. 17, 1848,

The Land Commissioners, greetings: I hereby state my claim at Namahana, for five lo'i, four mala of noni, two orange trees, and the house site.

And later surrendered his claim No. 9141:

Claimant came forward & made oath as follows:

I have forsaken my claim, Namahana, on account of the cattle overrunning it & I have no further claim to that land.

Kahikuokolo, sworn, I have rejected my land claim which is in Namahana, I have no claim there;

Jules Dudoit, the first French Consul, one of the first Catholics to be allowed in the Kingdom. He held the first Freemasonry Meeting at his store in Honolulu and later moved to Kauai to raise cattle and children. His murder, by his Pake cook, caused many repurcussions, as did his cattle in Namahana.

The Kauapea area had bunkers with machine guns during World War II. There are significant pieces of Kauai history in the Kauapea area of Namahana that should be considered.

Kaua'i's First Cattle Ranch

from the HawaiianEncyclopedia.com

Another significant foreign influence on Kaua'i's north shore in the early 1800s was the cattle ranch of Englishman **Richard Charlton,** which was later purchased and run by **Captain Jules Dudoit.**

The ranch was founded on August 27, 1831 when **Charlton,** the British Consul for Hawai'i in Honolulu, secured a 20-year lease from Kaua'i's Governor Kaikio'ewa for a portion of Hanalei from the eastern side of Hanalei Valley to Kalihiwai.

With longhorn cattle brought from "Norte California," **Charlton** started one of the first cattle ranches in the Hawaiian Islands, and the first on Kaua'i.

By 1840, **Charlton** had about 100 head of cattle. **Charlton's** fee for use of the Hanalei area land was to be paid with lumber, "560 boards," to be cut by **Charlton** and used by King Kamehameha III (Kauikeaouli) to build a house. Apparently the fee was never paid by **Charlton,** yet he retained use of the land until the lease was purchased by **Jules Dudoit** in 1845.

Captain Jules Dudoit served as the first French Consul to Hawai'i from 1837-1848, during which time there was a controversy regarding Catholic priests from France in Hawai'i, as well as significant disagreements of about the importation of alcohol. Dudoit moved to Hanalei with his family in 1848 after retiring from the consulship.

From 1848 until the early 1850s, the **Dudoit's,** including their five children (Maude, Adele, Blanche, Charles, and Jules), lived in the Kellett House. **Dudoit** exported butter and packed salt beef for whaling ships, and also shipped beef to Honolulu.

Behind the Kellett home was an area where cattle were slaughtered. Elsie Wilcox noted that the slaughter-pens "were in the little valley back of the Lanihuli home, directly back of where Mr. Birkmyer's house now stands."

Jules Dudoit owned the brigantine *John Dunlap*, which often made trips across the Ka'ie'iewaho Channel (Kaua'i Channel) between Kaua'i and O'ahu and provided one of Hanalei's few sources of supplies from Honolulu at the time, and in turn purchasing cattle and salt beef from Hanalei.

Mrs. Dudoit was the daughter of renowned explorer Peter Corney, an employee of the Hudson Bay Company and author of *The Early Voyages of Peter Corney.*

Living with **Mr.** and **Mrs. Dudoit** in Hanalei was the wife of Peter Corney as well as three of the Corney children: Fanny, Emily, and Peter. **Jules Dudoit** had traveled to Hawai'i on a ship with the Corneys, who were going on to meet their father, Peter Corney, in the Northwest.

Upon learning of their father's death, the Corney family remained in the Hawaiian Islands where one of the daughters, Anna, married **Jules Dudoit.**

When Albert Lyman of Connecticut sailed the trading schooner *Samuel Roberts* into Hanalei Bay in 1850 he noted, "We every day procure a bucket of the most delicious rich and new milk from the estate of Mr. Dudaver/**Dudoit**, on which he has about 1800 head of fine cattle. Milk is a most acceptable article on board, and a rare treat for us all."

Jules Dudoit purchased a Grant to the Namahana land in the Ko'olau district from Kamehameha III (Kauikeaouli) for $603 and moved there with his family. In 1862, **Dudoit** sold his Kaua'i property to Samuel Clark and moved to Honolulu.

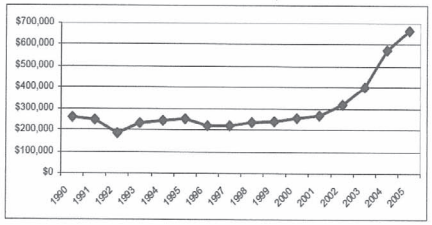
Jules Dudoit was murdered in 1866 while sleeping in bed. The crime was committed by Dudoit's Chinese cook, apparently because the cook's wages "had been docked for broken crockery." **Mrs. Dudoit** narrowly escaped death in the incident, but then went on to live a long life, passing away in 1903.

8. THE DEA ERRONEOUSLY STATES NO SOCIO-ECONOMIC IMPACT. After the demise of Kilauea Sugar Plantation, the working community of Kilauea struggled to remain a town and keep it's school and working-class identity. Soon after, Justin and Michelle Hughes, had a different vision for Kilauea -Sustainable Luxury. Creating high end vacation rental resorts in Agricultural land (even though the land was not zoned for resorts or vacation rentals). This does have an impact to our community.

From the Kilauea General Plan Update 2005

> Kīlauea's flourishing agricultural industry is nevertheless being challenged by land subdivisions, condominium property regimes, and special permits on agriculturally-zoned lands for residential and other uses rather than agricultural production. There is a strong market for visitor accommodations and luxury vacation and retirement homes that is exerting development pressure on Kīlauea's agricultural lands, resulting in several types of direct and secondary impacts on the resident community in town and the farmers outside of town. One of the obvious impacts, especially in recent years, is the steep rise in land values. This, in turn, affects assessed valuation and property tax liability, which puts a financial squeeze on farmers and homeowners alike. Some impacts are more subtle, such as a growing disparity in the socio-economic profile of the community, and an erosion of small-town neighborliness and familiarity, since the newer, often part-time, residents outside of town are less likely to mix frequently with the long-term residents in town. The social divide is physically apparent where the new residential developments outside of town take the form of sprawling mansions within "gated communities." Substantial additional housing development capacity remains in the agricultural subdivisions and condominium property regimes outside of town in the Kīlauea region, but this would not produce housing that is affordable for long-term residents in the workforce, as is discussed in Chapter 4.
>
> People expressed concerns about the rise in property values and the spread of outlying "gentlemen's estates".
>
> Preserving or expanding physical and visual access to natural areas remained an important issue, with concerns about visitor versus local use and access.
>
> Preservation of the existing town character was also a widely-held desire."

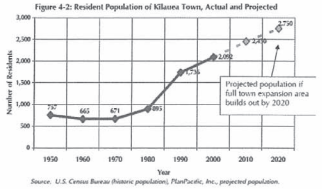
Figure 2-3
Median Home Sales Prices on Kaua'i, 1990-2005



Most Kilauea residents, if they do not presently own a home, are priced out of this market. Most Kilauea residents cannot afford a multi-million dollar estate.

Where is the opportunity for Workforce Housing?

Figure 4-2: Resident Population of Kilauea Town, Actual and Projected



Source: U.S. Census Bureau (historic population), PlanPacific, Inc., projected population.

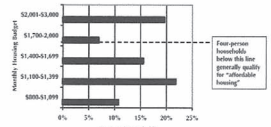
The concern about potential "gentrification" of Kilauea is not unfounded. As witness, the graph in Figure 2-2 shows a steep rise in the residential sales prices in recent years. Most Kilauea residents, if they do not presently own a home, are priced out of this market. Since more than a third of Kilauea's households are renters (see below), this is a significant concern.

Figure 4-3: Housing Characteristics in Kilauea Town, 2000

Source: U.S. Census Bureau

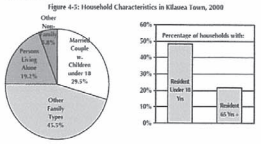
A 2003 State housing study found that 21.4% of those who are moving out of state are doing so because of housing cost.[1] The pressure is particularly strong in areas like North Shore Kaua'i where there is strong demand for vacation and second homes and a limited stock of housing available for year-round residents. As indicated in Figure 4-4, most of those who are looking to rent or buy a year-round residence in the North Shore region are households that qualify for "affordable housing" programs, as defined by the County.

Figure 4-4: What People Looking for North Shore Housing Can Afford



Looking specifically at the population of Kilauea Town, less that one-third of the households are "nuclear families": i.e., married couples with children. Many people live alone, and even more live in multi-generation households. The latter may be due to both cultural and economic factors.

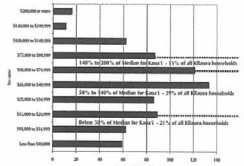
Figure 4-5: Household Characteristics in Kilauea Town, 2000



[1] SMS Research & Marketing Services for State of Hawai'i, *Hawai'i Housing Policy Study, 2003*

Due to escalating housing prices, an increasing percentage of households who are not eligible for affordable housing programs are nevertheless unable to afford housing that is available on the market, even though there may be two or more income-producers in the household. The size of this "gap" of "workforce" household group varies according to current market prices and interest rate, but under present conditions, it generally includes the households whose income is between 140% and 200% of the island-wide median. In Kilauea Town, this group made up approximately 15% of the population in 2000 (see below.) Overall, then, about three-quarters of Kilauea's resident population would not be able to afford to buy a home in Kilauea on the open market unless they could convert the equity in a home they presently owned or had other unusual assets they could apply to a home purchase.

Figure 4-6: Household Income of Kilauea Town Residents, 2000



Source: U.S. Census and Kaua'i Housing Agency

This DEA only considers the impacts of trails to private residences. The trails in this project join commercial vacation resorts and were constructed for commercial recreational purposes. "Private Beach Access" is being marketed as part of resort advertising. Applicant has been operating vacation resorts at Kauapea for over 15 years on agriculturally zoned land.. Secret Beach Hideaway, LLC : Hale Nanea - (built in 1989 in commercial resort operation for 17 years); Hale Ke Aloha (built in 1995 (in operation for 16 years); Hale Lani (built in 1996 in operation for 15 years); The Villa - (acquired in 2007 operational for 4 years). Individual commercial resort operational time cumulatively totals over **52 business years.** Michele and Justin Hughes have applied for TVR permits for Secret Beach Hideaway (TVNC 1112 TMK 5-2-5:33) and The Villa (TVNC 1113 TMK 5-2-5:31). Both have been denied - because they are on Ag land.

The 2000 ATF violation/permit states:

> (b) Economic. As the trail has already been constructed, there are no economic benefits from the action. However, the significant costs of constructing the stairs (in excess of $30,000) provided economic benefits to those persons employed for such work.

The economic benefits of a private trails to Secrets Beach by Secret Beach Hideaways, LLC must be considered. These trails area actively marketed in the vacation rental resort and real estate offerings.

> (8) As the trail is not part of any larger scheme or proposed development, there will be no cumulative effects on the environment or any commitment for larger actions.. The trail is intended for use and will continue to be used by the occupants of a single dwelling at the top of the bluffline.

The trail is part of a larger existing development, and has been since constructed.
The occupants of the Secret Beach Hideaway luxury cottages and villas can change HOURLY. There are hourly rates. Transients' and tourists' use of a property is different than residential use.

> **Secret Beach Hideaway luxury cottage** and villa rentals provide private access to Secret Beach, a remote beach of golden sands, where spinner dolphins and whales can be seen frolicking just off the shore.
>
> Pamper yourself and your loved one at our Secret Beach Hideaway luxury Kauai accommodations ideal for those desiring a private, romantic vacation in Hawaii. Our Kauai rentals are found off the beaten path, far from the crowds and stress of everyday life. Click here for a guide to Romantic Experiences on Kauai. These special rentals on the Garden Island of Kauai, Hawaii are offered to you by The Michele Hughes Company. We hope to see you soon!

> The trail, intended to provide better access to the shoreline from one dwelling, will not substantially affect the economic or social welfare of the Kilauea community, the County of Kauai or the State of Hawaii.

a refreshing dip in the salt water pool. Soak in the heated spa. Or **wander down a private trail** to *one of the most beautiful beaches in the world*

> The project is not inconsistent with the foregoing. It does not affect population growth, so there is no concern with respect to setting population limits. Although the project will create the opportunity for the owners of the land using the trail to improve their quality of life by providing a safe and reasonable access to the shoreline with minimal or insignificant effect to the physical environment, it is not an economic activity which needs to be balanced with the physical and social environments.

The creation of this trail has increased the marketability and value of the applicant's property. The up-scaling and gentrification of Kauapea is not balanced with the local social environment. This is agricultural land not resort land. Property taxes have escalated. Many in the neighborhood pay $1,000 per week in property taxes. What kind of farm can yield the same return as vacation rentals?

Secret Beach Hideaway

The Villa :
2010 Rates, - $1850 per night, plus 4.166% GE tax, 7.25% TA tax,
Holiday rates - $1950 per night during Christmas/New Year (December 21 - January 3, 2009)
1 week minimum stay PLUS

- $600 one-time housekeeping fee plus 4.166% GE tax, and
- $3500 security deposit.
- $100 per hour (min 2 hours, required for seven nights or longer) mid-stay cleans.
- $100 per hour (min 2 hours) for extra cleaning requested by guests.

50% of total is due for reservation deposit. Full Payment must be made 60 days prior to arrival and 90 days prior to arrival for Holiday bookings

Hale Lani and Hale Nanea:
2010 Rates - $650 per night, plus 4.166% GE tax, 7.25% TA tax,
Holiday rates - $725 per night (December 21 through January 3, 2009)

- $300 one-time housekeeping fee plus 4.166% GE tax, and
- $1500 security deposit.
- Mid-stay cleaning fee is $200 (required for seven nights or longer).

> The project will not have effect on establishing communities which can provide a sense of identity. However, the project will allow a sense of harmony with the natural environment by allowing safe access through the natural vegetation of the area to access the shoreline at the base of the pali, an experience which could be uniquely Hawaiian. The trail is a commitment on the part of each person using the trail not to stray therefrom; this is a better alternative to having people randomly making their own way up and down the pali with the attendant destruction of vegetation and increased erosion. Nonrenewable resources are not involved in the activity.

Kilauea is established with a sense of identity as a coastal community. The cumulative loss of access to Kauapea beach causes a sense of disharmony to the community and causes the children of Kilauea to walk or ride their bikes on Kuhio Highway (our only highway) to the beach, instead of walking to Kauapea Beach on smaller (less traffic), ancillary neighborhood streets.

Privitazation of access to a beach increases land values and decreases quality of life for those excluded. Privitazation of Kauapea beach access needs cumulative consideration.

> **For Sale: Secrets Beach Estates Condo #2 Ocean Bluff acreage Home-site and rare Secret Beach vehicular and pedestrian access. 3.55 acres Price $4,750,000 Price Change $1,250,000 Prop Tax.$28,023 MLS#236386 Private, Pristine, Perfection -**

> Discretely located behind a beautiful automatic wooden gate and lava rock wall at the end of exclusive Kauapea Road, the entrance to Secret Beach Estates awaits your discovery.

The only private road on Kauai down to a very Secret Beach runs parallel to one side of the property providing exclusive, quick and easy vehicular or walking access to the stunning beach below. A walking trail can also be easily created from home-site through property to the beach. What is Secret Beach? Over a mile of pristine, soft golden sand. A majestic waterfall cascading into the ocean. Natural black lava rock tidal pools. A freshwater "shower" spring. Several explorable sea caves. Swimming, surfing, boating, and a beautiful coral reef. Countless dolphins, whales, turtles, Hawaiian monk seals, and rare tropic sea birds.

Trails have been **"easily created"** by weak enforcement, After-The-Fact Permitting, and inadequate fines. Time to say **"Pau Ku". No more ATF trail permitting.**

9. ACCESS ON UN-PERMITTED TRAILS IS BEING MARKETED. Applicant has created 2 miles of trails without engineering or permits, connecting various luxury resort projects on different properties (saying that trails were to private residences!). Various of these properties have been or are planned to be sold or auctioned in the near future.

Access on the trails to the beach has been offered for sale (at reported millions!) to Kauapea neighbors by the applicant. This is a commercial use of the Conservation District. Applicant is reportedly also using the trails when selling real estate. None of these uses were stated in the permit. According to DEA page 50, 4.2.1 Recreational Facilities

> Access to Kauapea Beach is by a pedestrian access easement that traverses the western portion of the Property. This access easement was established as a condition of approval for the Pali Namahana subdivision in 1978. It is one of is a series of access easements that begins from Kūhiō Highway and makes it way down towards Secret Beach. Additionally, access is also provided to adjoining land owners through the existing trails system that is part of this document.

Private access is being marketed on these un-permitted trails in the Conservation District. What happened to the public access to Kauapea?

10. THE DEA OVEREMPHASIZES THE FIRST RESPONDER NEED. The DEA proposes the steep, switchback trail was **constructed to assist beach rescues** and for maintenance. This is absurd. Adjacent properties have paved vehicular access to Kauapea Beach.

Police and Fire Protection	Positive impacts to police and fire protection. The existing trails provide an alternative and faster access to Kauapea Beach during emergencies.

Why would a rescue crew attempt to access this trail on the left with a gurney instead of driving to the beach on the paved road to the right??

Kauai has great Fire Department Rescue crews, with Jet-Skis. Most rescues in this area are by jet-ski launched at Anini Beach. It is simply **not true** that KFD needs this trail for rescues as stated in the DEA:

> The proposed action will promote the public health, safety, and welfare by providing emergency personnel (fire, rescue, police, and DOCARE) with an alternative access to Kauapea Beach for emergency response..

PRIVATE, VEHICULAR access right down to remarkable Kauapea ("Secrets") Beach!

Kauapea Road #5 Paradise found!

Land Area 3.00 acres Price **$2,995,000** Prop Tax.$20,700 MLS#233550
This amazing, level OCEAN BLUFF Estate Property is located in a private, gated subdivision at the end of the very exclusive Kauapea Road above Secret Beach. Panoramic ocean, mountain and beach views will astound you! The entrance to the 5 Estates in this development enjoy a beautiful custom gate with lava rock walls and professionally landscaped grounds. Once inside the gate, a paved road leads to each exceptional property.

There is deeded access to a stream and **a private paved road all of the way down to the sand at Secret Beach for the exclusive use of these 6 Estates. This is the ONLY DIRECT ROADWAY TO THE SAND AT SECRET BEACH**. Build your dream home in one of the most beautiful spots on earth! Secret Beach is known for its mile of pristine sandy beach , a waterfall, lava rock tidepools and several sea caves. Since it is adjacent to the Wildlife Reserve...albatross, shearwaters, booby birds, dolphins, whales, turtles and Hawaiian Monk Seals are all common sights along this stretch of beach. You must see this property! You will never want to leave!

It does not seem valid to claim that 2 miles of trails constructed without permits were constructed for emergency personnel. I do not believe they have been used by first responders yet, but the trails have had extensive use by vacation rental tourists and for real estate marketing.

It is important to remember that these trails are un-engineered and un-permitted. They were constructed for private, commercial use, not emergency responder use.

Why would First Responders use this trail instead of driving on a road?

4.3.2: Potential Impacts

A positive impact on police protection is anticipated as a result of the proposed action. The existing trails currently provide an alternative and faster access to Kauapea Beach for the police department during emergencies. Also, the location of the proposed action will not impact the existing Hanalei District substation or impede access to this facility by the general public.

According to the Hughes, the purpose of the trail is to

"Improve quality of Life and Assist KFD in beach rescues"

The Applicant previously stated that the trail was not in a tsunami zone; however, this was in error as the lowest portion of the trail is within the tsunami inundation area. Should there be a tsunami, the trail may be damaged but such damage would not be significant nor a hazard to life. The trail, on the other hand, could provide a faster means of getting to higher elevations should high waves or a tsunami suddenly materialize and threaten people on the beach.

Who would the trail provide quick egress for? Tourists in the Vacation Rental? All Beach goers? Maybe for the KFD and First Responders….That's what the 2 miles of trails are for - so First Responders can escape a tsunami!

A KFD rescue on a gurney would be difficult on the 250 stair trail.
(photo not from Kauapea)

Kauai Fire Department comments should be included as to how they would manage a beach rescue at Kauapea.

11.APPLICANT'S ALLEGATIONS OF ASSISTING THE POLICE PROTECTION DO NOT SEEM TO BE IN AGREEMENT WITH THE NEIGHBORHOOD SENTIMENT. According to Kauapea neighbor William H. Strong's October 9, 2009 letter to Mr. Michael Cain, Environmental Planner, OCCL DLNR, illegal activities, trespassing and related activities **have escalated** since the construction of the Hughes' trail:

From William H. Strong's letter to DLNR:

> Subsequent to the date of my letter to Administrator Lemmo, I have been informed that there have been several incidents of trespassing around homes on Kauapea Road from people using the Trail for access to such homes. Prior to the Trail being constructed, I had not heard of a single incident of such trespassing. In addition, since my letter of July 24th, there have been at least three incidents of theft of personal property from homes on Kauapea Road.
>
> As you may know, Kaua'i has experienced a meaningful increase in robbery and related crimes in 2009. Although no area on Kaua'i is immune to this type of activity, neither a robbery nor this type of trespassing has ever, to my knowledge, occurred in the eleven years that we have been living around the Kilauea Lighthouse and on Kauapea Road
>
> We have filed a report with the Kaua'i Police Department in connection with the incidents that we have directly experienced. The police were appreciative of us taking the time to bring them up-to-date and said they will do all that they can. As you will understand, the homeowners along Kauapea Road are very concerned about this sudden increase in theft-related incidences. We are hopeful that they do not escalate to more serious matters.

The impact of new construction of mauka/makai trails to the entire neighborhood must be considered by this permit. The applicant has great financial interest in the perpetuation of these trails and apparent small concern for the negative impact to the community.

If there has been a noted increase in personal property theft as a result of these mauka/makai trails, that is not a positive impact as stated on page 51 DEA. Concerns of the immediate neighbors must be included.

On April 5, 2011, the TripAdvisor website had a disturbing resort review for Secret Beach Hideaway, LLC for a visit that occurred February, 2011:

> If you are considering staying at Secret Beach Hideaway, please be sure to ask the management how they have addressed the security of the property prior to booking.
>
> On our 2nd to the last night, someone entered the cottage while we were sleeping and stole the money from my husband's wallet. We were fortunate that the person did not take anything else and that we were not harmed.
>
> We spent our last day or the vacation shaken and dealing with the police (who were very helpful) and the property management.
>
> The issue with the property's security is this: There is only 1 window that opens in the cottage, and it's high up in the bedroom (not reachable and quite small). So, the only ventilation in the place comes from the screened doors. There are about 4 or 5 screened doors around the cottage and none of them lock. It was explained to us after the burglary, that the property management was told by the police not to bother putting on locks on the screened doors because someone could just slit open the screen and get

in. So, there are no locks on the screens, and there is no way to get any air in the cottage and have it locked at the same time.

My husband and I of course noticed this when we arrived but figured (it turns out stupidly) that the property owner would have done this if there no real crime threat. This of course was not the case. In fact, the property manager told us that the place had been burgled more than once during the day previously. Apparently this was just the first time it had been burgled at night while guests were there.

The property manager tried to be helpful, though we were upset to learn that this had happened before and that the property owner had chosen not to address the problem.

We were also upset by the property owner's response to the incident. She offered to give us our money back for the last night on the island. That's it. Of course, we weren't going to stay at the cottage for our last night, given what happened. So basically, she just let us out of the contract for that last night. This was a pitiful and inappropriate response, especially given that she and the property manager were well aware that crime was an issue.

So again, please be sure to check with the property management re: how security has been addressed prior to booking this cottage. I do hope they fix this critical issue. It is a beautiful place. We really enjoyed our stay prior to the burglary. Bur there is no way we would stay there again (or recommend that anyone we know do so) unless the security were addressed. I don't know why anyone would.

Not many properties on Kauai experience multiple, day time burglaries. The trails do not seem like an effective security addition, in fact they seem to have escalated the situation, as Mr. Strong said.

12. THE BLNR FINDS SECRET BEACH PROPERTIES DISINGENUOUS

On January 28, 2008, OCCL made a site visit to Kauapea as a result of unauthorized tree cutting and dumping of green waste complaints (made March 2007) and instructed the landowners of land use practices pursuant to HAR 13-5 (tree removal) and gave them a copy of HAR 13-5.

In July 2009, DOCARE officers conducted a site visit to the Hughes' property and found a "newly graded trail", removal of healthy trees, new fencing and stairway construction - a year after they had been instructed on proper land use practices.

> Finally, OCCL does not accept that any reasonable reading of the Conservation District rules could lead a landowner to believe that "cleaning" and "routing maintenance" allows for the grading and construction of a permanent trail without going through the permitting process.

BLNR needs to know that these trails served a commercial resort, not a private residence, at the time of these violations. That elevates the disingenuousness.

13. THE VIOLATIONS WERE WILLFULL. These violations were orchestrated as part of a planned resort by international developers in an effort to privatize and control Kauapea Beach Access. In March 2010, the DLNR stated:

> OCCL's main concern with this case is the willful nature of the alleged violations, rather than with any significant resource damage. The design and durability of the trail indicates that this was intended to be a permanent addition to the land, and one which would increase it's value to prospective investors for the subject and neighboring parcels. The landowner had been notified

> had been provided with a copy of Conservation District Rules. OCCL believes that the landowner would have been aware of the need for a permit for land uses in the Conservation District.
>
> OCCL is concerned that a lower fine would establish a potentially dangerous precedence that Conservation District Rules can be violated at will. **OCCL recommends a minimum fine of $7500 due to the willful nature of the violation.**

Working without permits or engineering was a conscious choice for this project. Applicant and her crew had been cited for previous violations and knew the proper procedures. Why was the choice not to follow the laws and regulations of the State of Hawaii and the County of Kauai?

The DLNR fine of $7,500 + $1,500 Admin fees ($9,000) is less than one week's resort rates at The Villa at Secret Beach - located in Ag land. How could a farmer make that kind of income off ag land? What are the agri-economic impacts of enabling the continuing resortification of ag land?

The AFT permitting of this project will allow the applicant to continue the resortification of our coast. Secret Beach Hideaway, LLC has owned and operated multiple resorts on Kauapea ag lands: Hale Nanea (built in 1989 in commercial resort operation for 17 years); Hale Ke Aloha (built in 1995 in operation for 16 years); Hale Lani (built in 1996 in operation for 15 years); The Villa - acquired in 2007 (operational for 4 years). Individual commercial resort operational time cumulatively totals over **52 business years.** These resorts are not operated as private residences. The trails are part of a private, commercial recreational resort operation and are actively marketed and advertised.

Michele and Justin Hughes have applied for TVR permits for Secret Beach Hideaway (TVNC 1112 TMK 5-2-5:33) and The Villa (TVNC 1113 TMK 5-2-5:31). Both have been denied - because they are on Ag land. How long are they going to be allowed to operate resorts on Ag land and advertise private trails?

14. TOXIC RUNOFF FROM THE KILAUEA PLATEAU INTO NIU STREAM AND THE WATERS OF THE PACIFIC OCEAN MUST BE CONSIDERED.

There has been recent findings in Kilauea of pesticide and herbicide mixing and storage areas from the plantation era in the Aalona area of Kilauea. Arsenic was cooked and mixed at this location. Dioxin was stored, mixed and loaded at this location. Herbicides were delivered and sprayed by railroad car.

The drainage for this area was through a flume and ditch draining into Niu Stream which terminates at Kauapea Beach. Levels of both arsenic and dioxin exceed allowable limits at the Aalona site. Testing is continuing downstream to determine the range of toxicity. Earth movement, such as un-engineered road and trail construction, could have spread and dispersed original contamination site. According to Gary Gill, Director of Hawaii Department of Health, at this Kilauea Community Meeting, potential toxicity of Niu Stream area should be considered by this CDUA.

STATE OF HAWAII
DEPARTMENT OF HEALTH

COMMUNITY MEETING
WEDNESDAY, MARCH 20th
6:30 - 8:00 pm
Kilauea School Cafeteria
2500 Kolo Road
Kilauea, Hawaii

Historic Pesticide Mixing Area
Arsenic and Dioxin Soil Contamination

We cordially invite you to join us next Wednesday, March 20th to learn about soil contamination from old pesticide mixing and storage operations that is impacting two properties on Aalina Place, at the south end of Aalina Street in Kilauea, Hawaii. Department of Health Director Loretta Fuddy will be on hand with Deputy Director Gary Gill, and staff from the Hazard Evaluation and Emergency Response Office to explain what we have found, what it means for affected residents, workers and property owners, and the actions the State plans to take to protect public health and the environment.

Meeting Agenda:

6:30 pm Drop in information session
7:00 pm Short presentation on the continuing investigation
Talk by Dr. Al Bruneau on health concerns
7:30 pm Information session and one on one discussions

The meeting will be conducted in an informal format, with knowledgeable staff available at poster displays to provide you with information on the history of the site, how site discovery authorities alerted us to a potential problem, what measures are being taken to ensure no one is exposed to contaminated soils, and to address health questions and concerns that you may have. We will begin with a short presentation on the continuing investigation, the results of the initial round of sampling activities, and a short talk by Dr. Al Bruneau, from the Rocky Mountain Poison Control Center. At 7:30 pm we'll resume the information session and the opportunity for one on one discussions with our staff and Dr. Bruneau.

If you have questions about the meeting, please contact Laura Young or Fawn Orange at the HEER Office. Email: Laura.Young@doh.hawaii.gov ; Email: fawn.orange@doh.hawaii.gov
Telephone 808-586-4249, Fax 808-586-7537

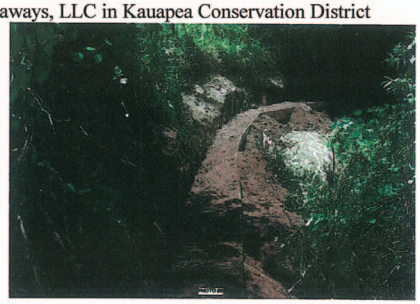
This permit cannot be granted until there is a determination of the potential impacts of arsenic, dioxin and other toxins to the waters of Niu (referred to as Un-named Stream) and the Pacific Ocean.

<u>15. THE DEA DOES NOT CONSIDER THE EROSION POTENTIAL IF THIS 2 MILES OF UNPERMITTED TRAIL CONSTRUCTION FAILS.</u> The coastal scarp at Kauapea is very steep. The receiving waters of the Pacific Ocean are Class 1 waters.

Kauapea Beaches: Pa`ahau, Kamakau, Keahiu, Papaloa and Kalaeokaohe.

According to the applicant, this project is beneficial to the environment. It is only beneficial to their resort and their personal financial environment. Failure of these un-engineered trails has potential to damage the waters of the Pacific Ocean, near the U.S. Kilauea Point National Wildlife Refuge.

Newly constructed trail by Secret Beach Hideaways, LLC in Kauapea Conservation District



From Page 44 DEA:

5.4.2: Potential Impacts

No adverse impacts on drainage facilities are anticipated as a result of the proposed action. There has been no change to the existing drainage patterns on the Property. Run off and sediments are captured by sand located at the bottom of the coastal bluff or by soils in the gulches.

Construction of 2 miles of trails <u>has changed</u> the drainage patterns extensively on the property. These trails show blowouts and failures already and will likely fail in the future. Sediment will enter the Pacific Ocean, not the just the sand (as considered above by the applicant). There is great potential for a Clean Water Act violation

The DEA also said the trail was not in an environmentally sensitive or erosion prone area. This is contrary to the Conservation District Limited Subzone criteria.

(11) The trail would not affect nor be likely to suffer damage by being located in an environmentally sensitive area, such as a flood plain, beach, erosion-prone area, geologically hazardous land, estuary, freshwater, or coastal water. To begin, it is not located in a flood plain, a beach, geologically hazardous land, estuary, freshwater, or coastal water. Although the trail meanders down the side of the bluff and could be considered an erosion-prone area, the cutting of the hillside, the placing of railway ties in the ground and the revegetation of the cuts, have mitigated the possibility of erosion.

This project needs to have a hard look taken at the real impacts like erosion and privatizing commercial beach access perpetuating resorts in Ag Land.

<u>16. THE DEA STATES THERE ARE NO CUMULATIVE OR SECONDARY</u>

IMPACTS. The up scaling of our community's ag land by allowing unpermitted resorts is a significant impact that must be considered. Marketing private trails must be considered. Advertising private trails to a luxury resort must be considerd.

From the March 11, 2011 OCCL submittals K-3,

> OCCL conducted an online search of properties for sale in the area. The Hughes properties are listed as luxury vacation rentals, but we did not find evidence that they were for sale. OCCL does note that listings for neighboring properties do claim trails with private beach access (e.g. The Villa at Lewalani, TMK 5-2-005:035, advertises "coveted beach access on a private manicured trail leading to world renowned Secret Beach;" see **Exhibit 6**).

EXHIBIT 6

2878 Kauapea Rd, Kilauea Sold for $4,952,750. Median Kilauea 2009 per capita income was less than $30,000 per year. Most people in Kilauea cannot afford this luxury, community up-scaling.

From the Hughes' Secret Beach Hideaway Resort website:

> Secret Beach Hideaway is the perfect choice for your romantic Hawaiian getaway. Ideally found on the North Shore of Kauai at Kilauea, these holiday cottage rentals offer a unique accommodation experience lying steps away from a privately secluded beach.
>
> Surrounded by 35 acres of magnificently landscaped lawns and tropical gardens, Secret Beach Hideaway offers two private cottages with panoramic views of lush mountains and sparkling azure waters. Remote and tranquil, the cottages deliver romantic Bali Hai sunsets from your lanai and pamper you with your private deluxe spa.
>
> **Each of the Secret Beach Hideaway cottages has a private path to the secret beach**. The beach offers golden sands and is often home to spinner dolphins and whales where they can be seen frolicking off the shore.

From KOA Properties website:

> **If Kauai had a Rodeo Drive, its name would be Kauapea Road.**
>
> Running along the bluff above secluded Secret Beach, ringed by magnificent mountain ranges and the sparkling blue Pacific, Kauapea Road is Kauai's "ultimate address."
>
> So says Koa Properties about their October 14 2010 auction of the Villa at Secret Beach, to be auctioned off to the highest bidder regardless of the price.
>
> With panoramic views of the ocean, Makana Ridge and Bali Hai, this is a home you will never want to leave…except to wander down the trail to one of the island's most pristine and private beaches, where silky white sand meets outcroppings of primordial lava rock an…..
>
> Koa Properties continues "In this economy, in this housing market, who do you think wins? Those who act quickly on an opportunity that flits by in a second, yet has the potential to benefit for a lifetime.

Paniolos and plantations are not compatible with Rodeo Drive mentality. Rodeo Drive mentality is not compatible with Kilauea's future, as visioned in the Kilauea Town Plan (2005).

17. THERE ARE NO ALTERNATIVES TO THIS PROJECT CONSIDERED. Under HRS 343, alternatives to this project must be given full consideration, irregardless of the After-The-Fact circumstances.

- Remove and restore the unauthorized work should be a considered alternative.
- Restoring the trails to their original state should be a considered alternative.
- Restoring the public access should be a priority alternative.
- Remove the mauka/makai trails&/or remove the lateral trails.
- Remove and restore trails to properties owned by others (TMK 5-2-5:27, 28 and 32)

A restoration alternative with plans and engineering should be included in this DEA. The only project consideration the applicant provided was to leave the existing un-authorized trails (which are being used for commercial purposes in the Conservation District). This is not legally adequate. A full restoration detail, designed by a licensed and bonded landscape engineer, must be included in this project application.

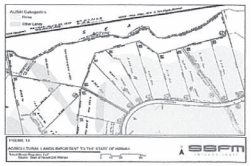
18. ALL MAPS MUST BE STAMPED BY A LICENSED SURVEYOR.

These maps are included in the DEA, yet none are have a surveyor's stamp.

Page21

Page 22 DEA

Page 32 DEA



19. THE DEA MUST INCLUDE CONSIDERATION OF ENVIRONMENTAL JUSTICE IMPACTS TO SPECIFIC GROUPS. Kilauea is a diverse community of humble and hard working people, many brought up with plantation values. There are neighborhoods of Chinese, Japanese, Filipinos, newcomers and Hawaiians. Many kupuna are on fixed incomes. There are subsistence and sustenance fisher folk. The impact of up-scaling our neighborhoods by the intrusion of illegal vacation rentals into ag lands must be considered. The impact to our children to be restricted from the closest beach must be considered. The impact of our community not having a beach they can walk to must be considered. The impact of our children having to walk on the highway to get to the beach must be considered. The impact to a fishing community to not be able to get to fishing grounds must be considered. The economic impact of "private trails to a private beach" must be considered.

Thee following DOH Healthy Communities Check list should be submitted to the Communities impacted by the project to fill out, not the checklist only filed out by the applicant who has vested financial interests. The Kilauea community would come up with different results.

The Kilauea Community has few residents who can afford a $1,900 per night vacation rental. Business such as these in our neighborhoods do have an impact to our communities. Selling trail access and restricting those who cannot afford it does have an impact to those who are financially challenged.

Healthy Community Design
Smart Growth Checklist

The Hawaii State Department of Health, Built Environment Working Group, recommends that State and County Planning Departments, developers, engineers and other professionals apply healthy built environment principles when they plan or review new developments or redevelopments. Government agencies should lead by example in their own projects. This checklist focuses on public health elements that would be integrated into land use and community planning and design. We ask you to share this list with others to increase community awareness of how to design healthier communities.

Healthy Built Environment Principles:

- Promote fitness through safe walking, biking, and other active transportation through connectivity of planned bikeways and paths with existing and adjacent networks, designing travelways that connect multiple destinations and encourage non-vehicular travel.
- Promote clean air by making transit convenient and comfortable, minimizing petroleum fueled car and truck use, and minimizing fossil energy use.
- Promote a healthy environment by buying green products, reducing, reusing & recycling, and minimizing waste in construction, operations, and demolition.
- Promote fitness and health by encouraging home and community gardens

Healthy Built Environment Best Practices:

Close Proximity to Existing/Future Development and Infrastructure
☐ Close to roadways, water and sewer service
☐ Located within growth/redevelopment area
☐ Walking distance to transit
☐ Next to or includes food/convenience/retail/services
☐ Next to or includes employment, recreation, entertainment
☐ Wide range of housing opportunities

Mix and Balance of Uses
☐ Multi-use buildings
☐ Multi-use districts
☐ Provide employment, housing, neighborhood serving retail/service
☐ Provide civic, educational, cultural recreation
☐ Provide street-level uses that maximize pedestrian activity

Site Optimization and Compactness
☐ Maximize allowable floor-area ratio
☐ Maximize dwelling unit/acreage density
☐ Maximize usable open space for gathering and recreation
☐ Maximize usable open space for home and community gardens
☐ Locate buildings at minimum setbacks or at "build-to" lines

Accessibility and Mobility Choices Provide:
☐ Shelters at transit stops and store fronts (e.g. awnings or arcades) and along paths and lanes.
☐ Pedestrian/bicycle/stroller/wheelchair facilities for and on transit
☐ Sidewalks, preferably on both sides of the street
☐ Walking and bike paths separate from roads (e.g. in greenways)
☐ Bike lanes in roads marked with paint and good signs

Content adapted from *Smart Scorecard for Development Projects* (Congress for New Urbanism and the US Environmental Protection Agency 2002) and *East Garrison Smart Growth Checklist* (Monterey, CA)

1

Healthy Community Design
Smart Growth Checklist

(Continued on next page)
Accessibility and Mobility Choices Provide:
☐ Shared paths & sidewalks marked to separate walkers and bicyclists. (paint, texture, signs)
☐ Bike racks, stroller storage
☐ Direct street connections, such as well-marked paths to front doors
☐ Parking lots & garages behind, above, or below buildings
☐ Connections to existing or planned parks, open space
☐ Raised or highly visible crosswalks near schools (paint and signs)
☐ Ramps, depressed curbs, and periodic breaks in curbs for people with disabilities
☐ Meet all ADA standards for accessibility

Healthy Designs for Indoor Areas
☐ Pleasant, wide central stairs provided to encourage walking
☐ Elevators stop on alternate floors (except ADA elevator)
☐ Bike/luggage/stroller ramps on stairs
☐ Indoor bicycle parking provided
☐ Showers and lockers provided at work sites

Community Context, Site Design, and Visual Appeal
☐ Preserve or re-use existing buildings/structures when feasible
☐ Incorporate buildings reflect local historic building materials, styles and/or design
☐ Include a map of the neighborhood and nearby street connections is included with plans
☐ Scale and mass of buildings relate to existing neighborhood structures
☐ Provide open access to all adjacent natural features such as coasts, streams, river-ways, mountains, forests, hiking, trails
☐ Create coastal, stream, and forest green-ways with walking and bike paths to town/village centers, parks, other destinations
☐ Insure automobile access makes minimum impact on pedestrian/bicyclist experience

☐ Create or enhance community spaces such as plazas, squares, parks, etc.
☐ Include open spaces and trails that provide opportunities for physical activity
☐ Provide play equipment in parks for children
☐ Include pedestrian/bicyclist–oriented landscaping and lighting

Fine - Grained Block, Pedestrian and Park Network
☐ Create street networks based on a grid system; avoid cul de sacs
☐ Incorporate short block lengths
☐ Design for traffic calming measures in and around residential areas
☐ Design pedestrian/bicycle systems to link with civic, cultural, retail/service destinations, and other paths
☐ A variety of park types and sizes

Environmental Quality
☐ Recycle materials from deconstruction of existing infrastructure
☐ Maximize energy efficiency of buildings
☐ Use green building materials when feasible
☐ Use energy conservation equipment, systems and/or programs
☐ Use water conservation systems
☐ Use rainwater on-site - provide storage, infiltration, irrigation
☐ Use on-site wastewater treatment & reuse or disposal where appropriate
☐ Use solar energy for heating and electricity
☐ Use wind energy
☐ Minimize artificial A/C, energy use, GHG emissions
☒ Protect, preserve and/or restore any on-site natural features such as steep slopes, wetlands, watersheds
☐ Create and maintain buffers around natural areas
☒ Plant native Hawaiian species
☐ Establish a recycling program for residents/tenants

Content adapted from *Smart Scorecard for Development Projects* (Congress for New Urbanism and the US Environmental Protection Agency 2002) and *East Garrison Smart Growth Checklist* (Monterey, CA)

2

Healthy Community Design
Smart Growth Checklist

Variety and Range
☐ Include a variety of building types and styles
☐ Include locally owned businesses in project
☐ Provide a wide-range in pricing structure of units that will be sold or leased
☐ Insure at least 30% of the units will be priced for very low and moderate incomes
☐ Provide a variety of densities in both residential and commercial employment units
☐ Vary set backs
☐ Vary residential lot size
☐ Address need for community facilities

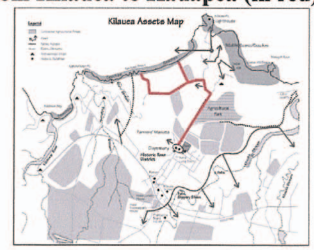
Re-Use and Redevelopment Options
☐ Install utility lines along access roads
☐ Install utility lines underground
☐ Master plans to show future/projected streets, blocks and development sites
☐ Include building types and structures that are adaptable to different uses

Process Collaboration and Predictability of Decisions
☐ Conduct pre-design workshops/Charrettes with stakeholders, agencies, and the public
☐ Provide public outreach regarding input, project vision, goals, and timetable
☐ Provide a project model that serves as a visual representation of the project
☐ Contact State and county staff (planning, public works, etc) in all key departments in the planning phase of project development
☐ Develop Public/Private partnerships
☐ Align design plans with existing community and general plans

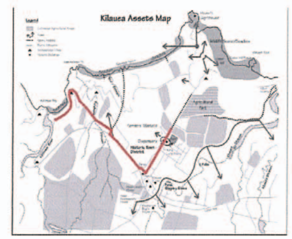
Content adapted from Smart Scorecard for Development Projects (Congress for New Urbanism and the US Environmental Protection Agency 2002) and East Garrison Smart Growth Checklist (Monterey, CA)

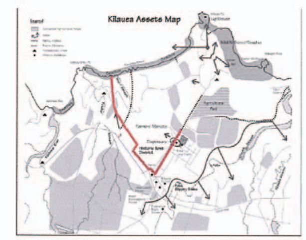
3

Historic Beach Accesses from Kilauea to Kauapea (in red)



Post-Hughes Beach Access from Kilauea (in red)

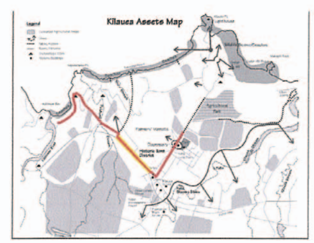




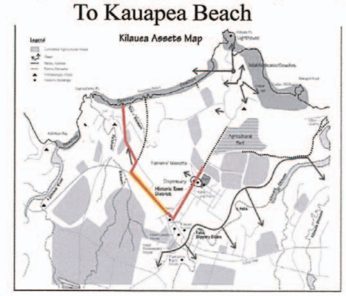
Now Kilauea area children must walk/bike/hitchhike/skate on Kuhio Highway to the beach at Kalihiwai or climb down the steep trail to Kauapea.

Both access (in red) require highway travel (highlighted in yellow).

To Kalihiwai Bay



To Kauapea Beach



20. THIS PERMIT IS FOR AFTER-THE-FACT PERMITTING OF TRAIL CONSTRUCTION, NOT TO ENABLE FUTURE LANDSCAPE WORK.

Applicant proposes to "seek approval for future removal of unwanted vegetation, including trees". I suggest the applicant seek permitting approval in the future for future removal of trees, not now for future removal. This permit is for unauthorized work in the past . Applicant has shown no reason to be trusted in the future. Landscape maintenance plan is not specified. These Conservation District coastal lands are steep and not suitable for intensively manicured resort visage.

21. THIS PERMIT CANNOT INCLUDE AUTHORIZATION FOR FUTURE, UNSPECIFIED FENCING.

This ATF permit process does not include fencing details (as to location, type, height, etc) or scale maps of proposed fencing. Applicant alleges it may need fencing in the future because of actions by neighbors. This is ludicrous. This ATF permit is not intended for future allegations of unauthorized use. It is for the construction of 2 miles of unpermitted, unauthorized and unengineered trails.

> Lastly, approval will also be a requested to allow for future fencing along the mauka property boundary to prevent unauthorized use of the property. This fence will only be constructed if unauthorized use of the property by adjoining landowners persists.

Conservation district boundary must be located by the state and a separate fence permit must be obtained, not generic permission for future fencing.

According to Conservation District Rules and Regulations, HAR, Chapter 13-5, if the area of proposed use (fencing) is within fifty feet of the boundary of the Conservation District, a map showing the interpretation of the boundary by the State Land Use Commission must be provided

22 SECRET BEACH, LLC, OPERATED WITH WILLFUL DISREGARD OF STATE REGULATIONS.

Justin and Michele Hughes and The Michele Hughes Company, LLC have extensive resort development experience with ample planning and legal resources available. They chose to develop without permits. Why?

> In September 2008, DLNR-OCCL received a complaint that the Applicant was installing steps on the Property. Upon further investigation by DLNR-OCCL Staff, a Notice of Alleged Violation & Order dated July 30, 2009 was issued to the Applicant regarding the Property.

In an area with many land use violations, why was the order 10 months after the violation complaint?

> This letter serves as a formal Notice of Alleged Violation & Order to stop any further land use within the Conservation District. The Department intends to bring this matter to the attention of the Board of Land and Natural Resources (BLNR) as an alleged violation of Hawai'i Revised Statute Chapter 183C-7 and rules promulgated pursuant to that chapter. If you continue to engage in land use in the Conservation District after receipt of this notice, the Department may ask the BLNR to assess a fine of up to $15,000 per day in addition to other penalties and remedies that may already or otherwise be applicable.

> On March 11, 2010, the Board of Land and Natural Resources (BLNR) found the Applicant in violation of Chapter 183C, Hawai'i Revised Statues (HRS), and Title 13-5, Hawai'i Administrative Rules (HAR) by landscaping in the Limited subzone without a Conservation District Use Permit (Enforcement File: KA-08-06).

The Michele Hughes Company
Websites: www.Secretbeachkauai.com
www.themichelehughescompany.com
Reservation: 808-635-6184 or 800-820-2862
Email: Info@Secretbeachkauai.com

The Michele Hughes Company is singularly unique in its positioning as a multifaceted company; land acquisition, custom home building, turnkey design and creation of luxury properties. This vertical integration strengthens the focus, provides control, continuity and a defined signature that resonates throughout each and every project. The Michele Hughes Company distinguishes itself even further by acquiring real estate investments in the most exquisite locations in the world. The primary focus of this company's land acquisition is respect to the "Mana", the Hawaiian word for soul of the land. Beginning with a gorgeous natural palette and vision to grace this exterior landscape with beautiful homes, The Michele Hughes Company mission is to indulge the senses with aesthetically pleasing features, elegant natural materials, warmth and texture, a zen like simplicity and uncompromised dedication to quality and luxury living.

With precision and discipline, The Michele Hughes Company realizes that homes are the fulfillment of a dream, a fantasy becoming reality. With respect and sensitivity to time, place and legacy, this company targets high end resort areas such as Aspen, San Francisco, Kauai and Cabo San Lucas.

The heart of the Michele Hughes Company is the vision of its founder, Michele Hughes. Her contextual focus and connection with the natural surroundings provided the impetus for her creations. Dedicated to the synchronicity and harmony of form and function, Michele Hughes contributes impeccable good taste, resourcefulness, and a colorful presence to her work. Her properties make a dramatic unforgettable statement.

Over a 15 year period, The Michele Hughes Company has participated in $200 million of real estate transactions. Included in this portfolio are:

ASPEN: From 1992 to 2003 The Michele Hughes Company invested in the best Aspen locations such as Red Mountain, Wildwood, and Lacet in downtown Aspen. Developing a niche in the resort market, the company produced furnished turn key luxury homes that included art, antiques and the finest amenities. One of the properties, a 10,000 squate foot estate supporting an indoor swimming pool and surrounded by glorious views, sold within one month of completion at a record price.

SAN FRANCISCO:
A resident of the San Francisco Bay Area for 36 years, Michele Hughes focused her interest on luxury homes in the exclusive Marin County towns of Tiburon, Belvedere, Mill Valley. Larkspur and San Rafael.

KAUAI;
A resident of Kauai for 28 years the Michelle Hughes Company investments included six luxury homes and over 7000 acres of land. For example, Secret Beach Hideaway, purchased in 1979, began as 5.5 acres and has grown into a magnificent 40 acres with 1.5 miles of ocean frontage which the Hughes own. Currently this unique property includes:

HALE LANI and **HALE NANEA** are considered the most luxurious vacation cottages on Kauai, showcased on acres of oceanfront manicured tropical gardens. These cottages are featured in many prestigious travel publications.

PUALANI GARDENS the oceanfront nursery at the Secret Beach Hideaway property, produces thousands of lush tropical plants and organic fruits and vegetables for sale from a spectacular garden setting. Guests at the Secret Beach Hideaway are invited to participate in agricultural activities.

SECRET BEACH HIDEAWAY is a "one of a kind property", hosting undulating terrain, ocean and sunset panoramic vistas. Perfectly landscaped and terraced hillsides are the home to many tropical trees and flowers which are in lush abundance everywhere. "I love to create beauty and the Secret Beach Hideaway property allows me the raw canvas to express may passionate love affair with the land and to fulfill my dreams" says Michele Hughes.

Aloha
Thirty four years ago, Michele and Justin Hughes vacationed on Kauai for the first time. Six years later, a fateful phone call from an acquaintance led Justin to return to Kauai to investigate the potential purchase of a 5.5 acre parcel of undeveloped land above Secret Beach. This is the very property where **Hale Nanea** is situated today.

From Kauai, Justin called Michele at their San Francisco home and she remembers this conversation as if it happened yesterday" "I am not sure what we have here because the are is in wilderness, completely overgrown, but I believe there is an ocean beyond and it is worth your coming to have a look."

In order for Justin and Michele to get a feel for the property, they had to tie a string from tree to tree in search of a safe way through the thicket to the most magnificent Secret Beach below. "This was truly our version of Robinson Crusoe," says Michele. In 1979, Michele and Justin purchased this land. As you sit here today enjoying the panoramic ocean views, it is hard to fathom that this exquisite property was hidden under all the overgrowth of a tropical forest. It has taken years of planning, clearing, planting and constant maintenance, exacerbated by two devastating hurricanes in 1982 and 1992, to create what we see here today, a beautifully manicured tropical garden.

Although completed in 1989, Hale Nanea did not welcome its first guests until five years later. This beautiful cottage has been remodeled and upgraded twice in 2000 and 2006 when new limestone decks were installed along with new stone exterior, a cedar shake roof, all new furnishings, and a most stunning waterfall with two ponds. The second cottage, Hale Ke Aloha, was completed in 1995, nestled within one of the tropical valleys. This cottage has been remodeled in 1999 and again in 2996. It now features a designer bath and wall to wall glass windows.

A rare opportunity presented itself in 1996 when neighbor Sylvester Stallone, decided to sell his 5.5 acres of unimproved property to the Hughes. Further clearing and opening of view corridors revealed additional undulating terrain and landscaping became the focus for this newest acquisition. In 1999, Michelle, with her team, designed and built **Hale Lani,** meaning "Heavenly Home,: a most exquisite and romantic honeymoon cottage positioned where panoramic views are incredible. Remodled in 2006 and blessed by the Mayor and a Hawaiian Kahuna, Hale Lani has led a charmed existence.

Even before the last stone was set, the Los Angeles Times features a color 2 page spread in the Sunday Times Travel Section. **Hali Lani** was "on the map" and became the luxury destination of choice for discriminating travelers worldwide.

Over the next several years, the Secret Beach Hideaway earned many accolades from prestigious travel publications such a Fieldings, Fodors, the Ultimate Kauai Guidebook, Conde Naste Traveler, The Robb Report, Fine Living Network, Men's Journal, San Francisco Magzine and the Travel Channel.

During the first twenty years of their ownership, one cloud of uncertainty caused Michelle and Justin to delay further development plans. They did not have deeded access to Secret Beach as their property boundary fronted a conservation piece owned by someone else who refused to sell them a deeded access.

Truly a miracle happened in 2006 when the entire 24 acre property, including one and one half miles of spellbinding Secret Beach frontage, became available and the Hughes were able to purchase thie piece bringing their holdings to 35 acres.

The joy and relief I felt to know that our land was now protected from any unwanted development and that we ouned our beach access in perpetuity was just indescribable," said Michele.

Another fortuitous event occurred when in March of 2007, the 4 acre bluff of their neighbor became available and now their latest edition. In just three weeks, Michele and her miracle team of dedicated workers transformed "The Villa" into a showcase home now featured on their website www.secretbeachkauai.com.

Beginning with 5.5 acres in 1979, this beautiful oceanfront property of Justin and Michele Hughes is now one of the most unique in Hawaii spanning 40 acres of undulating terrain with mountain views, dramatic seascapes and ever changing sunset vistas. The vision is to plant tropical trees and flowers everywhere, to create a place of abundance and sustainability and to embrace their love and stewardship of the land.

Today, this "one of a kind" property, Secret Beach Hideaway is perfectly landscaped and terraced where additional native plantings of tropical trees and flowers are in lush display everywhere. "I love to create beauty and the Secret Beach Hideaway allows me the raw canvas to express my passionate love affair with the land and to fulfill my dreams," says Michele Hughes.

This stunning Kilauea property has several private trails to Secret Beach which was recently named "the most romantic beach in Hawaii" by Honolulu Advertiser.

From MicheleHughes.com

With conscience and sensitivity to time, place and legacy, the Michele Hughes Company successfully embodies the unprecedented vision for design and build experiences while consistently adding value to real estate projects in high end resort areas such as Kauai, Aspen, Tiburon and Cabo San Lucas.

MICHELE HUGHES navigates the world with style, elegance and passion. A very strong aesthetic sense, a determination and resilience to spare no expense to do things right, to focus on the details and to add value beyond expectations are the hallmarks of her efforts. She believes the spaces she creates are a microcosm of her personal identity, and with insight, vision, balance, uniqueness of design, and sensitivity to form and function, Michele Hughes and her experienced team create custom masterpieces throughout the world. The confidence exuded by the values of the Michele Hughes Company team produces unshakeable quality and enduring results.

Ms. Hughes is a Dean's List graduate of the University of Massachusetts, Amherst, and holds a Masters of Arts degree from Hofstra University, New York, in addition to obtaining advanced education at Oxford University, England and the core curriculum for a Masters in Business Administration at Golden Gate University in San Francisco.

Why did Secret Beach, LLC, The Michele Hughes Company, LLC, Justin and Michele Hughes choose to construct trails without permits and operate their multi-million dollar resort project for 15 years in agricultural lands, without ever obtaining a variance to operate legally? Why didn't TMH Company design and get permits for the trails legally? Why did they choose to disregard the laws?

A lesson must be learned on how to prevent this situation from repeating. ATF Permitting for real estate moguls cannot be considered a routine manner of business. The BLNR was correct in calling Secret Beach LLC disingenuous

23. LANDSCAPE CONTRACTOR OPERATED WITH WILLFUL DISREGARD OF REGULATIONS.

Bruce Laymon , Paradise Ranch, LLC has had extensive experience working in the Conservation District. He has many CD violations and citations. His first known CD violation, 1990 resulted in an Emergency Environmental Assessment because of un-permitted road construction in the Conservation District properties at Kauapea (TMK 5-2-5:35,36,37). He said he was ignorant.

He has worked in this area for over 20 years. In many states, heavy equipment operators who work without permits have their equipment seized by the state and their contractror's license revoked.

From the 1991 02-23 Shiraishi After-The Fact CDUA for Road Construction, applicant Bruce Laymon stated:

II. Description of proposed uses

1. Create and maintain a roadway* from the mauka Agricultural District area to the makai Conservation District area of the property to make it easier and safer for workmen to go into the Conservation District with their tools and equipment for the purpose of removing trash, dead trees, deteriorated and noxious plants. The roadway will also make it easier and safer for the property owner and enforcement officers to inspect, patrol and control the area, and to make arrests of vagrants and illegal campers on the property and for their removal therefrom.

*NOTE: Since the area within the Conservation District is steep and rugged and difficult for the workers to maneuver their way down to the beach area with their equipment and tools, the Applicant thought that the work could be expedited if he cleared a path down to the beach area with the use of a John Deere 450 Bulldozer (JD 450).

On September 24, 1990, while the operator was clearing a path with the JD 450, the equipment slid into a valley within the Conservation District, and the operator was unable to move it out. To save the JD 450, the Applicant ordered the use of a John Deere 850 Bulldozer (JD 850) to cut a "roadway" from the mauka area within the Agricultural District to the makai Conservation District area where the JD 450 was located. The roadway is about 10 feet wide. The JD 450 was retrieved on September 26, 1990, the same day that a DLNR inspector verbally ordered that no further work within the Conservation District be performed without a use permit. The Applicant has complied with this order.

Attached hereto as Exhibit H is a photo of the emergency roadway, looking from mauka to makai, and Exhibit I is a photo of the same roadway looking from makai to mauka with the hillside down which the JD 450 slid indicated.

His first violation in 1991 was because he was "ignorant".

The Applicant acknowledges that the work within the Conservation District was performed without a use permit. He was ignorant of this requirement, which he also acknowledges is no excuse; however, in mitigation, he asserts that he was of the belief that what he attempted to do was something desired by, and was with the blessing of, the various government officials.

The 2000 Violation/ATF, the only economic benefit stated was to the person who built the trail - Paradise Ranch LLC.

(b) Economic. As the trail has already been constructed, there are no economic benefits from the action. However, the significant costs of constructing the stairs (in excess of $30,000) provided economic benefits to those persons employed for such work.

Private vehicular access on this "the only private road to the sands of Kauapea Beach" has increased property value astronomically.

In 2003, Mr. Laymon said he didn't apply for grading and grubbing permits for the 3 acre Hughes property at Kealia Kai because it was in the middle of a bigger piece of land and it was confusing.

In 2007-2008, unknown persons dumped green waste and caused him to construct 2 miles of trails to remove it. The local community feels it was Mr. Laymon who dumped the green waste. He works for multiple property owners in the area.

In 2009, Mr. Laymon , when stopped by DOCARE for working in the Conservation District at Lepeuli, said that he thought the NRCS guy was supposed to get the permits, even though only the property owner, lessee or their agent (attorney) can apply for permits (not the NRCS guy).

Applicant should hire a reputable landscape contractor, with experience working **legally** in the CD.

23. THE PATROLLING OF PUBLIC BEACHES BY PRIVATE SECURITY GUARDS NEEDS INVESTIGATION.

For over a decade, a private Secret Beach Hideaway security guard has been harassing beach goers at Kauapea. He wears a fake security badge and carries mace or pepper spray. He is hired by people with vested commercial interests, very high dollar interests who advertise the privateness of their trails and private beach weddings. This should not be allowed.

Unauthorized camping was formerly a problem in this area. It is not now. Most places were held by absentee landowners then. There are many new homes in the area. Restricting access to public beaches usually increases problematic behavior. Creating family friendly beach access decreases problematic behavior.

The public is guaranteed a right of safe transit on all beaches. Safe from high waves. The public should also be safe from harassment from private security guards and commercial development interests when at the beach.

24. NATIVE BIRD HABITAT SHOULD BE IDENTIFIED AND PROTECTED.

DEA mentions the CD is nesting habitat for protected migratory sea birds - the wedge tailed shearwaters and tropic birds, yet fails to identify this nest area. These birds are colonial ground nesters. Lawn mowering or dogs can eliminate the colony immediately. Nest areas need to be enclosed and predators excluded with sea bird friendly fencing, designed and installed by wildlife biolists.

25. THE CONSERVATION DISTRICT PROPERTY (T.MK 5-2-5:36) CAN NOT BE AVAILABLE FOR SALE UNTIL ALL PERMIT MATTERS AND ACCESS ISSUES ARE RESOLVED AND UNAUTHORIZED CONSTRUCTION REMOVED AND PROPERTY RESTORED. This property is for sale (or auction), as listed on Koa Properties website. Three contiguous parcels are listed for sale - TMK 5-2-31, 33, and 36. This cannot be allowed. Un-authorized construction must be removed and conservation district property restored before these parcels can be sold. Developers must be held accountable.

THE SECRET IS OUT –

Exclusive Kauai Real Estate Offering

Surfing. Shelling. Swimming with Dolphins...

Secret Beach, where miles of silky white sand meets the turquoise sea. Offered for the very first time in its entirety, this extraordinary 34-acre estate includes six beach and bluff home sites, three guest house sites, and **over 2/3 mile of sandy beach frontage**.
Quite simply, there is *no other* comparable property in Hawaii.

Sought after by the most discriminating clientele in search of luxury island properties, this Secret Beach Hideaway has been featured in the *Wall Street Journal*, *the L.A. Times*, *Forbes*, and the *Robb Report*, among many others.

Accessed by three private gates on Kauapea Road—Kauai's "ultimate address"—the three-parcel estate offers **breathtaking ocean and mountain views** including legendary sunsets over *Bali Hai*, two exquisite guest homes, an office, an organic nursery, underground utilities, park-like acreage, ponds, waterfalls, and ***miles* of beach trails.**

The Kilauea Lighthouse and Wildlife Sanctuary, quaint Kilauea and Hanalei towns, the five star St. Regis Hotel and the famed golf courses of Princeville are minutes away.

KOA Properties is proud to announce ***an exclusive pre-listing opportunity*** to purchase the **SECRET BEACH HIDEWAY**, the crown jewel of The Michele Hughes collection.

Time is of the essence: offers must be submitted by June 10, 2011 to be considered, and brokers are fully protected.

Secret Beach: Where stress turns into ***bliss.***
For more information, please contact KOA Properties.
Check video at http://www.koakauai.com/blog/the-secret-is-out-exclusive-kauai-real-estate-offering.html

26. THIS DEA ONLY CONSIDERS THE IMPACT OF TRAILS TO PRIVATE RESIDENCES, NOT TO LUXURY RESORTS. SECRET BEACH HIDEAWAY PROPERTIES ARE A LUXURY VACATION RESORT, and have been for over a decade, not a private residence. The trails were constructed, without engineering, in the Conservation District, for commercial uses. These "private trails" further privatize the public beach and are advertised for private weddings.

Hughes Properties built and operate resorts in the Agriculturally zoned land at Kauapea. Secret Beach Hideaway, LLC has owned and operated multiple resorts at Kauapea: Hale Nanea - built in 1989 (in commercial resort operation for 17 years); Hale Ke Aloha - built in 1995 (in operation for 16 years); Hale Lani - built in 1996 (in operation for 15 years); The Villa - acquired in 2007 (operational for 4 years). Individual commercial resort operational time cumulatively totals over **52 business years.** These resorts are not operated as private residences. The trails are part of a private, commercial recreational resort operation and are actively marketed and advertised.

Michele and Justin Hughes have applied for TVR permits for Secret Beach Hideaway (TVNC 1112 TMK 5-2-5:33) and The Villa (TVNC 1113 TMK 5-2-5:31). Both have been denied - because they are on Ag land.

SECRET BEACH HIDEAWAY

THE ULTIMATE ACCOMMODATIONS-LUXURY HOMES & COTTAGES ON KAUAI

The Secret Beach Hideaway is one of the most stunning properties on Kauai. Every tree and flower on the lushly landscaped and very steep terrain has been planted by the owners, Michele and Justin Hughes, who carefully developed a master plan that makes every effort to respect the rural heritage of Kauai.

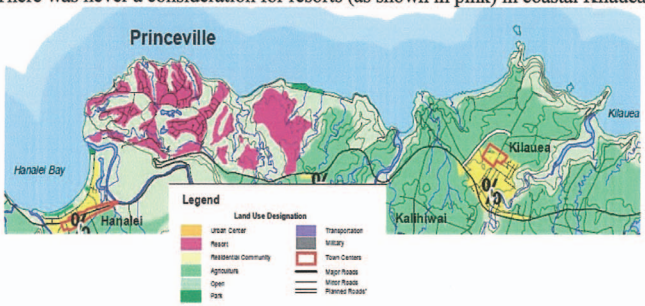
The 50 acres of land owned by Michele and Justin Hughes is zoned agricultural but most of it is unsuitable for farming because of its location on the rocky bluff above Secret Beach and Anini Beach. Despite the adversarial conditions, they have made, at considerable expense, a concerted effort to irrigate, add steps and trails for access, and plant the hillsides and whatever small flat areas available.

Secret Beach Hideaway luxury homes and cottages provide private access to remote beaches of golden sands ...

Secret Beach Hideaway, PO Box 781, Kilauea, HI 96754; 800-820-2882;
www.secretbeachkauai.com; info@secretbeachkauai.com;
Copyright 2008 Secret Beach Hideaway. All Rights Reserved

We are concerned about the precedent that allows this resort to continue constructing and operating private trails in the Conservation District, adjoining a private, commercial resort in ag zoned land and the granting of After-the-Fact permits to a resort developer with international expertise.

There was never a consideration for resorts (as shown in pink) in coastal Kilauea.



Princeville is a designated area for resorts, not Kilauea.

Kauai's coasts provide the foundation of our social, economic, recreational, and environmental prosperity. Every county has the primary responsibility to develop and maintain public access to and along the shoreline (HRS 46-6.5, 115-5, 115-7)

27. THIS PROJECT ENABLES INAPPROPRIATE LAND USE BY ATF PERMITTING, ENABLING THE RESORT TO CONTINUE ON AG LAND. This project has increased the value of ag land by up scaling to resort caliber valuations. In 2005, the Kīlauea Town Plan, An Update of the Kīlauea Sub-Area Plan, was prepared considering the quality of life in the Kilauea community and to formulate a vision for the future. The lowest satisfaction was with affordable housing in the Kilauea area. Concerns were expressed about the lack of walkways and paths. The legislative intent of the town expansion policy in the Kīlauea Town Plan was to control the spread of "gentlemen's estates" and the steep rise in land values that they bring. Increased assessed land valuations and increased property tax liability negatively impacts homeowners and farmers. The KNA would like adherence to the Kauai General Plan, and the Kilauea Town Plan and enforcement of established Agricultural zoning.

The existence of luxury resorts in agricultural areas leads to the social stratification of our community and the erosion of the feeling of aloha, trust and small-town neighborliness felt when long-term residents have known each other for generations. The working class community of Kilauea has median incomes slightly lower than Kauai's median incomes:

Kilauea Median Income	Per Capita	Household
2000	$19,184	$41,313.
2009	$29,381	$64,764

Kilauea Median House Value

2000	$214,200	(For state of Hawaii $272,700)
2009	$640,276	(for state of Hawaii $517,600)

The Villa : 2010 Rates, - our rates are **$1850 per night**, plus 4.166% GE tax, 7.25% TA tax, $600 one-time housekeeping fee plus 4.166% GE tax, and $3500 security deposit. $100 per hour (min 2 hours, required for seven nights or longer) mid-stay cleans. $100 per hour (min 2 hours) for extra cleaning requested by guests. 50% of total is due for reservation deposit. Full Payment must be made 60 days prior to arrival and 90 days prior to arrival for Holiday bookings.

Holiday rates are $1950 per night during Christmas/New Year (December 21 through January 3, 2009) 1 week minimum stay

Median gross rent in 2009 in Kilauea was $1586 per month. The Villa at Secret Beach rents for $57,350 per month. Most residents of Kilauea cannot afford to rent The Villa. The Villa is adjacent to property intended for Affordable Housing in the Kilauea area.

Taxed assessed value of bluff front residential property is increased by approximately 10% by the addition of a trail to the beach. Taxed assessed value of bluff front property is increased exponentially by the addition of 2 miles of trails to the beach. This is a definite economic impact with distinct financial advantage to the developers.

This DEA must honestly consider the impacts of this commercial resort and the real reasons the trails were constructed. **Proactive strategies are needed to acquire shoreline areas like Kauapea, with high scenic and recreational values, *prior to the imminent sale and/or threat of more unpermitted development.*** **These properties are for sale.** Public Beach access must be restored to Kauapea to ensure our quality of life in Kilauea.

Privitization of access to Kauapea Beach must stop. Newly, constructed, modern trails must be removed and the integrity of the Conservation District restored. Fines should be imposed to stop this practice of ATF permitting of un-authorized trails for commercial purposes in the Conservation District. A FONSI and CDUP on these 2 miles of unauthorized trail construction cannot be issued by the State of Hawaii.. There are significant impacts to this project that have not been considered. This project is contrary to Shoreline Management Practices and Ocean Resources Management Plan. It is not permittable.

The ahupua`a of Namahana has had a very interesting history. We believe that, prior to the displacement by the consular cattle and after the infiltration of Kamehameha chieftans on Kauai, the ili of Namahana was given to Queen Ka`ahumanu's mother, Namahana, who was an ali`i from Maui. After Namahana died, the land went to cattle (Charlton's). Now, the ahupua`a`a Namahana is being used as a "cash cow" to further displace the possibility of real agriculture and maka`ainana from the area. Time to say "Pau Ku." An ATF permit should not be issued for Secret Beach Hideaway, LLC.

Michele Hughes has recently been quoted in *The Garden Island* newspaper:

> "There needs to be balance, sensitivity, respect for the law and a final analysis on impact mitigation."

We agree. There needs to be respect for the law. And there needs to be a hard look taken at this project's real impacts. Mahalo for including these topics for discussion in the Draft Environmental Assessment for Secret Beach, LLC at Kauapea, Kauai. Please contact us if you have any questions or have trouble with any files or cannot make the graphics large enough.

Mahalo.
Hope and Tim Kallai

SSFM INTERNATIONAL

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www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Hope and Tim Kallai
P.O. Box 655
Kilauea, Hawai‘i 96754

Dear Hope and Tim Kallai:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua‘i, Hawai‘i

Thank you for your letter dated April 12, 2011 to Michael Cain on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We offer the following responses to your comments.

1. Comment noted.

2. The processing of the CDUA and Final EA do not require a certified shoreline. Secret Beach Properties, LLC (SBP) will work with the County of Kaua‘i to determine the need for a certified shoreline.

3. A public access to Kauapea Beach is not part of the project. There is an existing public access easement to Kauapea Beach on the western portion of the Property. Access to this public easement is from Kalihiwai Road.

4. Comment noted.

5. An archaeological field inspection and literature report was prepared by Cultural Surveys Hawai‘i, Inc. to identify potential cultural resources, historic properties, and provide recommendations related to the State of Hawai‘i historic review process. The archaeological field inspection was conducted on December 20, 2010 on the 23.8 acre Property to record and document any surface archaeological features.

   No historic, archaeological, and cultural resources (including trails) were identified during the literature review and field inspection. A majority of the Property consists of steep slope and/or cliff with little possibility for historic properties or cultural resources. No evidence of human modification or cultural material was observed.

6. Comment noted.

7. Comment noted.

8. We would like to clarify that the Draft EA does not state that there are no socio-economic impact. A summary of potential impacts of the proposed project is provided in Table 3 of the Draft EA, including socio-economic impacts. Based upon the nature of the proposed action as described and analyzed in the Draft EA: Table 3 summarizes: “No adverse impacts to the socio-economic environment. The proposed action does not influence the number of visitors, jobs, or resident income of the County of Kaua‘i”.

9. Comment noted.

10. Emergency responders have utilized the mauka-makai trails in the past and continue to use these trails. The following table by the County of Kaua‘i Fire Department provides the following breakdown of access across the Property to Kauapea Beach spanning the last five years:

Inc #	Date	Inc. Type	Location	Situation	Trail Used
2757	7/29/2006	364	Secret Beach	Surf Rescue	Yes
2087	6/4/2007	361	Secret Beach	Swimmer in Distress	Yes
2571	7/7/2008	143	Trail to Secret Beach	Brush Fire	Yes
2619	7/18/2008	151	Secret Beach	Brush Fire	Unknown
431	7/31/2008	141	Secret Beach	Tree Fire	Unknown
616	2/19/2009	140	Secret Beach	Small Fire	No
3292	9/15/2009	140	Secret Beach	Tree Fire	Yes
3724	10/21/2009	364	Secret Beach	Swimmer in Distress	Yes
4545	12/23/2009	321	Secret Beach	Drowning	Unknown
4606	12/28/2009	321	Secret Beach	Swimmer in Distress	Yes
450	2/6/2010	342	Secret Beach	Surf Rescue	Yes
2815	8/6/2010	321	Secret Beach	Swimmer in Distress	Yes
3020	8/22/2010	321	Secret Beach	Swimmer in Distress	Yes
3782	10/17/2010	142	Secret Beach	Brush Fire	Unknown
4743	12/26/2010	321	Secret Beach	Near Drowning	Yes
248	1/19/2011	364	Secret Beach	Swimmer in Distress	Yes

.

11. Comment noted.

12. Comment noted.

13. Comment noted.

14. We are following up with the DOH on this.

    The Draft EA There has been no change to existing drainage patterns. Existing runoff and sediments continues to travel to the bottom of the gulch and coastal bluff. No soil erosion has been observed on the existing trails; however, soil erosion is occurring on the eastern portion of the Property in locations previously cleared of trees.

    Further, existing improvements blend in with and utilize the topography of the Property while landscape maintenance will continue to be an integral component to minimize potential erosion of the coastal bluff. Operations associated with maintenance will utilize best management practices to minimize impacts to land, air, and water resources.

15. Based upon the nature of the proposed action as described and analyzed in the Draft EA, there will be no adverse secondary impacts and neutral to positive cumulative impacts.

    Secondary impacts, or indirect effects, are those which are caused by an action and later in time or farther removed in distance, but are still reasonably foreseeable. Secondary impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

    Cumulative impacts are effects on the environment which result from the incremental impact of a project when added to past, present, and reasonably foreseeable future actions. The cumulative impacts associated with the project includes assessing implementation of the project to evaluate it, and incorporate other known planned improvements within the study areas that would affect or be affected by the project.

16. The alternative actions identified in the Draft EA reflect the options provided by the BLNR in the current enforcement action; 1) obtain a use permit or 2) "remediate". The "no action" alternative describes the status quo. While the proposed alternatives which you have provided are excellent, they do not address the proposed remedies offered by the BLNR.

17. The maps provided in the Draft EA are for information purposes, thus they are not required to be stamped by a licensed surveyor.

18. Comment noted.

19. Comment noted.

20. Fencing for the Property was previously approved by the Board of Land and Natural Resources (BLNR) with the issuance of Conservation District Use Permit KA-2454 in 1991 as a means to keep vagrants, trespassers, and other unauthorized entry of the Property. The current fence request provides SBP an option in the event that discussions with the adjacent mauka landowners are not successful in preventing future unauthorized entry, dumping, and cutting on the subject property.

21. Comment noted.

22. Comment noted.

23. A biological survey was conducted on the Property and confirmed the presence of migratory seabirds on the Property. The U.S. Fish and Wildlife Service (USFWS) reviewed the Draft EA and confirmed that migratory seabirds may utilize the Property. The following mitigation measures, to protect federally protected species, were provided by the USFWS and will be implemented by SBP.

    - Any onsite projects, including vegetation removal, will occur outside of the nesting season for these seabird species (March through November). Prior to initiation of any work activity, the area should be searched to ensure that active nests or burrows are not present. If work must occur during the seabird breeding season, a 150 buffer from the active nest is recommended.

    - To protect the productivity of active nesting sites, it is suggested that free movements of pets (i.e. dog's off-leash) be prohibited on the property. It is also recommended that the use of sturdy animal-proof garbage containers that reduce the attraction of the area to non-native and feral species, such as house mice, rats, and feral cats, which are known to prey upon eggs and chicks of seabird species.

24. Comment noted.

25. The lateral trail was re-established while SBP was clearing the Property in response to DLNR-OCCL January 28, 2008 site inspection. The two mauka-makai trails, which provide access across the Property to Kauapea Beach, were in existence when SBP purchased the Property. This re-established lateral trail provides access across the Property so that it can be maintained in accordance with DLNR-OCCL rules to remove dead, dying, or hazardous trees. In September of 1990, a public health, safety, and welfare enforcement action was initiated by the state Department of Health (DOH)

against the previous landowner for illegal camping on the Property. The general location of the lateral trail was established during this time to respond to maintenance concerns.

26. Comment noted.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

04/25/2011

Sam J Lemmo/DLNR/StateHiUS
04/25/2011 01:27 PM

To Stephen M Cain/DLNR/StateHiUS@StateHiUS
cc
bcc
Subject Fw: Letter of Support - Secret Beach Properties KA-3586

Samuel J. Lemmo, Administrator ><)))>
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
Phn (808) 587-0377
Fax (808) 587-0322
www.hawaii.gov/dlnr/occl

---- Forwarded by Sam J Lemmo/DLNR/StateHiUS on 04/25/2011 01:27 PM ----

From: Brian Kariger <brian.kariger@nothing.com>
To: Samuel Lemmo <Sam.j.lemmo@hawaii.gov>
Cc: Lisa Smith <lesmith@kauai.gov>, Michael Dahilig <mdahilig@kauai.gov>, Bernard Carvalho <bcarvalho@kauai.gov>
Date: 04/25/2011 07:05 AM
Subject: Letter of Support - Secret Beach Properties KA-3586

Dear Mr. Lemmo,

I am a new member of the community here on the North Shore of Kauai, having recently acquired land on Kauapea Road adjacent to the applicant's property. After reviewing the application and discussing the issues with my neighbors, I am very concerned that this vital resource which provides emergency access to the beach might be lost. It is remarkable that the application has received support from both the fire and police departments. Public safety is paramount and with respect I urge the DNLR to consider the benefits of approving the application.

Sincerely,
Brian Kariger
Kauapea Bluff Acres, LLC
brian.kariger@nothing.com

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Brian Kariger
1015 Abbot Kinney Boulevard
Venice, CA 90291

Dear Mr. Kariger:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your comments dated April 25, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (DEA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment.

We confirm that you support the project.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

SSFM INTERNATIONAL, INC.
RECEIVED
APR 20 2011
FILE

April 19, 2011

FILE COPY

Re: DEA for Conservation District KA-3586(After the Fact Permitting)

I am writing to express my opposition to granting after the fact permits to Michelle and Justin Hughes(Secret Beach Properties LLC). DNLR gave SBP the conservation district rules but the Hughes chose to ignore the rules and build a modern trail anyway. Modern trials of any type are not allowed in conservation district limited subzone. This type of after the fact permitting is a way of doing business for the Hughes and Bruce Layman their contractor, they have done this on multiple projects before and have been successful unfortunately

This trail was build to increase the financial value of the property which is currently used as a vacation rental www.secretbeachkauai and advertised with this private trail. In addition the property is now for sale and the value of the private trail to the sale is apparent in the advertising of said property. www.koakauai.com.

My concern also includes the lack of any environmental assessment study. There are migratory seabirds using this area and they are definitely being impacted. Finally there seems to be a lack of Engineering studies soil erosion is already taking place. It is not a matter of IF this erosion will ultimately be headed down to the beach/ocean and reef, but WHEN.

Please do not grant any after the fact permitting and instead require SBP, the Hughes and Mr. Layman to return/restore this area to its prior undeveloped native conditions. On April 13, 2011 Ms. Hughes was quoted in the Garden Island as saying: "There needs to be a sensitivity and RESPECT FOR THE LAW and a final analysis on impact mitigation" I think it is important that Ms. Hughes be held to her own words.

Thank you for your consideration,

Nicki Lorayn Pignoli PO Box 1243, Kilauea 828-6109

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Nicki Lorayn Pignoli
P.O. Box 1243
Kilauea, Hawai'i 96754

Dear Ms. Pignoli:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated April 19, 2011 to the Department of Land and Natural Resources Office of Conservation and Coastal Lands (DLNR-OCCL) on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We offer the following responses to your comments:

- Secret Beach Properties, LLC (SBP) has indicated that there was a misunderstanding between SBP and DLNR-OCCL on what was allowed in order to remove dead, dying or hazardous trees, and maintain the Property. During the January 28, 2008 DLNR-OCCL site inspection, SBP was instructed by DLNR-OCCL Staff to remove dead, dying or hazardous trees and maintain the Property. SBP was further advised that these activities could be conducted without any type of conservation permit, as long as internal documentation of the work done was kept.

- Trails are allowed within the Conservation District Limited subzone by DLNR-OCCL rules. Specifically, Chapter 13-5-23, *Identified Land Uses in the Limited* subzone, Hawai'i Administrative Rules (HAR). This was confirmed by letter dated February 22, 2011 to Dean Uchida from DLNR-OCCL. In this letter DLNR-OCCL finds, "The proposed use is an identified land use in the Limited subzone of the Conservation District, pursuant to the Hawai'i Administrative Rules (HAR) §13-5-23, L-3, EROSION CONTROL (D-1)Erosion control, flood control, and other hazards prevention devices or facilities and L-4, LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS (D-1), removal of noxious plants for maintenance purposes in an area of more than ten thousand square feet that results in significant ground disturbance (e.g., clearing or grubbing).

- The Property is not being used as a vacation rental.

- A biological survey was conducted on the Property and confirmed the presence of migratory seabirds on the Property. The U.S. Fish and Wildlife Service (USFWS) reviewed the Draft EA and confirmed that migratory seabirds may utilize the Property. The following mitigation measures, to protect federally protected species, were provided by the USFWS and will be implemented by SBP.

  - Any onsite projects, including vegetation removal, will occur outside of the nesting season for these seabird species (March through November). Prior to initiation of any work activity, the area should be searched to ensure that active nests or burrows are not present. If work must occur during the seabird breeding season, a 150 buffer from the active nest is recommended.

  - To protect the productivity of active nesting sites, it is suggested that free movements of pets (*i.e.* dog's off-leash) be prohibited on the property. It is also recommended that the use of sturdy animal-proof garbage containers that reduce the attraction of the area to non-native and feral species, such as house mice, rats, and feral cats, which are known to prey upon eggs and chicks of seabird species.

- No soil erosion has been observed on the existing trails; however, soil erosion is occurring on the Property in locations previously cleared of trees. These cleared areas were already in existence when SBP purchased the Property. Future erosion on the Property is a great concern should the illegal tree cutting and dumping continues. The continued maintenance of the Property will minimize future erosion

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

William H. Strong and Sandra J. Strong
2676 Kauapea Road
Kilauea, Hawai`i 96754

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2011 APR -5 A 10: 48
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

April 4, 2011

Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawai`i
1151 Punchbowl Street, Room 131
Honolulu, Hawai`i 96813

Via Hand Delivery
and Via U.S. Mail

Attention: Mr. Samuel J. Lemmo, Administrator

Re: Comments on the Conservation District Use Permit Application and the Draft Environmental Assessment for Secret Beach Properties, LLC, Kilauea, Kauai, TMK: (4) 5-2-05:36 (CDUA: OA-3586)

Dear Mr. Lemmo:

We are part of a group of concerned citizens in Kilauea, Kauai. We submit these comments in opposition to the Conservation District Use Permit Application ("CDUA"), received by the Office of Conservation and Coastal Lands ("OCCL") on January 10, 2011, and to the Draft Environmental Assessment ("DEA"), dated January 2011, both of which were prepared on behalf of Secret Beach Properties, LLC ("SBP"). The CDUA and the DEA were prepared in connection with SBP's application for after-the-fact permits for the construction of approximately two miles of lateral trails, two mauka-makai trails and associated improvements across and through a 24-acre parcel of land owned by SBP that is identified on the Kauai tax maps as TMK No. (4) 5-2-5:36 (the "Property"). SBP is also asking the Board of Land and Natural Resources ("Land Board") to allow SBP to perform landscape maintenance and to install fencing along the mauka border of the Property.

For the reasons set forth in the March 11, 2010 report prepared by the OCCL staff ("OCCL Staff Report") (a copy of which is attached) and for the reasons set forth in this letter, we object to the CDUA and to the DEA and ask that the Land Board and the OCCL deny the requested permits and order the removal of the trail and the restoration of the Property to its previous condition. (Also attached is Item K-3 from the Minutes of the March 11, 2010 Land Board meeting ("Land Board Minutes") where the Land Board fined SBP for unauthorized trail construction.[1])

[1] The March 11, 2010 Land Board Minutes were approved by the Land Board on April 8, 2010.

It is Critical to Know the Context of the CDUP Application

It is critical that readers of the CDUA and the DEA be fully aware of the context in which the CDUA was submitted. Without doing so, there is a real risk that the reader will say "Hey, this trail is not so bad. It can't be seen from the beach; it can't be seen from the pali; it's not hurting anyone. What's the big deal? Let's let SBP keep their trail."

The problem is that the trail, and the brazen manner in which it was constructed, is an affront to the conservation district rules and, simply, the rule of law. It is a big deal because of what it has done to the unspoiled natural beauty of the Property and because it was constructed in direct and knowing violation of DLNR's own rules and regulations.

Throughout both the CDUA and the DEA, there is repeated reference to the "existing trails", as if their use should somehow be "grandfathered" or treated as an existing non-conforming use. However, it is very important to remember that we are not talking about some ancient Hawaiian trail system or even trails that have been around for decades. SBP bought the Property in November 2005 and, in 2006, began constructing various portions of the modern trail.[2] SBP claims that the several mauka-makai trails it constructed were established for the planting, maintenance and harvesting of tropical flowers and other ornamental plants in the portion of the Property that is within the State's Agricultural Land Use District. However, just 4 of the Property's 24 acres are within the Ag District. The vast majority of the Property (19 of its 24 acres) lies within the "limited" subzone of the State's Conservation Land Use District. The lateral portions of the modern trail (which now includes PVC drainage pipes, Trex, wooden planks, rebar driven into the soil to hold the planks in place, and hog wire fencing with metal T-posts[3]) were constructed by SBP in this portion of the Property[4], which is comprised of sensitive conservation land.

Positions of the OCCL Staff and Land Board Members

Although we have attached a copy of the OCCL Staff Report and Item K-3 from the Land Board Minutes for your ease of reference, we believe it essential that the reader be reminded of the very strong statements that the OCCL staff made in its report and that

[2] See DEA Section 1.2.

[3] See DEA Section 1.3.

[4] See OCCL Staff Report, page 4.

individual Land Board members made at the March 11, 2010 Land Board meeting where SBP was fined for violating HRS Chapter 183C and HAR Chapter 13-5:

1. SBP Notified of the Rules (page 3 of OCCL Staff Report)

The following is from page 3 of the OCCL Staff Report:

"OCCL staff reviewed Conservation District rules with representatives of the landowners, calling attention in particular to the following land uses pursuant to Hawai'i Administrative Rules (HAR) §13-5, and their associated permits: [the Report quoted from HAR Section 13-5-22 TREE REMOVAL]. The OCCL site visit was concluded, and the landowners' representatives were provided with a copy of HAR § 13-5 for reference."

2. Removal of Healthy Trees and Grading of a New Trail (Exhibit 7 to the OCCL Staff Report)

After the July 2009 visit to the Property by officers of DOCARE to determine if the required maintenance and clean up had been completed, OCCL was notified:

"that the landowners instead have removed healthy trees, cut and graded a new trail along the pali, and installed steps and fencing along the trail; and this work appears to be ongoing;"

3. Disingenuous Argument by SBP (pages 4 and 5 of the OCCL Staff Report)

After OCCL re-opened its investigation of possible land use violations on the Property and determined that "the Hughes or their contractors had begun construction of a modern trail transversing most of the property", on July 30, 2009, OCCL sent a Notice of Violation to SBP alleging various violations. (See page 4 of the OCCL Staff Report.) The OCCL staff went on to write the following:

"Secret Beach Properties has argued that the trail was necessary in order to clean debris off the property, that the trail was extended when additional debris was discovered, and that they were only clearing debris due to OCCL's initial Notice of Violation.

OCCL finds this argument disingenuous. The majority of debris that OCCL noticed on our original site inspection was at the top and the base of the pali, not at its midpoint. OCCL would also point out that the trail pathway has been cut and graded, that PVC drainage pipes have been lain under the trail, and that

fencing and trail borders were installed. We take this as evidence that the trail was intended to be a permanent feature of the land, and not a temporary measure designed for the one-time clean-up of debris."

4. Willful Nature of the Violations (page 6 of the OCCL Staff Report)

The following is from page 6 of the OCCL Staff Report:

"OCCL's main concern with this case is the willful nature of the alleged violations, rather than with any significant resource damage. The design and durability of the trail indicates that this was intended to be a permanent addition to the land, and one which would increase [its] value to prospective investors for the subject and neighboring parcels. The landowner had been notified [and] had been provided with a copy of Conservation District Rules. OCCL believes that the landowner would have been aware of the need for a permit for land uses in the Conservation District."

5. Extensive Trail Improvements (page 8 of the Land Board Minutes)

The following is from page 8 of the Land Board Minutes:

"Member Pacheco said he has experience building trails and this is an extensive trail cut with a lot of labor and expense just to get into an area to clear it out. People who do this kind of work in very steep terrain and he doesn't believe this trail was put in merely to clear the logs out. It's a trail meant to be used long term and the fact that they laid board down to hold the trail back — this is the building of a trail for access not to carry logs up.

Member Gon said he had a similar impression suggesting modifying item 5 by putting the remediation option in instead of the after-the-fact permit. He doesn't like the idea of how much more open this place is to be accessed by people on a dangerous conservation district area and he has a hard time accepting the motion as currently being proposed. His amendment to item 5 is Secret Beach shall remediate the trail and restore the land in its original state and scratch the application for an after-the-fact CDUP. It's understood the need to monitor, but because of the nature of the trail really open up the property to further activities both within and outside the control of the landowner and adjacent owner which is his concern. He would rather see remediation than establishment of a well built trail that has easy access to the beach."

6. No Reward for Unauthorized Behavior (pages 9 and 10 of the Land Board Minutes)

This is a classic case of the following adage at work when a person, faced with choosing to do the right thing or the wrong thing, chooses to do the wrong thing: "It is better to beg for forgiveness than to ask for permission." Addressing the issue of whether remediation of the trail would be an option, the Land Board Minutes said the Chair acknowledged:

> "that [the Land Board has] done that in the past [where] there is evidence that the owners were aware of the rules because if there was a situation where the Board was looking at a request where there was no trail in place where they wouldn't approve it and authorize it after-the-fact it becomes a motivation for people to go build it without a permit and come in seeking permission for an after-the-fact permit. They had situation where the Board has ordered remediation and then if people want to come in seeking permission for a trail they are on level with everyone else where it's a no-no, but not wanting to reward unauthorized behavior."

According to the Minutes, the Chair also had the following position:

> "Given that the Hughes had notification of the rules and tree cutting wasn't ok then we go build an extensive trail to see if there was further cutting as opposed to calling OCCL and saying there is more activity and it wasn't us which the Chair has trouble with. [The Chair] thinks going with a remediation with a lower fine and kept the option for an after-the-fact, but have a higher fine. Maybe go the route of remediation with a lower fine because you don't want to reward behavior that people were on notice that they shouldn't do."

According to the Minutes, the Chair's final remarks on the matter were as follows: "filing for a conservation district use permit does not mean it will be automatically granted and will have to come back before this Board."

Questions and Issues Raised by the CDUA

It seems to us that the CDUA is replete with unsubstantiated conclusions and misleading statements that need to be challenged. We have the following questions and concerns regarding the CDUA that should be addressed by SBP:

1. According to the OCCL Staff Report, the majority of debris resulting from the (allegedly) unauthorized tree cutting in 2007 was at the top and the base of the pali, not at its midpoint. The CDUA says the application will allow for "monitoring of activities on the property as the parcel fronts approximately 9 parcels on the mauka side".

   a. Why is a modern lateral trail (which runs through the approximate midpoint along most of the length of the Property) needed to clean up tree cuttings that were located near the mauka border of the Property, adjacent to just one of the nine lots that adjoins the Property?

   b. Please explain how a trail in the middle of the Property will allow SBP to monitor activities on the Property by the people occupying the nine mauka parcels.

2. The CDUA says the "lateral trails are needed primarily for property maintenance and control".

   a. In the context of the Property, a 24-acre parcel located in the "limited" subzone of the State's Conservation District and that includes an endangered bird, three indigenous birds and 10 plant species indigenous to Hawaii, what does "property maintenance and control" mean?

   b. Please explain how, exactly, the lateral trails will be utilized for "property maintenance and control".

3. Considering that the Property's mauka-makai width is approximately 200 feet at its narrowest[5], how does a 2.5-foot wide pedestrian trail that was cut through the middle of dense trees and other vegetation allow for the maintenance and control of the Property, much of which is comprised of steep cliff?

   a. In other words, unless the debris falls within an arm's length of the trail, how would a maintenance worker safely get to the debris and haul it off the Property?

[5] Based on the map and scale attached as Exhibit 1 to the OCCL Staff Report, it appears the Property is approximately 200 feet wide at its narrowest and approximately 650 feet wide at its widest, with much of the Property being approximately 240 feet wide.

b. Along those portions of the trail that have hog wire fencing (to "ensure that persons walking along the trail do not slip and fall down the pali"[6]), how would a maintenance worker safely get to debris and haul it off the Property?

4. The CDUA says the mauka-makai trails provide emergency personnel with alternative access to the shoreline area, which oftentimes means a faster response in emergency situations. The CDUA attaches letters from the County of Kauai Fire Department and the County of Kauai Police Department, each of which states that having the ability to drive to Secret Beach is helpful to their personnel.

   a. Please describe every instance during SBP's ownership of the Property that the County of Kauai Fire Department has used the Property's mauka-makai trails to access Secret Beach.

   b. Please describe every instance during SBP's ownership of the Property that the County of Kauai Police Department has used the Property's mauka-makai trails to access Secret Beach.

   c. Are the mauka-makai trails capable of providing vehicular access to Secret Beach?

   d. Readers of the CDUA may not be clear as to exactly which of SBP's trails would be used by emergency personnel. In a paragraph of the CDUA that includes a discussion of the lateral trails, the CDUA says "<u>these trails</u> can continue to be used by . . . emergency personnel as an alternative to the public access provided from Kuhio Highway." (emphasis added)

      Is SBP taking the position that the lateral trails are also needed and would be helpful for emergency personnel access to Secret Beach?

5. The CDUA says it also seeks approval for future removal of "unwanted vegetation, including trees".

   a. Please explain what is meant by "unwanted vegetation" and who determines whether vegetation is "unwanted".

[6] <u>See</u> Proposed Use section of CDUA.

   b. Exhibit 5 to the OCCL Staff Report includes photos that show the cutting of trees and other vegetation along the lateral trail.[7] With reference to the trees that Photo #'s 6, 7 and 8 show as being cut, would those trees fall within the definition of "unwanted vegetation"?

      If so, then why?

   c. <u>Where</u> will the "unwanted vegetation" and trees be removed to?

6. The CDUA says the existing trail improvements and the proposed plan for removing unwanted vegetation will allow SBP to "conserve, protect and preserve the coastal bluff and to minimize the potential for natural hazards such as soil erosion and landslides."

   a. Please explain <u>how</u>, exactly, SBP will "conserve, protect and preserve the coastal bluff ".

   b. Please explain how developing a trail, removing trees and other vegetation (including the soil attached to the removed trees and vegetation) and cutting into the side of a bluff that had been in its current, natural state for hundreds (thousands?) of years will minimize the potential for soil erosion and landslides.

7. The CDUA requests that SBP be allowed to install fencing along the mauka border of the Property to prevent unauthorized use of the Property.

   a. Please explain how such a fence would be consistent with SBP's argument that the mauka-makai trails be available for emergency personnel to access the shoreline area.

   b. Please cite the section(s) of the applicable statutes, ordinances and/or regulations that would allow the construction of such a fence.

8. The CDUA correctly states that the objective of the Limited Subzone is to limit uses where natural conditions suggest constraints on human activities. However, in the next paragraph, the CDUA goes on to say that the "application is to allow

[7] The photos attached to the OCCL Staff Report, which show the extensive clearing and tree cutting and the significant amount of materials added to the land to construct the trail, are actually very disturbing.

an existing trail system used to maintain the landscaping along the 23 acre parcel."

a. The word "landscaping" suggests human interaction with the natural vegetation. (HAR Section 13-5-23 defines "landscaping" as "alteration (including clearing) of plant cover.") Other than the trail and its improvements, isn't the Property in a natural condition, comprised of natural vegetation?

b. Where in the 24-acre parcel is the "landscaping" that is to be "maintained"?

c. Please explain how the construction of a modern trail with PVC drainage pipes, Trex, wooden planks, rebar, hog wire fencing and metal T-posts is consistent with an objective of natural conditions and constraints on human activities.

9. The Property is within the SMA and subject to HRS Chapter 205A.[8] HRS Section 205A-22 defines "Development" as including the "(1) Placement or erection of any solid material . . . ." HRS Section 205A-28 says "No development shall be allowed in any county within the special management area without obtaining a permit in accordance with this part."

a. The CDUA form asks the applicant if the proposed land use complies with HRS Chapter 205A. Interestingly, SBP's answer is that the "proposed action is consistent with Chapter 205A HRS relating to CZM." (emphasis added) SBP does not say whether or not its actions are in compliance with Chapter 205A.

b. Because compliance with Chapter 205A would require an SMA Permit for the trail improvements, please provide a copy of the SMA Permit authorizing SBP's trail improvements.

10. The CDUA says "The proper maintenance of the existing improvements as well as the coastal forest will assist in minimizing potential soil erosion and runoff."

In other words, SBP is saying that, in order to minimize soil erosion and runoff, it needs to maintain the very improvements that it constructed illegally and that are

[8] See DEA Section 7.4.

causing the erosion and runoff. Doesn't this argument seem rather ironic and circular?

11. The CDUA form requires SBP to describe how the existing physical and environmental aspects of the Property will be preserved or improved upon. After describing various birds that live in the area, including the Nene, and listing one of the purposes for the establishment of the Kilauea National Wildlife Refuge, SBP's response to this requirement is:

"With the majority of the improvements located at the 150 foot elevation, there are no impacts to the shoreline and to the shoreline processes. Continued maintenance of and enhancement to the existing coastal forest will further minimize the potential of erosion of the bluff."

Although the CDUA says "Future proposals for removal of unwanted vegetation will address erosion, as well as the maintenance and enhancement of the coastal forest, including impacts on native flora and fauna" (emphasis added), please explain how the current development and maintenance of a modern trail preserves or improves the habitat and nesting of the Nene, the Pacific Golden Plover, the Wedge-tail Shearwater, the White-tailed Tropicbird and the other birds that live on the Property.

12. In the section of the CDUA relating to how the land use will not be detrimental to health, safety and welfare, SBP says, "All improvements and maintenance will be done in compliance with existing governmental regulations." That's an ironic statement considering that the trail was developed in direct and knowing contravention of DLNR's rules.

Questions and Issues Raised by the Draft Environmental Assessment

We believe that the DEA, like the CDUA, is full of conclusions that are based on inaccurate factual contentions, improper assumptions and misleading statements.[9] In addition, it appears there is a general failure to disclose the basis for conclusions being made.

[9] Because many of the questions and issues raised by the CDUA also apply to the DEA, we will not restate our concerns to those duplicative questions and issues in this section of the letter. Nevertheless, the questions and issues raised by the CDUA are incorporated by reference into this section of the letter and, thus, must be addressed by SBP in its response to the comments it receives to the DEA.

1. Potential Impacts to Biological Environment (Section 2.11).

   a. Please take a look at Photo #'s 7, 8 and 9 from Exhibit 5 to the OCCL Staff Report:

      i. In light of what is shown by those photos, please explain how the following statements from Section 2.11.2 of the DEA can be made accurately:

         A. "No adverse impacts to the biological environment are anticipated as a result of the proposed action."

         B. "It is not anticipated to impact the Nene and Golden Plover foraging grounds or the nesting area for the migratory seabirds."

      ii. Of those live trees shown in the photos that were cut down for the trail, which fall within the definition of "unwanted" and why?

   b. The following is stated in the last paragraph of Section 2.11.2: "This replacement of unwanted vegetation can also address illegal tree-cutting activities that have occurred on the Property."

      Other than the tree cutting allegedly performed by Mr. Haas in 2007, what verifiable evidence is there that other mauka property owners have conducted illegal tree cutting on the Property?

   c. The last sentence of Section 2.11.2 says, "Additionally, the removal of dead ironwood trees will be positive for the migratory seabirds as their flight pattern along the coastal bluff is currently affected by the ironwoods." (emphasis added)

      i. Are the birds' flight patterns not affected by live ironwoods?

      ii. Is SBP suggesting, by implication, that all the ironwoods should be removed in order to clear a flight path for the birds?

2. Potential Impacts for Police and Fire Protection (Sections 4.3.2 and 4.4.2). These sections of the DEA state that "the existing trails currently provide an alternative and faster access to Kauapea Beach" for police and firefighters.

   Again, please clarify for the reader of the DEA whether SBP is taking the position that the lateral trails provide alternative and faster access to Kauapea Beach for emergency personnel.

3. Cumulative Impacts (Section 6.2). In this section of the DEA, SBP says "Existing and proposed improvements will allow Secret Beach Properties, LLC to walk, police, and maintain the Property."

   Again, please explain how, exactly, a 2.5-foot wide trail on a hillside will enhance the ability to maintain a 24-acre parcel that is, at its narrowest, approximately 200 feet wide.

4. Unwanted Vegetation (Section 7.3). The first sentence of the second-to-last paragraph of Section 7.3 provides that "It also proposes a procedure for the removal of unwanted vegetation to address illegal tree-cutting activities that have occurred on the Property."

   a. What does that mean?

   b. What "proposes a procedure for the removal of unwanted vegetation"?

5. Noxious Plants (Appendix C). Among the few authorized land uses in the limited subzone is the "removal of noxious plants for maintenance purposes". Appendix C of the DEA provides a detailed list of the Property's flora.

   Please describe which of the identified flora is considered "noxious" or is otherwise "unwanted" and that SBP intends to remove from throughout the Property via the trail.

6. Preliminary Finding (Section 11.1). Preliminary Finding 1 of the DEA says, "The proposed action does not involve irrevocable commitment to loss or destruction of any natural or cultural resources. Maintenance of the Property will continue to provide habitat and foraging areas for the Nene, a federal and state listed threatened and endangered species and indigenous migratory seabirds."

   a. Please explain how the cutting of trees and other vegetation for the construction of the trail does not involve the loss or destruction of natural resources.

b. Please explain how the cutting of trees and other vegetation for the construction of the trail provides habitat and foraging areas for the Nene.

Other Issues

In addition to the specific objections to the CDUA and the DEA described above, other significant reasons exist for denying an after-the-fact permit for the trail, requiring the removal of the trail and requiring the remediation of the Property to its prior condition.

Trail is for Commercial Purposes, Marketing and Financial Gain

It appears clear that the primary purpose for SBP's trail is to enhance the marketability of the Property and the Hughes' mauka parcels, not to protect or maintain the Conservation land that comprises the Property.[10] The trail is being promoted as an amenity to the Hughes' vacation rentals mauka of the Property and we have seen the trail used for tours to prospective purchasers of the Hughes' parcels.

Back in March of 2010, when the OCCL Staff Report was prepared, the Report stated that "OCCL conducted an online search of properties for sale in the area. The Hughes properties are listed as luxury vacation rentals, but we did not find evidence that they were for sale. OCCL does note that listings for neighboring properties do claim trails with private beach access (e.g. The Villa at Lewalani, TMK 5-2-005:035, advertises "coveted beach access on a private manicured trail leading to world renowned Secret Beach;" see Exhibit 6)."[11]

If the OCCL staff conducted its search today, it would find evidence that it did not find last year. Attached to this letter is an advertisement for the sale of real estate that includes the Property. The advertisement reads, in part, as follows:

[10] The Land Board Minutes state that one of the Land Board members "commented that if the neighbors never cut the trees this wouldn't be an issue that it wouldn't necessitate the Hughes ever going into that part of their property." Unfortunately, this simply is not true and is a misperception that must be clarified. The part of the Property where Mr. Haas allegedly cut down trees is separate and apart from the various portions of the trail that run throughout the Property and that are used by guests of the Hughes' vacation rentals to access the beach.

[11] Actually, a careful reading of the second page of Exhibit 6 to the OCCL Staff Report indicates that the quoted text is from a listing for TMK (4) 5-2-5:31 CPR 1. The property covered by that TMK is a single-family condominium unit and, from January 11, 2002 until November 12, 2010, was owned by SBH, The Villa LLC ("SBH"). As of the date of this letter, the two members of SBH are Justin and Michele Hughes.

"34 ACRES ON SECRET BEACH

Offered for the first time in its entirety, the 34 acre **home sites,** and **over 2/3 mile of sandy beach frontage**. Accessed by three private gates on Kauapea Road . . . the three parcel estate offers breathtaking ocean and mountain views . . ., waterfalls, and miles of beach trails.

* * *

The estate is being offered **privately to select clientele**. . . . Submit your **best offer NOW to Koa Properties! All offers must be received by June 10, 2011** to be considered. **Time is of the essence!**

The estate may be purchased in its entirety or as three separate parcels." (bold in original, underline added)

The property being sold is comprised of three parcels owned by Hughes-controlled entities: (a) TMK (4) 5-2-5:32, which is 5.325 acres and is owned by Justin and Michele Hughes, as Trustees of their Trust; (b) TMK (4) 5-2-5:33, which is 5.030 acres and is also owned by Justin and Michele Hughes, as Trustees of their Trust; and (c) TMK (4) 5-2-5:36, which is the 23.803-acre Property owned by SBP, on which the trail has been built.[12]

Given the June 29, 2011 deadline for SBP to obtain a favorable SMA decision from the County, and given the August 13, 2011 deadline for the Land Board and the OCCL to reach a decision regarding the CDUA[13], and given the final bid date of June 10, 2011 identified in the advertisement, it is apparent that the Hughes are seeking to sell the Property prior to those deadlines. This has been a concern of the community from the beginning of the DLNR process. If the Hughes sell the Property, then who will be responsible for its remediation?

[12] On September 28, 2010, the following review was written by "J&K Boulder" of Boulder, Colorado on the Trip Advisor website for 2908 Kauapea Road, which is part of TMK (4) 5-2-5:33:

"We were fortunate this time to meet the owner, Michele Hughes who has put many years of love and tons of hard work into making this story book hideaway. Michele graciously invited us to hike on the extensive trails which she just completed that run up and down the cliffs above Secret Beach. Sadly for us the Villa is now up for sale so we won't be able to return here but we will surely keep our eyes and ears open for any new projects Michele is part of as they will certainly be something extraordinary!"

[13] See the OCCL's Notice of Acceptance letter, dated February 22, 2011, addressed to Dean Uchida of SSFM International, Inc.

Perhaps even more brazen than the above-referenced advertisement to sell the Property along with its "miles of beach trails", The Michele Hughes Company has a website (www.secretbeachkauai.com), the "Secret Beach Hideaway" portion of which includes the following text:

> "The Secret Beach Hideaway is one of the most stunning properties on Kauai. Every tree and flower on the lushly landscaped and very steep terrain has been planted by the owners, Michele and Justin Hughes, who carefully developed a master plan that makes every effort to respect the rural heritage of Kauai.
>
> * * *
>
> The 50 acres of land owned by Michele and Justin Hughes is zoned agricultural but most of it is unsuitable for farming because of its location on the rocky bluff above Secret Beach and Anini Beach. Despite the adversarial conditions, they have made, at considerable expense, a concerted effort to irrigate, add steps and trails for access, and plant the hillsides and whatever small flat areas available.
>
> * * *
>
> Secret Beach Hideaway luxury homes and cottages provide private access to remote beaches of golden sands, where spinner dolphins and whales can be seen frolicking just off the shore." (emphasis added)[14]

[14] On January 11, 2011, the following review was written by "rwaites" of Palm Beach, Florida on the Trip Advisor website for 2908 Kauapea Road:

"The owner, Michele Hughes, has put many years of thought and planning into this place and she is rightfully proud of it. . . . The owner has built steps and terraces down to the amazing Secret Beach which do require some effort and common sense."

On August 25, 2010, the following review was written by "lcosette" of New York on the Trip Advisor website for 2908 Kauapea Road:

"Michelle, the owner of the property, was welcoming and pleasure to get to know. . . . Michelle has done a great job landscaping the 40+ acres with different tropical trees and plants. The walk down to the beach takes you along a landscaped path, although it can be steep in some areas and might be hard to go back up if your mobility isn't great."

Based on the definition of "commercial purpose" in HAR Section 13-5-2[15] and the manner in which the trail is being marketed as an amenity to Michele Hughes' luxury vacation rental business, it certainly seems as if the Property is being used for commercial purposes.

As evidenced by her company's website, Michele Hughes is an experienced and sophisticated real estate developer and operator of luxury vacation rentals. For commercial enterprises like hers, obtaining governmental permits and paying fines are just part of the cost of doing business. A simple fine, by itself, is just not sufficient in this case. SBP must be required to put the Property back to the state it was before the modern trail was constructed.

Public Hearing Required

HAR Section 13-5-40(a) states that "Public hearings shall be held: (1) On all applications for a proposed use of land for commercial purposes; . . . ." (Please see the definition of "commercial purpose" in the footnote.)

Not surprisingly, neither the CDUA nor the DEA makes a single mention of the fact that the trail (and, thus, the Property) is being used for a commercial purpose (i.e., as an amenity to the Hughes' luxury vacation rental business). Presumably, one reason for that failure is the desire of SBP to avoid a public hearing on Kauai where the Kilauea community and other members of the public would be given an opportunity to comment on SBP's modern trail.

It is understandable that the OCCL and the DLNR were not previously aware of the commercial use of the Property and, thus, had not required a public hearing on SBP's CDUA. However, as the website of The Michele Hughes Company and the comments from the guests of the Hughes' vacation rentals make very clear, the trail is being marketed and used as part of their vacation rental business. Therefore, pursuant to HAR Section 13-5-40(a)(1), a public hearing, conducted in accordance with HAR Chapters 13-1 and 13-5, must be held on Kauai in connection with the CDUA.

[15] HAR Section 13-5-2 provides, in relevant part, as follows: "Commercial purpose" means those land uses which entail or comprise the . . . providing of services, or relating to or connected with trade, traffic in goods and services or commerce in general; . . . ."

The Trail is NOT Allowed in the Limited Subzone

The CDUA form requires the applicant to demonstrate that the proposed land use is consistent with the Conservation District and the restrictions applicable to the Conservation District set forth in HAR Chapter 13-5.

HAR Section 13-5-10(c) says land uses permitted in a subzone shall be restricted to those uses provided for in HAR Chapter 13-5.

Addressing identified land uses in the limited subzone, HAR Section 13-5-23(b) provides:

> "If a proposed use is not presented below or in section 13-5-22, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses."

HAR Section 13-5-30(b) states:

> "Unless provided in this chapter, land uses shall not be undertaken in the conservation district. . . . The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria."

In other words, if a land use is not provided for in HAR Chapter 13-5, then the use is not allowed; although HAR Section 13-5-23(b) says that if a land use proposed by a landowner in the limited subzone is not set forth in HAR Section 13-5-22 (protective subzone list) or in HAR Section 13-5-23 (limited subzone list), then the only way that land use can be allowed in the limited subzone is if a temporary variance is issued, the district boundary is changed or the rules are changed to add the use to the allowed uses.

On page 5 of the OCCL Staff Report, the OCCL Staff concluded that SBP's trail "meets this definition of land use as it caused a permanent change in the land area, and involved the grading of land." The Report goes on to say that "[t]he closest identified land use to the trail construction would be found under HAR § 13-5 L-4 LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS." (emphasis added)

Notice that the OCCL Staff did not state, definitively, that construction of the trail was, in fact, an allowed or identified use within the limited subzone. It said that "landscaping and removal of noxious plants" was the closest identified use to what SBP had done to the Property. In fact, although SOME of what was done by SBP to the

Property in constructing the trail might fall within an allowable land use IF the proper permit was obtained (e.g., removing more than five large trees), NONE of the allowable land uses include the construction of the type of modern trail that has been constructed by SBP.

Conclusion

As the OCCL Staff Report makes clear, back in January of 2008, the landowners were given a copy of the DLNR's rules, but still went ahead and constructed a modern trail within conservation land. Despite SBP's prior knowledge of the rules and regulations, a decision was made to construct the trail in violation of those rules and regulations.

Issuing a permit to allow the trail to remain and not requiring remediation would make a mockery of the DLNR's regulations and procedures and would set a very bad precedent (i.e., that a landowner can knowingly violate the DLNR's rules and permitting requirements, pay a fine, then just apply for and obtain a permit for the illegal acts they had already performed). We are fearful that if the trail is allowed to remain on the Property, then it would create a precedent for other owners of sensitive conservation land to construct trails through such land without proper permits. In addition to requiring everyone to abide by the rule of law, this is about fixing and preventing further damage to important and beautiful coastal and conservation lands.

SBP alleges that the purpose of the modern trail, which traverses almost the entire length of the 24-acre conservation parcel, is for maintenance and safety and not for beautification. However, the trees that were allegedly cut by Mr. Haas and that were the subject of the 2007 OCCL investigation were in a separate and relatively small portion of the 24-acre parcel. Also, simply put, there is nothing along the trail that needs to be maintained. Prior to the trail's construction, there was no need for any such maintenance, and no such maintenance is needed now.

Finally, after the trail was developed, we noticed that trespassing and theft on the mauka properties by people using the trail has increased.

Request for Contested Case Hearing

If the Land Board decides to issue one or more permits to SBP allowing the trail to remain and allowing SBP to construct a fence along the mauka boundary of the Property, and if the Land Board does not require SBP to remediate the Property to the condition it was in prior to the construction of the modern trails, then, by this letter and

pursuant to HAR Section 13-1-29(a), we hereby request a contested case hearing with respect to such decision of the Land Board.

We respectfully request that the Land Board and the OCCL deny the requested permits and order the removal of the trail and the restoration of the Property to its previous condition.

We appreciate the opportunity to provide these comments. Please contact us should you wish to discuss the concerns raised in this letter. We can be reached at 808 828 0429.

Very truly yours,

William H. Strong

Sandra J. Strong

Enclosures

cc: Secret Beach Properties, LLC (w/enclosures)
P.O. Box 781
Kilauea, Hawaii 96754
Attention: Michele and Justin Hughes
Via U.S. Mail

SSFM International, Inc. (w/enclosures)
501 Sumner Street, Suite 620
Honolulu, Hawaii 96817
Attention: Robyn Loudermilk
Via U.S. Mail

Attachments
1. March 11, 2010 report prepared by the OCCL staff
2. Minutes from the March 11, 2010 Land Board meeting
3. Advertisement entitled "The Secret is Out; 34 Acres On Secret Beach"

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

William H. and Sandra Strong
2676 Kauapea Road
Kilauea, Hawai'i 96754

Dear William and Sandra Strong:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated April 4, 2011 to Sam Lemmo and on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We offer the following responses to your comments:

Conservation District Use Application

1. The general location of the lateral trails was established during the early 1990's in response to maintenance concerns. In September of 1990, a public health, safety, and welfare enforcement action was initiated by the state Department of Health (DOH) against the previous landowner for illegal camping on the Property.

   The re-establishment of the lateral trails, the existing permitted mauka-makai trail, and the two unpermitted mauka-makai trails are sufficient for maintenance and monitoring of the Property. These lateral trails allow for access across the length of the Property while the mauka-makai trails allow access to upper and lower portions of the Property. Combined, all of these trails also allow for monitoring of the adjacent mauka properties.

2. Secret Beach Properties, (SBP) intends to maintain the Property based upon the existing Conservation District Rules. More specifically: Section 13-5-24 L-4 LANDSCAPING, REMOVAL OF NOXIOUS PLANTS, (C-1) states: *Landscaping, defined as alteration (including clearing) of plant cover*. and Section 13-5-22 P-12 TREE REMOVAL (A-1) *Removal of dead or diseased: (1) Non-native trees; or (2) Native trees less than six inches in diameter measured at ground level*. (A-2) *Removal of trees which pose a hazard to public safety; provided however, that the landowner shall be required to provide documentation for the need to remove the tree if it was six inches or greater in diameter measured at ground level.*

   As noted in Item 1, all of the trails combined, allow for Property maintenance and control..

3. It is anticipated that persons maintaining the Property would depart from the existing trails to gather green waste/debris. However, hazardous conditions will not warrant such action.

4. Emergency responders have utilized the mauka-makai trails in the past and continue to use these trails. Vehicular access is provided from Kauapea Road down to the location of the western most mauka-makai trail. The County of Kaua‘i Fire Department provides the following breakdown of access across the Property to Kauapea Beach spanning the last five years:

Inc #	Date	Inc. Type	Location	Situation	Trail Used
2757	7/29/2006	364	Secret Beach	Surf Rescue	Yes
2087	6/4/2007	361	Secret Beach	Swimmer in Distress	Yes
2571	7/7/2008	143	Trail to Secret Beach	Brush Fire	Yes
2619	7/18/2008	151	Secret Beach	Brush Fire	Unknown
431	7/31/2008	141	Secret Beach	Tree Fire	Unknown
616	2/19/2009	140	Secret Beach	Small Fire	No
3292	9/15/2009	140	Secret Beach	Tree Fire	Yes
3724	10/21/2009	364	Secret Beach	Swimmer in Distress	Yes
4545	12/23/2009	321	Secret Beach	Drowning	Unknown
4606	12/28/2009	321	Secret Beach	Swimmer in Distress	Yes
450	2/6/2010	342	Secret Beach	Surf Rescue	Yes
2815	8/6/2010	321	Secret Beach	Swimmer in Distress	Yes
3020	8/22/2010	321	Secret Beach	Swimmer in Distress	Yes
3782	10/17/2010	142	Secret Beach	Brush Fire	Unknown
4743	12/26/2010	321	Secret Beach	Near Drowning	Yes
248	1/19/2011	364	Secret Beach	Swimmer in Distress	Yes

A similar table is being provided by the County of Kaua‘i Police Department.

5. Discussions with DLNR-OCCL have narrowed the definition of unwanted vegetation to include the removal of trees to non-native trees or those that may present a hazard as well as noxious plants. DLNR-OCCL’s preferred solution is to have SBP remove unwanted vegetation based upon site specific plans submitted to DLNR-OCCL for review and approval.

6. The DLNR-OCCL has indicated that property owners are responsible for property maintenance. Hence the enforcement action and filing of the Conservation District Use Application.

7. The installation of a mauka boundary fence is an option SBP would like to have should unauthorized uses and trespassing continue to occur on the Property. If a fence is to be installed, SBP will work with the emergency responders to ensure they continue to have access to the mauka-makai trails. Fencing of the Property was previously approved by the Board of Land and Natural Resources (BLNR) in 1991 with the granting of CDUA KA-2966.

8. The use of the word “landscaping” is based upon the definition used within Title 13-5 Conservation District, Hawai‘i Administrative Rules (HAR). Specifically, Section 13-5-23 L-4 LANDSCAPING, REMOVAL OF NOXIOUS PLANTS, (C-1) states: *Landscaping, defined as alteration (including clearing) of plant cover*. Landscaping will be conducted as noted in Item 2.

   Trails will allow the Property to be maintained and ensure that vagrants and trash does not accumulate.

9. As noted in the draft EA, the applicant will be applying for a Special Management Area (SMA) Permit (minor) for the proposed project. The SMA Permit is processed by the County of Kaua‘i Planning Department (KPD). Consultation with KPD occurred to determine when the SMA Permit should be filed. KPD advised that the SMA Permit be filed with the Planning Department after the EA/FONSI has been issued by DLNR-OCCL.

10. As noted in Item 6, DLNR-OCCL has indicated that property owners are responsible for property maintenance. The re-establishment of the lateral trails in combination with the existing mauka-makai trails allow for Property maintenance.

11. The greatest, current threat to the existing habitat is the unauthorized cutting and dumping of green waste on the Property. US Fish and Wildlife Service has provided mitigation measures to ensure that property maintenance does not adversely impact listed bird species.

12. Comment noted.

<u>Draft Environmental Assessment</u>

1. The photographs that you referenced were taken by SBP to show the conditions in the vicinity of the lateral trails, prior to SBP cleaning up. Thus it is not known who cut these trees and why.

   There have been several occasions when SBP witnessed illegal tree cutting on the Property. The last occurrence was on April 4, 2011. The persons cutting the trees on SBP lands were later asked to remove the debris from the tree cuttings.

   This sentence regarding then ironwoods was removed as it is not supported by the biological report.

2. No. We are not taking the position that lateral trails provide alternative and faster access to Kauapea Beach for emergency personnel.

3. Note answer to Item 1 under “Conservation District Use Application”.

4. As noted in the Draft EA, DLNR-OCCL understands the need for SBP to be able to maintain the Property of noxious plants, dead trees, and trees that pose a hazard. However, DLNR-OCCL has expressed a desire to limit the removal of trees to non-native trees or those that may present a hazard.

   The preferred solution is to have SBP remove dead and hazardous trees and noxious plants based upon site specific plans submitted to DLNR-OCCL for review and approval. This solution is based upon the existing Conservation District Rules: Section 13-5-24 L-4 LANDSCAPING, REMOVAL OF NOXIOUS PLANTS, (C-1): *Landscaping, defined as alteration (including clearing) of plant cover*; and Section 13-5-22 P-12 TREE REMOVAL (A-1) *Removal of dead or*

diseased: (1) Non-native trees; or (2) Native trees less than six inches in diameter measured at ground level. (A-2) *Removal of trees which pose a hazard to public safety; provided however, that the landowner shall be required to provide documentation for the need to remove the tree if it was six inches or greater in diameter measured at ground level.*

These site specific plans will include the amount of trees and vegetation to be removed, why they are being removed, proposed replacement vegetation, and best management practices to be utilized to minimize potential erosion. Replacement vegetation would be limited to native species appropriate for the area. This will be done in consultation with DLNR-OCCL and utilizing information obtained from the biological reconnaissance survey conducted on the Property and located in Appendix C of the Draft EA.

5. Specific plants have not been identified. As mentioned earlier, the removal of vegetation will be done in consultation with DLNR-OCCL staff through the establishment of site specific plans.

6. The removal of dead trees and noxious plants will allow the existing native vegetation to grow. This will be supplemented with the planting of additional native vegetation that will create a better foraging area for the Hawaiian goose.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk

Robyn L. Loudermilk, AICP
Planner

RECEIVED
OF CONSERVATION
COASTAL LANDS

April 6, 2011

Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813

2011 APR 11 P 1:30

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Via e-mail: oeqc@doh.hawaii.gov

Dear Mr. Samuel J. Lemmo, Administrator,

My Family owns a property in Kilauea Hawaii, at 2860 Kauapea Road. This letter is to respond to the request for comments on the matter of Conservation District Use Permit Application and the Draft Environmental Assessment for Secret Beach Properties, LLC ("SBP"), Kilauea Kauai, TMK: (4) 5-2-05:36; CDUA: OA-3586

Chapter 9 of the Draft Environmental Assessment: "Alternatives to the proposed action" lists two possible alternatives to consider for the requested permit. I am strongly in favor of adopting Alternative 9.2, the "remediation alternative" which would require removing all existing improvements on the property. Below is a summary of why alternative 9.2 should be selected and applied to the requested permit.

- SBP was given the conservation district rules by the DNLR, but chose to ignore the rules and construct the trail anyway. The trail is constructed using lumber, steel rebar, PVC drain pipes and steel fencing. It is my understanding that "modern trails" of this type are clearly not allowed in the Limited Subzone of the Conservation District.

- Despite what is said in the Draft Environmental Assessment, the trail is not needed for maintenance of the property, as the property has been maintained by previous owners without the need for a trail for many years. It is my opinion that the trail was constructed to enhance the financial value of the land, and other land owned by SBP principals. Recently the land has been listed for sale and the trail system is highlighted as a valuable improvement to the property. As in other places on the island where trails have been constructed, (if this trail is allowed to remain) I hope a public hearing will be scheduled so the community can provide input about this issue as the trail appears to go against the intent and vision that established the conservation zone in the first place.

- SBP and its principals are highly experienced real estate developers, and any fees or fines applied to their property, is just a cost of doing business. Granting SBP an after the fact conservation district use permit would be setting a bad precedent for how the DLNR deals with land owners and developers who violate DLNR rules and construct improvements despite the rules.

2860 KAUAPEA ROAD, KILAUEA, HAWAII 96754
PHONE: (808) 828-1148

- The Draft Assessment infers the trail will benefit emergency personnel accessing Secret Beach. I am not aware, that in the 25 years we have owned our property, any emergency personnel have used trails to access the beach. However, I am aware that emergency personnel have used the private road access to Secret Beach that starts at the west end of Kauapea road. Why would emergency personnel use a trail when they can drive to the beach?

- Rather than preserving or improving the existing physical and environmental aspects of the Property, the trail negatively impacts the existing physical and environmental aspects of the Property by removing vegetation and adding improvements.

If you have questions or want to discuss this matter further, please call me anytime at (808) 828-1148.

Sincerely,

Brad Thorson

SSFM INTERNATIONAL

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Brad Thorson
2860 Kauapea Road
Kilauea, Hawai'i 96754

Dear Mr. Thorson:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua'i, Hawai'i

Thank you for your letter dated April 6, 2011 to Sam Lemmo on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (Draft EA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment (Final EA).

We offer the following responses to your comments:

- Secret Beach Properties, LLC (SBP) has indicated that there was a misunderstanding between SBP and DLNR-OCCL on what was allowed in order to remove dead, dying or hazardous trees, and maintain the Property. During the January 28, 2008 DLNR-OCCL site inspection, SBP was instructed by DLNR-OCCL Staff to remove dead, dying or hazardous trees and maintain the Property. SBP was further advised that these activities could be conducted without any type of conservation permit, as long as internal documentation of the work done was kept.

- The lateral trail was re-established while SBP was clearing the Property in response to DLNR-OCCL January 28, 2008 site inspection. This trail provides access across the Property so that it can be maintained in accordance with DLNR-OCCL rules to remove dead, dying, or hazardous trees. In September of 1990, a public health, safety, and welfare enforcement action was initiated by the state Department of Health (DOH) against the previous landowner for illegal camping on the Property. The general location of the lateral trail was established during this time to respond to maintenance concerns. The two mauka-makai trails were in existence when SBP purchased the Property.

- Comment noted.

- Emergency responders have utilized these trails in the past and continue to use these trails. The County of Kauai Fire Department provides the following breakdown of access across the Property to Kauapea Beach spanning the last five (5) years:

Inc #	Date	Inc. Type	Location	Situation	Trail Used
2757	7/29/2006	364	Secret Beach	Surf Rescue	Yes
2087	6/4/2007	361	Secret Beach	Swimmer in Distress	Yes
2571	7/7/2008	143	Trail to Secret Beach	Brush Fire	Yes
2619	7/18/2008	151	Secret Beach	Brush Fire	Unknown
431	7/31/2008	141	Secret Beach	Tree Fire	Unknown
616	2/19/2009	140	Secret Beach	Small Fire	No
3292	9/15/2009	140	Secret Beach	Tree Fire	Yes
3724	10/21/2009	364	Secret Beach	Swimmer in Distress	Yes
4545	12/23/2009	321	Secret Beach	Drowning	Unknown
4606	12/28/2009	321	Secret Beach	Swimmer in Distress	Yes
450	2/6/2010	342	Secret Beach	Surf Rescue	Yes
2815	8/6/2010	321	Secret Beach	Swimmer in Distress	Yes
3020	8/22/2010	321	Secret Beach	Swimmer in Distress	Yes
3782	10/17/2010	142	Secret Beach	Brush Fire	Unknown
4743	12/26/2010	321	Secret Beach	Near Drowning	Yes
248	1/19/2011	364	Secret Beach	Swimmer in Distress	Yes

- Comment noted.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2011 APR 26 A 10 36

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

4/21/2011

Attention: DLNR/Office of Conservation and Coastal Lands

Subject: After-the-fact- permits for private trails to Kauapea Beach

To Whom It May Concern,

I am a resident of Kilauea and enjoy visiting Secret beach. It is a haven and a place I go that gives me great peace. On a sad note, my father drowned at Kauapea Beach December 23rd of 2009. I strongly believe that this is a dangerous beach for visitors of Kauai and currently there is no strong signage warning visitors. Allowing for more access to the beach and disturbing the wildlife would be very negative thing to do in my opinion. Please consider my words.

Thank You,

Courtney Puig Zietz

courtneypuig@gmail.com

(808)635.2572

501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

June 9, 2011 SSFM 2010_056.00

Courtney Puig Zietz
P.O. Box 621
Honolulu, Hawai‘i 96809

Dear Ms. Zeitz:

SUBJECT: Secret Beach Properties, LLC Existing Trail Improvements
Conservation District Use Application and Draft Environmental Assessment
TMK: (4) 5-2-005:036
Kīlauea, Namahama, Hanalei, Kaua‘i, Hawai‘i

Thank you for your comments dated April 21, 2011 to the Department of Land and Natural Resources Office of Conservation and Coastal Lands on the Conservation District Use Application KA-3586 (CDUA) and Draft Environmental Assessment (DEA) for Secret Beach Properties, LLC. Your comments have been forwarded to SSFM International for a response and inclusion in the Final Environmental Assessment.

We note that you have concerns allowing for more access to Kauapea Beach as well as actions that may disturb the wildlife.

Should you have any questions, please feel free to contact me at (808) 531-1308 or by email at rloudermilk@ssfm.com. Thank you.

Sincerely,

SSFM INTERNATIONAL, INC.

Robyn L. Loudermilk, AICP
Planner

Appendix D:

Biological Survey

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Biological surveys for an after-the-fact CDUA, Hughes coastal parcel (TMK: 5-2-05: 036, Lot 11-A-15, Pali Namahana Subdivision), Kilauea, Kaua'i[1]

April 14, 2011 *AECOS* No. 1240

Eric Guinther and Reginald David[2]
AECOS Inc.
45-939 Kamehameha Highway, Suite 104
Kāne'ohe, Hawai`i 96744
Phone: (808) 234-7770 Fax: (808) 234-7775 Email: guinther@aecos.com

Introduction

In August 2010, *AECOS* and Rana Consulting biologists conducted surveys of a 23.805-ac (9.63-ha) parcel (TMK: 5-2-05: 036, Lot 11-A-15, Pali Namahana Subdivision, Namahana, Hanalei, Kaua'i) located along the coastline west of Kilauea Point, Kaua'i. The parcel includes a coastal cliff (pali), portions of Kauapea Beach, and bluffs and swales. A small, perennial stream crosses the parcel at its western end. The purpose of the surveys documented herein is to assess biological resource on the subject property for an after-the-fact Conservation District Use Permit (CDUP). Nearly all of the eastern "panhandle" part of the parcel is in the Conservation District. The western "pan" part is divided into a makai portion in the Conservation District and a mauka portion in the Agricultural District. The biological surveys covered the entire parcel.

A CDUP is needed in this case to cover the construction and maintenance of foot trails within the Conservation District. Several trails down the pali section were in place when the current owners purchased the parcel. These trails were constructed by adjacent land owners to provide private access to the beach below the pali and are typically steps of lumber (e.g., old railway ties). The present owner constructed/reconstructed a trail paralleling the coast the full length of the panhandle, mostly along a natural shelf located midway down the pali. These trails are constructed with lumber and TREX forming edging and

[1] This report was prepared for SSFM International to be used as needed to support a CDUA for work done on the subject parcel. This report will become part of the public record.
[2] Rana Biological Consultants, Inc., Kailuia-Kona, Hawai'i.

steps. Various other trails were constructed in the broader, pan part of bluff and swale topography. These trails are for access to the shore and gardens in some cases or simply access for maintenance to planted areas.

Survey Methods

The botanical survey consisted of walking the entire parcel on August 11, 2010 mostly following the trail system that exists in the area; small white dots in Fig. 1 record the botanist's trek. The sea cliff or pali would be largely inaccessible were it not for the trails constructed along and up and down the steep face by various property owners to connect their lots to Kauapea Beach. For the most part, the trails provide adequate views of the entire cliff face, so there was no need to explore off-trail areas on the cliff face. Plants were identified as they were encountered and, in areas where landscaping was minimal or not evident, an estimate made of their relative abundance.

Five avian count stations (red points in Fig. 1) were evenly spaced within the subject property on August 11. An eight-minute point count was conducted at each station. Stations were each counted once. Field observations were made with the aid of Leica 10 X 42 binoculars and by listening for vocalizations. Counts were conducted during the early morning hours, the peak of daily bird activity. Time not spent counting was used to search the property for species and habitats not detected during count sessions.

With the exception of the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) or *'Ōpe'ape'a* as it is known locally, all terrestrial mammals currently found on the Island of Kaua'i are alien species, and most are ubiquitous. The survey of mammals was limited to visual and auditory detection, coupled with visual observation of scat, tracks, and other animal sign. A running tally was kept of all vertebrate species observed and heard within the subject property.

Plant names used in this report generally follow Palmer (2003), Staples and Herbst (2005), and Wagner, Herbst, and Sohmers, 1990, 1999). The avian phylogenetic order and nomenclature used in this report follows *The American Ornithologists' Union Checklist of North American Birds 7th Edition* (American Ornithologists' Union 1998), and the 42nd through the 51st supplements to *Check-list of North American Birds* (American Ornithologists' Union 2000; Banks et al. 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010). Mammal scientific names follow *Mammals in Hawaii* (Tomich 1986).

Figure 1. Map of TMK: 5-2-05: 036, Lot 11-A-15 (bold yellow outline) showing botany trek (white dots), bird count stations (red asterisks), Conservation District mauka boundary (fine white line), and general vegetation zones (green-grey lines; Cf = coastal forest, Ls = landscaped).

Results

Vegetation

The vegetation on the subject parcel can be divided into several more or less distinct types. Along the steep pali of the eastern "panhandle" piece, the vegetation is mixed forest with small open areas dominated by grasses and/or shrubs. The western end of the parcel includes extensively landscaped slopes and valleys (Fig. 2), partially cleared or otherwise ridge line assemblages of grasses, ferns and other herbs, and areas of coastal forest. The western boundary of the parcel is a small, flowing stream with riparian vegetation.

Figure 2. Swale and bluff in the landscaped area, showing landscaping mostly at the bottom (lawn and plantings). Lateral trails are for vegetation maintenance. Scrub areas above retain some of the natural vegetation.

The dominant tree found along the pali is ironwood (*Casuarina equisetifolia*). Some areas of *hala* (*Pandanus tectorius*), also common in the coastal forest, are present. In places where ironwood is not abundant, a thick understory growth of Chinese violet (*Asystasia gangetica*), *maunaloa* vine (*Canavalia cathartica*), wedelia (*Sphagneticola triloba*), dayflower (*Commelina diffusa*), and numerous

other, mostly non-native, shrubs and herbs (Fig. 3). In a few areas on the cliff face, wet seeps are present, and these support mostly California grass (*Urochloa mutica*), with other grasses, sedges, and mosses present. The base of the cliff is a coastal strand with tropical almond (*Terminalia cattapa*), some *'aki'aki* (*Sporoboilis virginica*), and *naupaka kahakai* (*Scaevola sericea*); *pōhinahina* (*Vitex rotundifolia*), and *pōhuehue* (*Ipomoea pes-caprae*) grow out across the sand of the back beach.

Figure 3. In some places along the cliff face, the vegetation is very thick, here dominated by ti, *maunaloa* (vine), *hala*, and Java plum.

The coastal forest is dominated inland by Java plum (*Syzygium cuminii*), *hala*, and Christmas berry (*Schinus terebinthefolius*), with tropical almond and *hala* dominating the seaward edge up to the beach.

A few areas near the crown of a ridge (Fig. 2) may represent a minimally disturbed open area, or an area in the process of conversion from coastal forest to landscaped. This vegetation was dominated by sword fern (*Nephrolepis multiflora*), lace fern or *pala'ā* (*Odontosoria chinensis*), *naupaka kahakai*, various weedy herbs, and scattered young strawberry guava (*Psidium cattleiana*) and albizia (*Falcateria moluccana*) trees.

Flora

The results of the botanical survey are expressed in Table 1. The table lists plants observed in August 2010 within the bounds of the Hughes parcel. Plants are arranged in taxonomic order, with species listed alphabetically by family. Plant "status" follows the common name and indicates whether a species is native (endemic [End] or indigenous [Ind]), a Polynesian introduction before 1778 (Pol), or non-native (naturalized [Nat] or ornamental [Orn]). Of course native plants and naturalized non-natives are used as ornamentals. A plant species status relates to its situation generally within the Hawaiian Islands.

Relative abundance values (see legend) pertain only to the "undeveloped" parts of the parcel. Note <1> indicates that a species was seen in the landscaped area (although not necessarily as a welcome part of the landscaping; weeds are listed as well). A species listed with note <1> but no abundance, was seen only in the landscaped area.

Table 1. Flora for Hughes Property, Kilauea, Kauai

Species	Common name	Status	Abundance	Notes
FERNS and FERN ALLIES				
BLECHNACEAE				
Blechnum appendiculatum Willd.	---	Nat	U2	
DENNSTAEDTIACEAE				
Odontosoria chinensis (L.) J. Smith	*pala'ā;* lace fern	**Ind**	U3	
NEPHROLEPIDACEAE				
Nephrolepis multiflora L.	sword fern	Nat	U3	
POLYPODIACEAE				
Phymatosorus grossus (Langsd. & Fisch.) Brownlie	*lauae*	Nat	O	<1>
PTERIDACEAE				
Adiantum 'Edwinii'	maidenhair fern	Nat	R	
Pityrogramma calomelanos (L.) Link	silverback fern	Nat	R	
THELYPTERIDACEAE				
Christella parasitica (L.) H. Lév	wood fern	Nat	U	
CONIFERS and CYCADS				
CYCADACEAE				
Cycas sp.	sago palm	Orn	--	<1>

Table 1 (continued).

Species	Common name	Status	Abundance	Notes
	FLOWERING PLANTS			
	DICOTYLEDONE			
ACANTHACEAE				
Asystasia gangetica (L.) T. Anderson	Chinese violet	Nat	C2	
Barleria repens C. Nees	pink-ruellia	Orn	R	
Thunbergia fragrans Roxb.	sweet clockvine	Nat	O	<1>
ANACARDIACEAE				
Mangifera indica L.	mango	Nat	--	<1>
Schinus terebinthifolius Raddi	Christmas berry	Nat	O	
APOCYNACEAE				
Plumeria obtusa L.	Singapore plumeria	Orn	--	<1>
Plumeria rubra L.	graveyard flower	Orn	--	<1>
Thevetia peruviana (Pers.)K. Schum.	be-still	Nat	R	
ARALIACEAE				
Schefflera actinophylla (Endl.) Harms	octopus or umbrella tree	Nat	U	
ASTERACEAE (COMPOSITAE)				
Bidens alba L.	*ki*	Nat	--	<1>
Calyptocarpus vialis Less.	---	Nat	--	<1>
Conyza sp.	horseweed	Nat	R	<1>
Cyanthillium cinereum (L.) H. Rob.	little ironweed	Nat	R	<1>
Erigeron bellioides DC	fleabane	Nat	--	<1>
Emilia fosbergii Nicolson	Flora's paintbrush	Nat	R	<1>
Pluchea indica (L.) Less.	Indian fleabane	Nat	U2	<1>
Pluchea carolinensis (Jacq.) G. Don	sourbush	Nat	O	<1>
Sonchus oleraceus L.	sow thistle	Nat	U	
Sphagneticola triloba (L.) Pruski	wedelia	Nat	A	<1>
BIGNONIACEAE				
Spathodea campanulata P. Beauv.	African-tulip tree	Nat	U	
CARICACEAE				
Carica papaya L.	papaya	Nat	R	
CARYOPHYLLACEAE				
Drymaria cordata (L.) Willd. ex Roem.	*pipili*	Nat	R	
CASUARINACEAE				
Casuarina equisetifolia L.	ironwood	Nat	AA	
CECROPIACEAE				
Cecropia obtusifolia Bertol.	guarumo	Nat	R	
CLUSIACEAE				
Calophyllum inophyllum L.	*kamani*	Pol	--	<1>

Table 1 (continued).

Species	Common name	Status	Abundance	Notes
COMBRETACEAE				
Conocarpus erectus L.	button mangrove	Nat	--	<1>
Terminalia catappa L.	tropical almond	Nat	C	
CONVOLVULACEAE				
Ipomoea pes-caprae (L.) R. Br.	*pōhuehue*	**Ind**	--	<2>
Ipomoea triloba L.	little bell	Nat		
CUCURBITACEAE				
Momordica charantia L.	wild bitter melon	Nat	R	
EUPHORBIACEAE				
Aclypha wilkesiana	beefsteak plant	Orn	--	<1>
Aleurites moluccana (L.) Willd.	*kukui*	Pol	U	
Breynia disticha J.R. & G. Forst.	snowbush	Orn	--	<1>
Codiaeum variegatum (L.) Blume	croton	Orn		<1>
FABACEAE				
Canavalia cathartica Thours	*maunaloa*	Nat	C2	
Chamaecrista nictitans (L.) Moench	partridge pea	Nat	U	
Desmodium triflorum (L.) DC	---	Nat	--	<1>
Falcataria moluccana (Miq.) Barneby & Grimes	albizia (juv)	Nat	R	
Leucaena leucocephala (Lam.) deWit	*koa haole*	Nat	U	
Mimosa pudica L.	sensitive plant	Nat	--	<1>
Senna surattensis (N.L. Burm.) H. Irwin & Barneby	*kolomana*	Nat	R	
GOODINACEAE				
Scaevola taccada (J. Gaert.) Roxb.	*naupaka kahakai*	**Ind**	U	<1>
MALVACEAE				
Hibiscus rosa-sinensis L. cultivars	Chinese hibiscus	Orn	--	<1>
MORACEAE				
Ficus microcarpa L. fil.	Chinese banyan	Nat	R	<1>
MYRSINACEAE				
Ardisia elliptica Thunb.	shoebuton ardisia	Nat	R	
MYRTACEAE				
Psidium cattleianum Sabine	strawberry guava	Nat	U	
Psidium guajava L.	common guava	Nat	U	
Syzygium cumini (L.) Skeels.	Java plum	Nat	O	
Syzigium malaccense (L.) Merr. & L. M. Perry	mountain-apple	**Pol**	--	<1,3>
NICTAGINACEAE				
Mirabilis jalapa L.	marvel of Peru	Nat	R1	
ONAGRACEAE				
Ludwigia octovalvis (Jacq.) Raven	primrose willow	Nat	R1	
Ludwigia palustris (L.) Elliott	water purslane	Nat	R	

Table 1 (continued).

Species	Common name	Status	Abundance	Notes
OXALIDACEAE				
Oxalis corniculata L.	yellow wood sorrel	**Pol**	U	<1>
PASSIFLORACEAE				
Passiflora laurifolia L.	yellow granadilla	Nat	R	
PLANTAGINACEAE				
Plantago lanceolata L.	nrw-lvd plantain	Nat	U1	
POLYGALACEAE				
Polygala paniculata L.	bubblegum plant	Nat	--	<1>
POLYGONACEAE				
Coccoloba uvifera (L.) L.	sea-grape	Nat	--	<1>
RUBIACEAE				
Gardenia taitensis de Candolle	Tahitian gardenia	Orn		<1>
Morinda citrifolia L.	*noni*	Pol	R	<1>
Spermacoce assurgens Ruiz. & Pav.	buttonweed	Nat		<1>
SCROPHULARIACEAE				
Bacopa monnieri (L.) Pennell	*'ae'ae*	**Ind**	R2	
VERBENACEAE				
Lantana camara L.	lantana	Nat	O	<1>
Stachytarpheta cayennensis (Rich.) Vahl	nettle-leaved vervain	Nat	O	<1>
Vitex rotundifolia L. fil.	*pōhinahina*	**Ind**	U2	<2>
MONOCOTYLEDONES				
AGAVACEAE				
Cordyline fruticosa (L.) A. Chev.	*ki*; green ti	Pol	U1	<1>
Cordyline fruticosa cultivars	ti cultivars	Orn	--	<1>
ALOEACEAE				
Aloë vera (L.) N.L. Burm.	aloe	Orn	--	<1>
ARACEAE				
Alocasia macrorrhizos (L.) G. Don	'ape	Nat	R	
Colocasia esculenta L.	*kalo*	Pol	R1	
Philodendron bipinnatifidum Endl.	selloum	Orn	R	
Xanthosoma robustum Schott	*'ape*	Nat	R1	
ARECACEAE				
Cocos nucifera L.	coconut palm	Nat	O	
Dypsis lutescens (H. Wendl.) Beentje & Dransfield	golden-fruited palm	Orn	--	<1>
Veitchia merrillii (Beccari) H. E. Moore	Manila palm	Orn	--	<1>
Wodyetia bifurcata Irvine	foxtail palm	Orn	--	<1>
CANNACEAE				
Canna indica L.	Indian-shot	Nat	R	
COMMELINACEAE				
Commelina diffusa N. L. Burm.	dayflower	Nat	C	

Table 1 (continued).

Species	Common name	Status	Abundance	Notes
COSTACEAE				
Costus woodsonii Maas	Indian-head ginger	Orn	--	<1>
CYPERACEAE				
Cyperus involucratus Rottb.	umbrella sedge	Nat	R	
Cyperus javanicus Houtt.	*'ahu'awa*	**Ind**	R	
Cyperus polystachyos Rottb.	---	**Ind**	R	
Kyllinga brevifolia Rottb.	*kili'o'opu*	Nat	R	
Kyllinga nemoralis (J.R. Forster & G. Forster) Dandy ex Hutchinson & Dalziel	*kili'o'opu*	Nat	--	<1>
HELICONIACEAE				
Heliconia collinsiana Griggs	hanging heliconia	Orn	--	<1>
Heliconia metallica W. J. Hook.	---	Orn	--	<1>
Heliconia rostrata Ruiz & Pavón	parrot's-beak heliconia	Orn	--	<1>
Heliconia sp.	dwarf red	Orn	--	<1>
LILIACEAE				
Asparagus densiflorus (Kunth) Jessop	asparagus fern	Nat	O3	
Crinum cf. *pedunculatum* R. Brown	river lily	Orn	--	<1>
Crinum asiaticum L.	giant lily	Nat	R	
MUSACEAE				
Musa hybrid	banana	Orn	R1	<1>
ORCHIDACEAE				
Spathoglottis plicata Blume	Philippine ground orchid	Nat	R	
PANDANACEAE				
Pandanus tectorius S. Parkinson ex Z	*hala*	**Ind**	C	<1>
Pandanus tectorius 'Veitchii'	*hala*	Orn	--	<1>
POACEAE (GRAMINEAE)				
Andropogon virginicus L.	broomsedge	Nat	R1	
Axonopus compressus (Sw.) P.Beauv.	brd-lvd. carpetgrass	Nat	O	<1>
Coix lacryma-jobi L.	Job's tears	Nat	R	
Cynodon dactylon (L.) Pers.	Bermuda grass	Nat	O	<1>
Digitaria ciliaris (Retz.) Koeler	Henry's crabgrass	Nat		<1>
Digitaria insularis (L.) Mez ex Ekman	sourgrass	Nat	U1	
Eleusine indica (L.) Gaertn.	wiregrass	Nat	U	
Paspalum conjugatum Bergius	Hilo grass	Nat	O3	<1>
Paspalum dilatatum Poir.	Dallis grass	Mat		
Paspalum scrobiculatum L.	---	**Ind**	R	<3>
Paspalum sp.	indet.	Nat	R	
Setaria gracilis Kunth	yellow foxtail	Nat	R	<1>
Sporobolis cf. *africanus* (Poir.) Robyns &Tournay	smutgrass	Nat	R	<1>
Sporobolus virginicus	*'aki'aki*	**Ind**	R1	<2>

Table 1 (continued).

Species	Common name	Status	Abundance	Notes
POACEAE (continued)				
Urochloa maxima (Jacq.) Webster	Guinea grass	Nat	O	<1>
Urochloa mutica (Forssk.) Nguyen	California grass	Nat	O2	
Zoysia matrella (L.) Merr.	zoysia grass	Orn	R	
ZYNGIBERACEAE				
Alpinia purpurata (Vieil.) K. Schum.	red ginger	Orn	--	<1>
Hedychium coronarium J. König	white ginger	Nat	R	<1>

Legend to Table 1

Status = distributional status

End. = endemic; native to Hawai'i and found naturally nowhere else.
Ind. = indigenous; native to Hawai'i, but not unique to the Hawaiian Islands.
Nat. = naturalized, exotic, plant introduced to the Hawaiian Islands since the arrival of Cook Expedition in 1778, and well-established outside of cultivation.
Orn. = exotic, ornamental or cultivated crop; plant not naturalized (not well-established outside of cultivation, at least at this location).
Pol. = Polynesian introduction; brought to the Hawaiian Islands before 1778.

Abundance = occurrence ratings for plants on property in March 2008

R – Rare - only one or two plants seen.
U - Uncommon - several to a dozen plants observed.
O - Occasional - found regularly, but not abundant anywhere.
C - Common - considered an important part of the vegetation and observed numerous times.
A - Abundant - found in large numbers; may be locally dominant.
AA - Abundant - very abundant and dominant; defining vegetation type.

Numbers (as in R3) offset occurrence ratings (1 – several plants; 2 – many plants; 3 – abundant in a limited area) in cases where distribution across the survey area may be limited, but individuals seen are more than indicated by the occurrence rating alone.

Notes:

<1> Landscaped areas (abundance, if given, relates to the presence in undeveloped areas)
<2> Mostly associated with beach at base of cliff.
<3> Plant lacking flowers or fruit; identification uncertain.

Avifauna

A total of 116 individual birds of 18 species, representing 15 separate families, were recorded within the subject property (Table 2). One species recorded—Nēnē (*Branta sandvicensis*)—is listed as an endangered species under both federal and State of Hawai'i endangered species statutes. Two other recorded species—Wedge-tailed shearwater (*Puffinus pacificus*) and White-tailed Tropicbird (*Phaethon lepturus*)—are indigenous nesting seabird. Another species recorded—Pacific Golden-Plover (*Pluvialis fulva*)—is an indigenous migratory shorebird that nests in the high Arctic during the late spring and summer months, returning to wintering grounds in Hawai'i, Japan, Okinawa, Polynesia, Micronesia, Melanesia, New Zealand, Australia, Indonesia, Philippines, southern China, southeast Asia, Bangladesh, Nepal, India, Sri Lanka, Pakistan, Iran, Bahrain, and northeast and southern Africa (Johnson and Conners, 1996). Wintering birds usually leave Hawai'i for the Arctic in late April or the very early part of May, and return to the wintering grounds in late July and early August. A few individuals overwinter in Hawai'i, and thus are

present here year round. The remaining 13 species detected during the survey are regularly encountered alien species, common in low elevation areas on the Island of Kaua'i.

Table 2. Avian Species Recorded on the Hughes Property, Kilauea, Kauai

Common Name	Scientific Name	***ST***	***RA***
	ANSERIFORMES		
	ANATIDAE - Ducks, Geese & Swans		
	Anserinae - Geese & Swans		
Hawaiian Goose	*Branta sandvicensis*	ER	0.80
	PHASIANIDAE - Pheasants & Partridges		
	Phasianinae - Pheasants & Allies		
Grey Francolin	*Francolinus pondicerianus*	A	0.20
Red Junglefowl	*Gallus gallus*	A	1.40
Ring-necked Pheasant	*Phasianus colchicus*	A	0.20
	PROCELLARIIFORMES		
	PROCELLARIIDAE - Shearwaters & Petrels		
Wedge-tailed Shearwater	*Puffinus pacificus*	IB	Dead
	PELECANIFORMES		
	PHAETHONTIDAE - Tropicbirds		
White-tailed Tropicbird	*Phaethon lepturus*	IB	1.80
	CICONIIFORMES		
	ARDEIDAE - Herons, Bitterns & Allies		
Cattle Egret	*Bubulcus ibis*	A	0.20
	CHARADRIIFORMES		
	CHARADRIIDAE - Lapwings & Plovers		
	Charadriinae - Plovers		
Pacific Golden-Plover	*Pluvialis fulva*	IM	0.20
	COLUMBIFORMES		
	COLUMBIDAE - Pigeons & Doves		
Zebra Dove	*Geopelia striata*	A	0.20

Table 2 (continued).

Common Name	Scientific Name	*ST*	*RA*
	PASSERIFORMES		
	ZOSTEROPIDAE - White-eyes		
Japanese White-eye	*Zosterops japonicus*	A	3.40
	TIMALIIDAE - Babblers		
Hwamei	*Garrulax canorus*	A	0.60
	TURDIDAE - Thrushes		
White-rumped Shama	*Copsychus malabaricus*	A	0.80
	STURNIDAE - Starlings		
Common Myna	*Acridotheres tristis*	A	3.00
	EMBERIZIDAE - Emberizids		
Red-crested Cardinal	*Paroaria coronata*	A	1.40
	ICTERIDAE - Blackbirds		
Western Meadowlark	*Sturnella neglecta*	A	1.80
	FRINGILLIDAE - Fringilline and Carduline Finches & Allies		
	Carduelinae - Carduline Finches		
House Finch	*Carpodacus mexicanus*	A	5.40
	ESTRILDIDAE - Estrildid Finches		
Nutmeg Mannikin	*Lonchura punctulata*	A	0.60
Chestnut Munia	*Lonchura atricapilla*	A	1.40

Key to Table 2.

ST Status
RA Relative Abundance - Number of birds detected divided by the number of count stations (2).
A Alien species – introduced to Hawai'i by humans and established in the wild.
ER Endemic Resident species.
IB Indigenous Breeding species.
IM Indigenous Migratory species.

Avian diversity and densities were in keeping with the locations and the habitat present within the subject property. Three species: House Finch (*Carpodacus mexicanus*), Japanese White-eye (*Zosterops japonicus*), and Common Myna (*Acridotheris tristis*), accounted for slightly more than 50% of the total number of birds recorded during station counts. The most commonly recorded species was House Finch, which accounted for slightly more than 23% of the total number of individual birds recorded. An average of 23 birds was detected per station count.

Mammals

Three mammalian species were detected during the course of this survey. Tracks and sign of several dogs (*Canis f. familiaris*) were encountered at several

locations within the site, as were rooting, tracks, and sign of pig (*Sus s. scrofa*). Cat (*Felis catus*) tracks and scat were seen in several locations within the site as was one dead Wedge-tailed Shearwater which appeared to have been taken by a cat and hidden under a wooden platform along the pali trail. The endangered Hawaiian hoary bat was not seen during the course of this survey. No mammalian species protected or proposed for protection under either the Federal or State of Hawai'i endangered species programs (DLNR, 1998; USFWS, 2005, 2010) were detected during the course of this survey.

Discussion

The subject parcel supports a fairly typical coastal/lowland assemblage of plants with some native species prominent (here, *hala* in particular) but mostly dominated by non-native species. Properties inland from the subject parcel are extensively landscaped.

Seeps on the face of the pali feed several wet areas that support vegetation indicative of wetlands. No attempt was made to ascertain if hydric soils are present, so it cannot be determined if these areas are wetlands subject to Clean Water Act jurisdiction. Wetted ground covers a very small portion of the parcel and the trail crosses these areas (three distinct seeps were counted) on the shelf midway up the pali, requiring minimal or no structural amendments to support the trail in these places. Nonetheless, consideration should be given to avoiding adding structures to places of constantly wetted ground. The law does permit control of vegetation and construction of trails. Where safety considerations dictate adding structural elements (such as fencing, edging, or fill), permission from the U.S. Army Corps of Engineers may be required.

The cliffs behind Kauapea Beach are known to support a species of grass, *Ischaemum byrone*, listed as endangered (USFWS, 2010). This cliff-dwelling plant (see Fig. 4) was not observed during our survey, which was limited to the existing trail system mostly along the upper part of the cliff where the dense vegetation would certainly preclude the grass from growing (see Figs. 1 and 3). A recent document by USFWS (2010) relates that "[o]ne small population [of *I. byrone*] had been recently discovered on the north shore of Kauai, where approximately 50 plants were growing on wet cliff faces on privately owned land at Kauapea Beach".

Typically a coastal species, habitat for this grass is described thusly by USFWS (2010, p. 4): "*Ischaemum byrone* usually grows in close proximity to the ocean, among rocks or frequently on moist or wet basalt cliffs in windward coastal dry shrubland at elevations between 0 and 190 meters (0 and 623 feet) with associated native plant

species including *Bidens* spp. (kookoolau), *Fimbristylis cymosa* (mauu aki aki), and *Scaevola taccada* (naupaka kahakai) (USFWS 2003c)." Of the associated native species described for the northern Kauai coastal population–that is, *Adiantum raddianum*, *Chamaesyce celastroides* var. *stokesii* (*akoko*), *Cyperus javanicus*, (*'ahu 'awa*) *Lipochaeta succulenta* (*nehe*), *Lysmachia mauritiana*, and *Scaevola taccada (naupaka kahakai*; USFW, 2003)–two (*C. javanicus* and *S. taccada*) were recorded in the site survey. However, these are common plants and would not necessarily indicate *I. byrone* in association at the location. The *'ahu 'awa* plant was recorded in a place where the trail crosses one of several seeps (noted above), and these seep features could *I. byrone* further down the face of the cliff where the seeps flow over a basalt face.

Ischaemum byrone growing at the base of the 'Ōpana Point sea cliff, Maui (photographed by E. Guinther, July 2002).

The primary threat to this species in the project vicinity would be competition with invasive introduced plants, and the abundance of shade from non-natives that dominate the area of the trail along the upper part of the cliff would suggest suitable habitat for *I. byrone* is not present along the trail. Nonetheless, it is certainly possible that the species might be encountered where trail maintenance repairs are being undertaken at some future time, and due caution need be exercised. This grass is moderate in size and coarseness, with somewhat grey-green leaves. The blades on some stems are short, almost spear tip like; the flowering head is distinctive in having one to three, rather fat, yellowish spikes with golden hairs and inch-long awns (needle-like projects; see Fig. 5).

Figure 5. Closeup of *I. byrone* flowering spike showing golden hairs and long, bent awns (Maui, July 2002).

The subject property supports a typical assemblage of avian species one would expect to find in this general location on the Island of Kaua'i. The property supports two nesting seabird species, Wedge-tailed Shearwater, and White-tailed Tropicbird. These species are nesting in the ocean cliffs and immediately inland from the cliff top. Two, banded Nēnē were seen foraging on the site, the two birds recorded are birds that nest at the Kīlauea Point National Wildlife

Refuge (USFWS unpublished data). Currently the habitat present on the property is not typical of that in which one would expect Nēnē to nest

The findings of the mammalian survey are consistent with the habitat available and the location of the property. Although no Hawaiian hoary bats were detected during the course of this survey, bats have been recorded foraging for insects in the general vicinity of the project site in the recent past (David, 2010). Hawaiian hoary bats are widely distributed in the lowland areas on the Island of Kaua'i, and have been documented in and around almost all areas that still have some dense vegetation. Although no rodents were detected during the course of this survey, it is likely that several if not all of the four established alien Muridae found on Kaua'i—roof rat (*Rattus r. rattus*), Norway rat (*Rattus norvegicus*), European house mouse (*Mus musculus domesticus*) and Polynesian rats (*Rattus exulans hawaiiensis*)—use various resources found within the project area. All of these introduced rodents are deleterious to native ecosystems and the native faunal species dependant on them.

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Appendix E:

Archaeological Field Inspection Report

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Archaeological Field Inspection Report for a 23.8-Acre Coastal Parcel at, Namahana Ahupuaʻa, Hanalei District, Kauaʻi Island TMK: [4] 5-2-005:036

Prepared for

SSFM International

Prepared by

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Management Summary

Reference	Archaeological Field Inspection Report for a 23.8-Acre Coastal Parcel at, Namahana Ahupuaʻa, Hanalei District, Kauaʻi Island TMK: [4] 5-2-005:036
Date	December 2010
Project Number (s)	Cultural Surveys Hawai‘i, Inc. (CSH) Job Code: NAMAHANA 1
Investigation Permit Number	The fieldwork component of the archaeological inventory survey was carried out under archaeological permit number 10-10 issued by the Hawai‘i State Historic Preservation Division/Department of Land and Natural Resources (SHPD/DLNR), per Hawai‘i Administrative Rules (HAR) Chapter 13-282.
Project Location	The project area is a fairly narrow strip, approximately a kilometer long east/west and averaging approximately 100 m wide north/south lying adjacent to the coast seaward of Kauapea Road approximately 1200 m northwest of Kīlauea Town on the north shore of Kaua‘i
Land Jurisdiction	Private
Agencies	State Historic Preservation Division / Department of Land and Natural Resources (SHPD/DLNR)
Project Description	No specific project is known by us on these lands. The concept behind this study is to provide the landowner (or their representative) with an overview of existing archaeological conditions, to facilitate planning and budgeting considerations, and to convey any possible archaeological constraints to the proposed development.
Project Acreage	23.8 acres
Historic Preservation Regulatory Context	This document was prepared to support the proposed project’s historic preservation review under Hawai‘i Revised Statutes (HRS) Chapter 6E-8 and Hawai‘i Administrative Rules (HAR) Chapter 13-13-275. In consultation with the Hawai‘i State Historic Preservation Division (SHPD), the archaeological inventory survey investigation was designed to fulfill the State requirements for an archaeological inventory survey per HAR Chapter 13-13-276.
Fieldwork Effort	The fieldwork component of this archaeological field inspection report was conducted on December 20, 2010 by three CSH archaeologists, Kendy Altizer, B.A., Gerald Ida, B.A. and Missy Kamai, B.A., under the general supervision of Hallett H. Hammatt, PhD. The fieldwork required approximately 3 person-days to complete.
Number of Historic Properties Identified	None

Summary	The archaeological field inspection investigation identified no historic properties within the 23.8-acre project area. No historic properties are believed to have been impacted by any land-altering activities of the recent past.

Table of Contents

Management Summary ii

Section 1 Introduction 7

1.1 Project Background 7
1.2 Scope of Work 7
1.3 Environmental Setting 11
1.3.1 Natural Environment 11
1.3.2 Built Environment 11

Section 2 Background Research 13

2.1 Traditional and Historical Background 13
2.1.1 The Land of Namahana 13
2.1.2 Mythological and Traditional Accounts 13
2.1.3 Population 15
2.1.4 Early Historic Records 16
2.1.5 Māhele Records 16
2.1.6 Late 1800s 16

Section 3 Previous Archaeological Research 22

3.1 Thrum’s *Heiau* Study (1906) 22
3.2 Bennett’s Survey (1931) 22
3.3 Handy and Handy’s Native Planter Observations (1972) 27
3.4 Recent Studies in the Vicinity 27
3.4.1 Kikuchi’s Kīlauea Point National Wildlife Refuge Survey (1987) 27
3.4.2 Xamanek Researches Kīlauea Point National Wildlife Refuge Survey (Fredericksen and Fredericksen 1989) 28
3.4.3 Rosendahl (1989, 1991a and 1991b) 28
3.4.4 Toenjes and Hammatt Study of 94-Acres at Kīlauea (1990) 28
3.4.5 Hammatt and Chiogioji (1992) 29
3.4.6 Hammatt and Robbins (1993) 29
3.4.7 Cleghorn (2001) 29
3.4.8 Elmore and Kennedy (2001) 29
3.4.9 Rechtman, Orr and Dougherty (2001) 1400-acre *Mauka* study 29
3.4.10 Shideler et al. (2007) & (2008) Studies for Kilauea Falls Ranch 29
3.5 Background Summary and Predictive Model 30

Section 4 Results of Fieldwork 31

4.1 Survey Findings 31

Section 5 Summary and Interpretation 36

Section 6 References Cited 37

List of Figures

Figure 1. U.S. Geological Survey 7.5 Minute Series Topographic Map, Anahola Quadrangle (1996), showing the location of the project area....8
Figure 2. Tax Map Key (TMK) plat 5-2-005, showing the location of the project area 9
Figure 3. Aerial photograph (source: Google Earth 2010) showing the location of the project area10
Figure 4. Overlay of Soil Survey of the State of Hawai‘i (Foote et al. 1972), indicating soil types within the project area....12
Figure 5. Portion of Monsarrat map of “Kaua‘i Between the Kalihiwai and Moloaa Streams” showing general development in the project area and vicinity circa 1892....18
Figure 6. Portion of 1910 U.S. Geological Survey 1:31680 Scale Topographic Map, Kilauea Quadrangle, showing the location of the project area....19
Figure 7. 1930 Map of the Kilauea Sugar Company note railroad down to Mōkōlea Point but otherwise no infrastructure in or adjacent to project area....20
Figure 8. 1963 U.S. Geological Survey Topographic Map, Anahola Quadrangle, showing the location of the project area....21
Figure 9. Map showing locations of previous archaeological studies in the vicinity of the project area....26
Figure 10. Project area overview from central portion of project area, view to north....32
Figure 11. Project area overview from northeast end of project area, view to southwest....32
Figure 12. Project area overview of northeastern end of project area showing stairs, view to south33
Figure 13. View of taro growing on *pali* on east side of small central headland, view to southwest....33
Figure 14. View of taro growing on *pali* on west side of small central headland, view to southeast....34
Figure 15. View of modern bamboo shower pipe (note taro on steep cliff above) on west side of small central headland, view to southeast....34
Figure 16. Stairs facilitating beach access, west central coastal portion of project area, view to southeast....35
Figure 17. General view of eastern end of project area, view to southeast 35

List of Tables

Table 1 Population of Northern Kaua‘i (1847) (from Schmitt 1969:229), indicating a relatively large population (and high population density at “Kilauea and Kahili”)....15
Table 2. Archaeological Studies Near the Present Namahana Project Area....23

Section 1 Introduction

1.1 Project Background

At the request of SSFM International, Cultural Surveys Hawai‘i, Inc. (CSH) completed an archaeological field inspection for a 23.8-acre coastal parcel in Namahana Ahupua‘a, Hanalei District, Kaua‘i Island (TMK [4] 5-2-005:036). The project area is located adjacent to the coast, approximately 1200 m northwest of Kīlauea Town and 800 m southwest of Crater Hill and the Kīlauea National Wildlife Refuge visitor center (Figure 1, Figure 2, Figure 3). The project area is shown on Tax Map Key plat [4] 5-2-005 (Figure 2) as a “Conservation Area”.

The project area is a fairly narrow strip, approximately a kilometer long east/west and averaging approximately 100 m wide north/south lying adjacent to the coast seaward of Kauapea Road. Private house lots, typically of between 5 and 6 acres, lie seaward of Kauapea Road inland of the project area which is accessed via a narrow access corridor on the south side between parcels 5-2-005:32 and 5-2-005:33. The project area was accessed via Kīlauea Road, Kauapea Road and the narrow access corridor

This document was prepared to support any State Historic Preservation Division and/or County of Kaua‘i historic preservation review.

1.2 Scope of Work

The archaeological field inspection and its accompanying report documented all historic properties within the project area. The following scope of work was agreed to:

Scope of Work

1. Historical research to include study of archival sources, historic maps, Land Commission Awards and previous archaeological reports to construct a history of land use and to determine if archaeological sites have been recorded on or near this property.
2. Limited field inspection of the project area to identify any surface archaeological features and to investigate and assess the potential for impact to such sites. This assessment will identify any sensitive areas that may require further investigation or mitigation before the project proceeds.
3. Preparation of a report to include the results of the historical research and the limited fieldwork with an assessment of archaeological potential based on that research, with recommendations for further archaeological work, if appropriate. It will also provide mitigation recommendations if there are archaeologically sensitive areas that need to be taken into consideration.

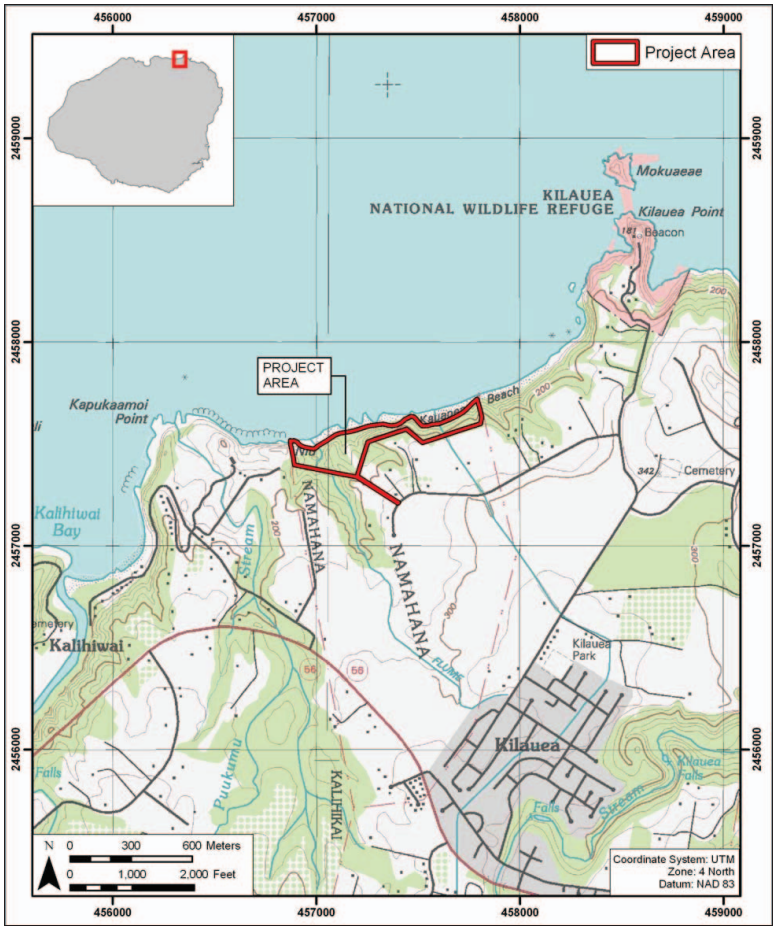

Figure 1. U.S. Geological Survey 7.5 Minute Series Topographic Map, Anahola Quadrangle (1996), showing the location of the project area

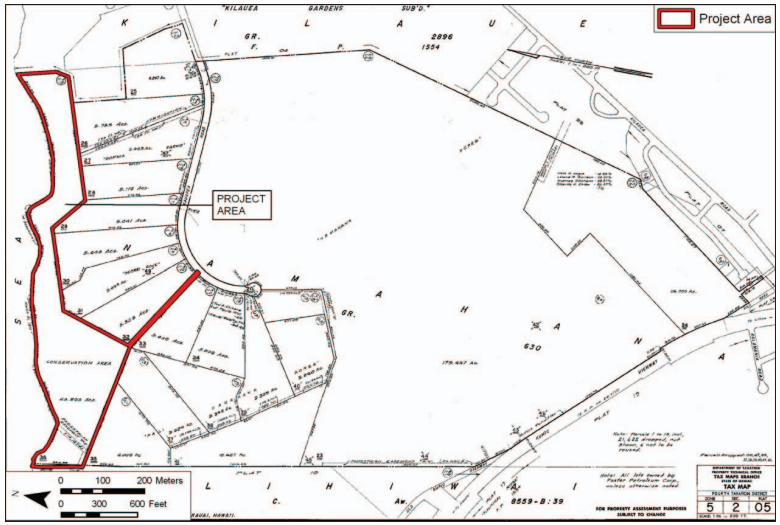

Figure 2. Tax Map Key (TMK) plat 5-2-005, showing the location of the project area

Figure 3. Aerial photograph (source: Google Earth 2010) showing the location of the project area

1.3 Environmental Setting

1.3.1 Natural Environment

The 23.8-acre project area includes mostly coastal cliff extending from an elevation of approximately 75 m above sea level at Kauapea Road on the south side down to the sea in the northwest corner. Kauapea Beach (also known as “Secret Beach” extends along the north side of the project area except at the extreme west side where a rocky headland extends to the coast.

Soils are primarily of Rock Outcrop (rRO) (Figure 4).

> Rock outcrop (rRO) consists of areas where exposed bedrock covers more than 90 percent of the surface. It occurs on all five islands [Kaua‘i, O‘ahu, Maui, Molokai, and Lāna‘i]. The rock outcrops are mainly basalt and andesite. This land type is gently sloping to precipitous. Elevations range from nearly sea level to 10,000 feet. …This land type is not suited to farming. It is used for water supply, wildlife habitat, and recreation. (Foote et al. 1972:119)

A small area of Hanalei Silty Clay Deep Water Table, 0 to 6 Percent Slopes (HrB) is present running across the west side of the project area. Portions of the north side of the project area are shown as “Beaches” (BS).

The project area is indicated to receive approximately 1500-1800 mm (60-70 in.) of annual rainfall, (Giambelluca et al. 1986). This is more than sufficient for most non-irrigated agriculture, and supports luxuriant and diverse vegetation.

The majority of the project area consists of steep slope and/or cliff. Vegetation observed includes tall stands of Ironwood trees (*Cassuarina equisetifolia*), ti (*Cordyline fruticosa*), *naupaka*, ferns, *wedelia*, buffle grass, crab grass, *hala*, *hilahila*, and palm trees. Taro was observed in the southern end of the project area, growing at the base of a steep *pali*.

A popular guidebook notes the popularity of Kauapea Beach (also known as secret beach) with nudists and the many drowning and near drownings in dangerous winter and spring high surf conditions. [Clark 1990:23-24]

The 203-acre Kīlauea National Wildlife Refuge is located along the Kīlauea shoreline, to the north of the project area, and was created largely as a preserve for various seabird species.

1.3.2 Built Environment

The project area is undeveloped land. Only minor modifications such as paths and steps were observed in the project area. The surrounding area is primarily rural, dominated by luxury house lot development.

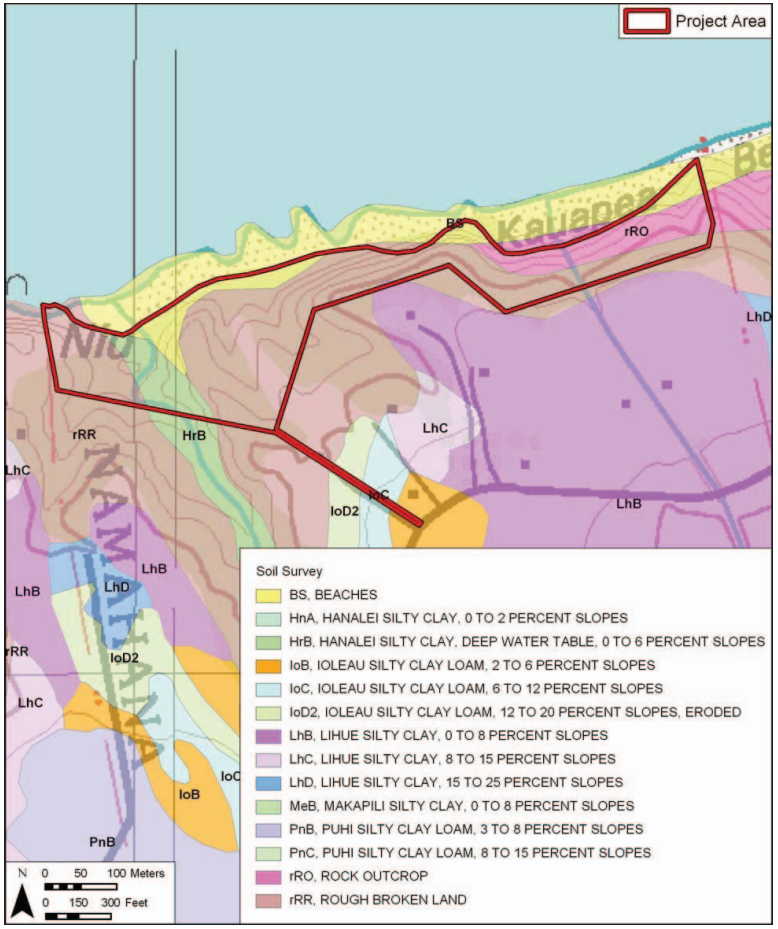

Figure 4. Overlay of Soil Survey of the State of Hawai‘i (Foote et al. 1972), indicating soil types within the project area

Section 2 Background Research

2.1 Traditional and Historical Background

2.1.1 The Land of Namahana

The project area lies on the *makai* (seaward) portion of the traditional Hawaiian land division of Namahana Ahupua‘a. Namahana is a small, atypical *ahupua‘a* in that it is not laid out to stretch from the reef to the mountains. It includes only the shoreline of Kauapea Beach and a small intermittent stream valley. The *ahupua‘a* extends only 6,000 feet inland and is not more than 3,500 feet wide.

Tracing the traditional pattern of land use one would expect a fishpond or extensive *lo‘i* along the shoreline but it appears that neither were present. The bulk of the *ahupua‘a* would have been *kula* lands. As is suggested by Handy and Handy (1972:421) of similar *kula* land in the adjacent Kīlauea Ahupua‘a the *kula* land of Namahana may have been productive land for cultivating sweet potatoes. However, the relatively dry landscape was undoubtedly non-productive for growing taro *lo‘i*.

Because Namahana Ahupua‘a does not extend upland and it appears to be situated within what may have been the original northwest corner of Kīlauea Ahupua‘a, Namahana may have been an *‘ili* that was subsequently subdivided from Kīlauea Ahupua‘a. Namahana is briefly mentioned in Commission of Boundaries (1873) documents of Kalihiwai Ahupua‘a as being a mountain peak along the east boundary of Kalihiwai. However, no mention of the adjacent ahupua‘a of Namahana or Kīlauea are given in these documents.

The entire *ahupua‘a* was awarded to Miriam Kekau‘ōnohi (LCA 11216) who also received extensive lands elsewhere on Kaua‘i, Maui, Hawai‘i and Moloka‘i. M. Kekau‘ōnohi was the daughter of Kahoano Kū Kinau‘u who was the son of Kamehameha I. Her mother was a close relative of Kekaulike, Chief of Maui. Most importantly she was the wife of Kamehameha II (Liholiho). After her husband’s death she moved to Kaua‘i, married Keli‘iahonui (son of the deceased Kaumuali‘i) and became governor of Kaua‘i in 1842.

Unfortunately little is known of this small *ahupua‘a*. There are no *kuleana* awards listed within this land. Namahana Ahupua‘a was incorporated into Kilauea Plantation Co. in the late 19th century.

2.1.2 Mythological and Traditional Accounts

An exhaustive search of Hawaiian legends and myths in print produced no references at all to the *ahupua‘a* of “Namahana” per se. A search for references to Kaupea (Kauapea) produced one passing reference in the “Legend of Kawelo (*He Mo‘olelo no Kawelo*)” in which the folk-hero Kawelo chants during fighting near Wailua, Kaua‘i. He makes reference to:

By the soldier of the noonday,	*Nā ke koa i ke awakea*
The soldiers of the waters of Wailua	*He kaha pue wai no Wailua*
Of the path that leads to Kaupea	*Kea lo hiki i Kaupea*
Where you and I are made weary…	*Kuhi au ka luhi kaua…*

(Fornander 1918 Volume V Part 1:36-37)

It is unclear whether this is in fact a reference to Kaupea Beach in Namahana Ahupua‘a.

Four mythological references were identified for neighboring Kīlauea Ahupua‘a and are summarized below.

Dole (1892) relates a somewhat vague account that at Kīlauea there were the remains of three, long, ancient, parallel irrigation ditches attributed by the Hawaiians to the claw marks of a *mo‘o*. “The lizard had been ordered by [the famous ruling chief] Mano-ka-lani-pō to open Kīlauea’s upper regions for agriculture” (Wichman 1998:102). In context the *mo‘o* is associated with the “brave lizard” Ka-mo‘o-koa after whom a ridge of the Makaleha Mountains is named.

Wichman (1998:102) relates an account, (that may have originated in a 1939 story contest - Juliette Ferreira’s “Pele the Goddess of Fire” for the Martha W. Beckwith prize, Kamehameha School for Girls), that near the top of a volcanic cone open to the ocean:

> …once stood three huge stones that have since been moved, with great difficulty, to make room for sugarcane. These three stone sisters of great beauty, were a warning that Pele, the volcano goddess, was not to be trifled with….Pele [seeking to establish a home for herself and her Kaua‘i lover Lohiau] caused an eruption here, but it was soon extinguished when the sea goddess [Nā-maka-o-kaha‘i] broke down the walls of the crater, drowning the fire with the ocean. The laughter of the three beautiful sisters enraged Pele. They had seen Pele defeated and shamed. Their scorn was not to be endured. “What are your names?” Pele asked. And one replied “I am Kalama, this is Pua, and this is Lāhela.” Pele repeated their names, touching them with her staff as she did so, turning them to stone. They were a mute and visible warning not to laugh at or ridicule Pele. (Wichman 1998:103)

In a slight variant of the story Pele is motivated by jealousy of the three girls’ beauty and fear they will make Lohiau fall in love with them and thus she turns them to stone to protect her love interest.

A third mythological account of Kīlauea related by Rice (1923:38, see also Wichman 1998:104) concerns the creation of a swath of awash boulders lying between the islet of Moku‘ae‘ae and Kīlauea crater:

> Traveling on the Menehune moved a big stone to Kahili, below Kilauea, which they used to dive from. At Mokuaeae, the island off the present Kilauea lighthouse, they began to fill in the channel between the island and the mainland. They were just able to touch the bottom with a paddle when morning dawned, and their task was left unfinished.

In the Story of Lonomakahiki (Fornander 1917: Vol IV, Part II: 358-359) is a passing reference to the ruling chief Lonoikamakahiki traveling with a companion at Kīlauea and Kalihi (Kalihiwai, Kalihikai) Kaua‘i. The account makes reference to “days of hunger” in which their hunger was appeased by eating the ripe flowers (or possibly fruit) of pandanus trees (*hele aku a ai i ka pua pala o ka hala, hala ia la poloi o ka ua ilaila, e ka hoa, he hoa i ka nahele lauhala loloa, mai Kilauea a Kalihi la*). The account emphasizes the great *lauhala* tracts and “…the heavy and wind-blown rain, the ceaseless and general rain…” The “ae-kai” is said to be the name of a wind specific to the vicinity of Moku‘ae‘ae Island and “the Wai-mio is the wind of Kilauea” (Aikin 1988:7). The wind name for the Ko‘olau District of Kaua‘i between Moloa‘a and Kalihikai was the “Kiukainui” (Nakuina 1990:54).

2.1.3 Population

Our best data on the population of north Kaua‘i comes from a census there in the spring of 1847 (Table 1). Namahana Ahupua‘a is not listed and we speculate that the population of Namahana was for the purposes of the census, lumped with adjacent Kīlauea Ahupua‘a and Kāhili Ahupua‘a to the east. Even given this conflation of the three it may be noted that the recorded population of 240 is relatively large, larger than the combined populations of Kalihiwai and Kalihikai to the west and larger than the combined populations of Waiakalua, Pāpa‘a, Waipāke, and Lepeuli to the southeast. The population is larger than that of the huge valleys of Kalalau or Wainiha. The population density of Namahana/Kīlauea/Kāhili thus would appear to have been relatively high for Kaua‘i in 1847. Most likely this pattern of being relatively well-populated would have continued back far into pre-contact times.

Table 1 Population of Northern Kaua‘i (1847) (from Schmitt 1969:229), indicating a relatively large population (and high population density at “Kilauea and Kahili”)

TABLE 1. POPULATION OF NORTHERN KAUAI, BY AHUPUAA: SPRING 1847

*Ahupuaa**	*Population*
Total	2,698
Kalalau	190
Haena	162
Wainiha	154
Lumahai	123
Waikoko	5
Waipa	66
Waioli	159
Hanalei	637
Kalihikai	87
Kalihiwai	78
Kilauea and Kahili	240
Waiakalua	43
Papaa	22
Pilaa	51
Waipake	60
Lepeuli	23
Moloaa	104
Papaa	23
Anahola	280
Hoomaikawaa	32
Kumukumu	21
Kealia	143

* Listed from west to east. Two different areas are named “Papaa’. See text and footnote 3 for further comment.

2.1.4 Early Historic Records

We have identified few early narratives of the vicinity of the project area. In 1849, William DeWitt Alexander wrote the following passing account crossing the Kilauea/Kahili River just to the east:

> …A little farther on we entered groves of hala, through which we continued to ride for the rest of our journey. We turned from the road to see the falls of the Kahili River. Though not large they are beautiful. Here the river falls in a jet of foam over a precipice of about 40 feet into a broad clear basin below… (Alexander 1991:124)

2.1.5 Māhele Records

As previously mentioned the entire *ahupua‘a* was awarded to Miriam Kekau‘ōnohi (LCA 11216) who also received extensive lands elsewhere on Kaua‘i, Maui, Hawai‘i and Moloka‘i. There are no *kuleana* awards listed within Namahana Ahupua‘a which appears to be something of a pattern in the vicinity (there are no *kuleana* Land Commission Awards within Kīlauea Ahupua‘a either.

It is unknown why there were no commoner *kuleana* land holdings within Namahana Ahupua‘a at the time of the Māhele (1848) and the following Kuleana Act. There was however a pattern at the time of the division of lands in which the land overseers (*konohiki*) often tried to present their overlord *ali‘i* with undivided tracts of land believing that to be in the best interests of their masters. Thus it could be that there was a systematic pattern to discourage commoner land claims in Namahana Ahupua‘a. It certainly seems odd that there was not a single claim in what should have been a well-populated, albeit small *ahupua‘a*.

Virtually all claims in the general vicinity involve a house-lot (understood as a permanent residence) and a few irrigated ponded fields for taro cultivation (*lo‘i*). Several claims mention “*kula*” which in this context probably refers both to pasturage and areas of dry land cultivation (with *wauke* specifically mentioned as a *kula* crop). Other specific cultigens mentioned are the bark-cloth plant *wauke, noni,* and orange trees.

2.1.6 Late 1800s

<u>The History of Kilauea Plantation</u>

In January 1863, a former American whaler named Charles Titcomb purchased the entire *ahupua‘a* of Kīlauea amounting to approximately 3,016 acres from Kamehameha IV for $2,500 (Grant 2896). This land grant included the present project area. By this time, Charles Titcomb was already a veteran of several enterprises at Kōloa, Hanalei, and Kīlauea, Kaua‘i, including efforts to cultivate silkworms, coffee, tobacco, sugarcane and cattle. He expanded his holdings to the west through further purchases within the next couple of years. The Kilauea Plantation, begun in 1863 by Mr. Titcomb, became a sugar estate in 1877 when Captain John Ross and E. P. Adams, in partnership with Titcomb, purchased much of the land and leased another substantial tract (Aikin 1988:19). Titcomb and his family continued to be involved in the plantation. He, his

Hawaiian wife and two of his eight children are buried in a family plot near his former home behind the Kīlauea Elementary School.

The Kilauea Plantation “was one of the smallest plantations in the Hawaiian Islands operating its own sugar mill” (Condé and Best 1974:159). In 1881, a railway was begun and Princess Lydia Kamakaeha (Lili‘uokalani) drove in the first spikes for the railroad bed. The plantation infrastructure grew over the next twenty years:

> Transportation system consists of 12 and a half miles of permanent track, five miles of portable track, 200 cane cars, six sugar cars and four locomotives. Kilauea is situated three miles from the landing at Kahili, with which it is connected by the railway system. Sugar is delivered to the steamers by means of a cable device at the rate of from 600 to 800 bags an hour. Mr. J. R. Meyers was the plantation manager. (*San Francisco Chronicle*, July 18, 1910, in Condé and Best 1974:152)

The plantation employed Chinese and Portuguese workers. In the 1880s, Kilauea Sugar Company began major modification of water resources in the uplands with dams, reservoirs, ditches and flumes (Joesting 1984). This may have had a major damaging effect on *lo‘i kalo* downstream and possibly signaled the end of large-scale native agricultural practices in Kīlauea and vicinity.

The Kilauea Plantation Company started to be managed by C. Brewer and Company in 1910 and C. Brewer took over the controlling interest in 1948. In 1938, trucks were employed to transport harvested cane, and by 1942, the rail system was abandoned entirely (Conde and Best 1974). Sugar continued as a crop until 1971 when Kilauea Sugar Co. was terminated (Anonymous, Custodial Chronology of the Sandy Saemann Property, Kilauea, Kauai 1989).

The Monsarrat map of “Kaua‘i Between the Kalihiwai and Moloaa Streams” (1898) shows the plantation infrastructure in place at that time (Figure 5). Overlays indicate that the “Government Road”, which crossed the southwest portion of Namahana Ahupua‘a, lies at approximately the same elevation as the older “Hanalei Road” and the present Kūhiō Highway - well *mauka* of the project area. The railroad, begun in 1881, and the Ko‘olau Ditch are shown running from the mill at Kīlauea as far as the east side of East Waiakalua, terminating near the Government Road. The railroad also extended to the southwest skirting the southeast side of Namahana Ahupua‘a.

The Monsarrat map (Figure 5) shows Namahana Ahupua‘a as Grant 630 awarded to Jules Dudoit. Jules Dudoit (1803-1866) arrived in Hawaii in 1835 and served as French consul from 1837 to 1848. He had quite a variety of business affairs.

A 1910 U.S. Geological Survey Map, Kilauea Quadrangle (Figure 6) shows the plantation infrastructure and other development in the vicinity of the project area at that time. No development is shown near the present project area.

A Condé and Best (1974:159) 1930 map of the Kilauea Plantation (Figure 7) shows the plantation’s sugar cane fields and associated infrastructure. The map indicates that sugar was cultivated close to the west side of the present project area in field 10 but indicates that sugar was not grown in or immediately adjacent to the project area. No infrastructure is shown in the project area.

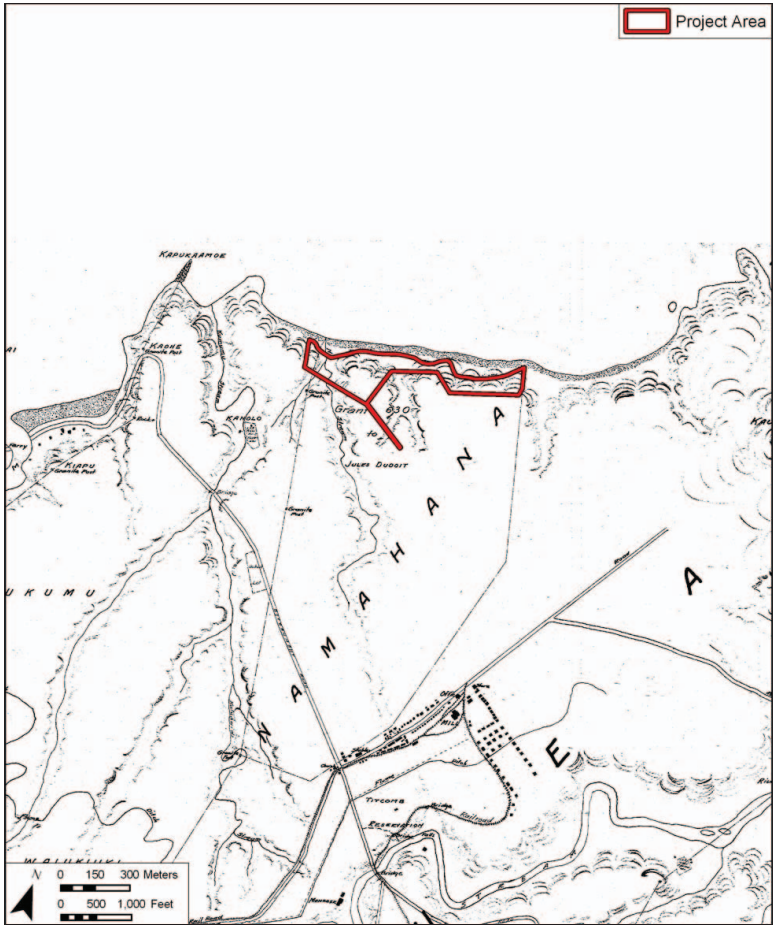

Figure 5. Portion of Monsarrat map of “Kaua‘i Between the Kalihiwai and Moloaa Streams” showing general development in the project area and vicinity circa 1892

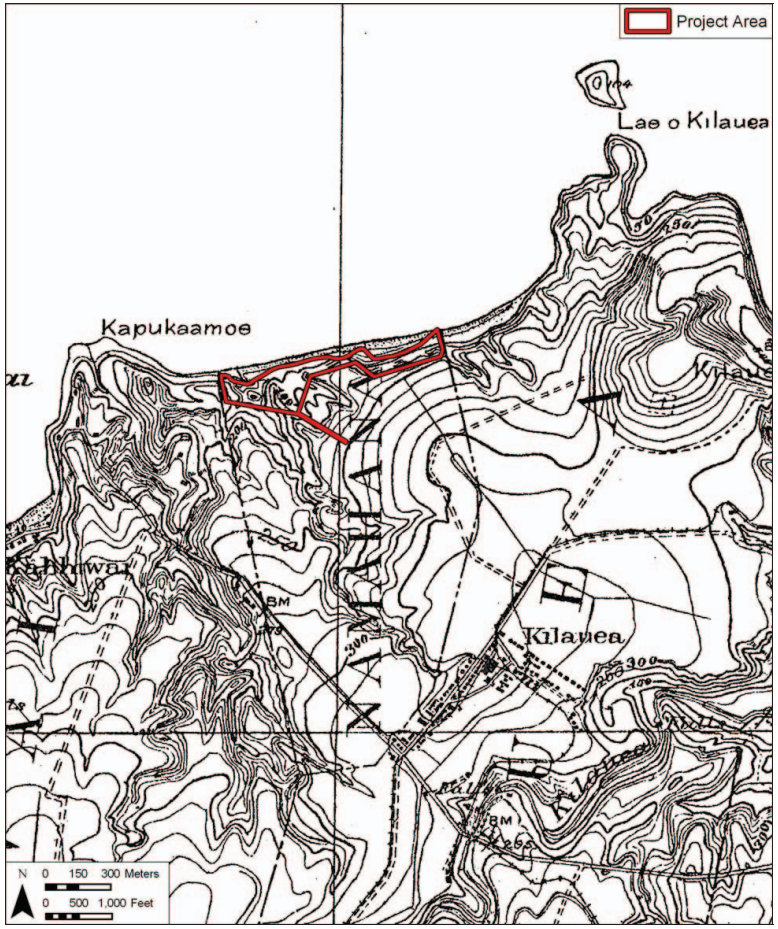

Figure 6. Portion of 1910 U.S. Geological Survey 1:31680 Scale Topographic Map, Kilauea Quadrangle, showing the location of the project area

Figure 7. 1930 Map of the Kilauea Sugar Company note railroad down to Mōkōlea Point but otherwise no infrastructure in or adjacent to project area

The 1963 U.S. Geological Survey map (Figure 8) does not indicate any structures within the project area but does show an unimproved road extending along the seaward edge of the table lands quite close to the top of the sea cliff (and cutting through the access corridor at the south side of the project area). The modern alignment of Kauapea Road is not shown at that time.

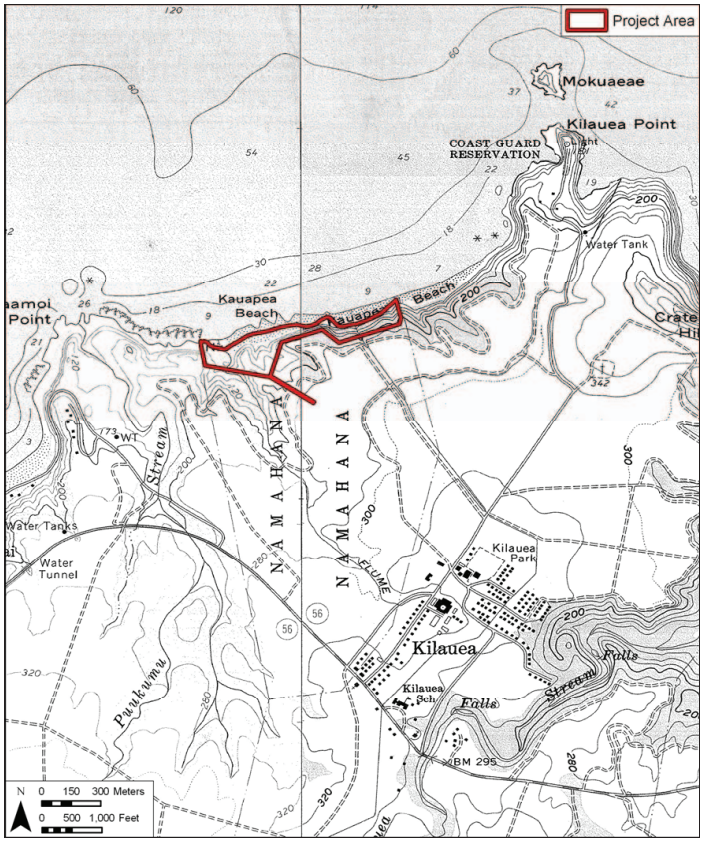

Figure 8. 1963 U.S. Geological Survey Topographic Map, Anahola Quadrangle, showing the location of the project area.

Section 3 Previous Archaeological Research

The only archaeological study of land within the boundaries of the subject property (Kikuchi 1987; discussed below) effectively presents no data. Archaeological studies in the vicinity are summarized in Table 2 and are located in Figure 9. More detailed discussion of some of the more pertinent studies follows.

3.1 Thrum’s *Heiau* Study (1906)

Thomas Thrum compiled the first systematic listing of Kaua‘i Island archaeological sites in his study of “Heiaus and Heiau Sites Throughout the Hawai‘i Islands” (Thrum 1906:36-44). In the vicinity he briefly described four *heiau*: Pailio at central Kīlauea, Kapinao and Kapuohaua‘e at Waiakalua and Kipapa at Kāhili as follows:

- Pailio - Central Kilauea – a round heiau of about 100 feet diameter; class unknown. Site covered in cane field
- Kapinao - Waiakalua-east - A large heiau of about 200 x 400 feet, high walled and stone paved. Still in existence. Of po‘okanaka class.
- Kapuohaua‘e – Waiakalua-uka – a small round heiau, paved, with high walls of husbandry class; still standing
- Kipapa – Kahili - A large heiau of some 300 by over 100 feet in size, paved, walls five feet high, standing in cane field in partial ruins.

3.2 Bennett’s Survey (1931)

During his 1928/1929 landmark survey of the island of Kaua‘i Wendell Clark Bennett identified five sites (sites 129 to 133) within the Ko‘olau District of Kaua‘i between Pila‘a to the east and Kalihiwai to the west including Site 129, Kapinao heiau, in Waiakalua Valley, Site 130, Taro terraces, in East Waiakalua and West Waiakalua valleys and Site 131, House sites, in East Waiakalua and West Waiakalua Valleys and on the ridge between. The closest sites were in neighboring Kīlauea where Bennett described two *heiau* sites: Site 132 Kipapa heiau and Site 133 Pailio heiau. Bennett described Site 132 Kipapa Heiau as follows:

> Site 132 Kipapa heiau, on the end of the first bluff east of Kilauea River in Kahili section. Described by Thrum as “A large heiau of some 300 by over 100 feet in size, paved, walls five feet high, standing in cane field in partial ruins.” Since that time the stones have been removed.

U.S. Geological Survey maps indicated Kipapa Heiau as located on the east side of the mouth of Kīlauea Stream.

Bennett described Site 133 Pailio Heiau as follows:

> Site 133 Pailio heiau in the canefields shorewards of Kilauea. The site does not have a view of the river valley. Thrum says that it was, “A round heiau of about 100 feet diameter: class unknown. Site covered in cane field.” Nothing remains of the heiau today [c. 1928].

Table 2. Archaeological Studies Near the Present Namahana Project Area

Source	Nature of Study	Location of Study	Finds
Handy and Handy 1972	Native Planters of Hawaii	Archipelago-wide	Conclude Kīlauea a relatively small producer of taro because of the nature of its hinterland
Kikuchi 1987	Archaeological Survey	Proposed Visitor Center, Kīlauea Point, National Wildlife Refuge Kalae O Kīlauea,	Surface remains of historic structures associated with Kīlauea Lighthouse are described, but no traditional Hawaiian sites were found
Fredericksen and Fredericksen 1989	Archaeological Inventory Survey	Crater Hill and Mokolea Point of Kīlauea Point National Wildlife Refuge, Kīlauea	Identifies historic structural remains related to the transport and loading of sugar at Mokolea Point, a Second World War era radar installation on Crater Hill and Kīlauea Lighthouse.
Rosendahl 1989, 1991a & 1991b	Archaeological Inventory Survey & additional survey	Kalihiwai Valley Proposed Housesites project	Minimal archaeological remains reported
Kennedy 1990	Surface Reconnaissance	19 Acres Located at Kalihiwai Ridge, Kīlauea, TMK 4-5-2-002:010	No sites identified
Toenjes and Hammatt 1990	Archaeological Survey	94 Acres in Kīlauea	No sites identified
Kennedy 1991	Archaeological Inventory Survey and Testing	Kalihiwai Ridge Subdivision-Phase II, TMK: 5-2-, 02:11, Kalihiwai,	Site 50-30-03-06007
Hammatt and Chiogioji 1992	Archaeological Inventory Survey	15-Acre Property in the Ahupua‘a of Namahana and Kalihiwai	No sites identified
Hammatt and Robins 1993	Archaeological Inventory Survey	Proposed Kilauea Golf Course in the Ahupua‘a of Namahana 204 acres	Site 50-30-04-00572 consisting of 3 irrigation ditches

Source	Nature of Study	Location of Study	Finds
Hammatt et al 1996	Archaeological Inventory Survey	5 acre parcel TMK 5-2-021:005 on east slope of Kīlauea Valley	3 sites:
Ida and Hammatt 1996	Reconnaissance Survey	Kīlauea Bridge	Railroad bridge foundation
McGerty and Spear 1998	Archaeological Inventory Survey	Proposed Driveway Corridor, Kīlauea Ahupua‘a	Site 50-30-04-644
Cleghorn 2001	Archaeological Monitoring Report	Kilauea Japanese Cemetery, (TMK: 5-2-4:49)	No significant finds
Elmore & Kennedy 2001	Archaeological Inventory Survey	At a small (0.37 acre) property located on the east side of the mouth of the Kalihiwai River	A habitation site (SIHP # 50-30-03-671) was identified that included six burials.
Rechtman et al. 2001	Archaeological Inventory Survey	Halaulani Property (TMK: 4-5-2-02:11, 12) Kīlauea and Kalihi Wai Ahupua‘a,	Sites 50-30-03-2060, -2062, -2063, 2064
Shideler, Tulchin and Hammatt 2007	Archaeological field inspection and literature review	An approximately 74-Acre portion of the Kilauea Falls Ranch Property, (TMK: [4] 5-2-012:035 por.)	Four specific areas of pre-contact agricultural terraces were observed. A posited mill site (CSH 1) in the north side of the southwest project area was noted. An extensive complex of long well-built terraces supporting a series of what appear to have once been ponded fields (CSH 2) was noted.

Source	Nature of Study	Location of Study	Finds
Shideler, Yucha and Hammatt 2008	Archaeological Inventory Survey	An approximately 74-Acre portion of the Kilauea Falls Ranch Property, (TMK: [4] 5-2-012:035 por.) (roughly the same as Shideler et al. 2007)	Five historic properties: SIHP # 50-10-04-579, an agricultural terrace; # 50-10-04-580, 53 agricultural terraces and 2 possible habitation areas (probably related to agriculture as field shelters); # 50-10-04-581, a stone retaining wall with cement and alignments and a rock-faced trail understood as a post-contact permanent habitation; # 50-10-04-582, agricultural terraces and # 50-10-04-583, agricultural terraces

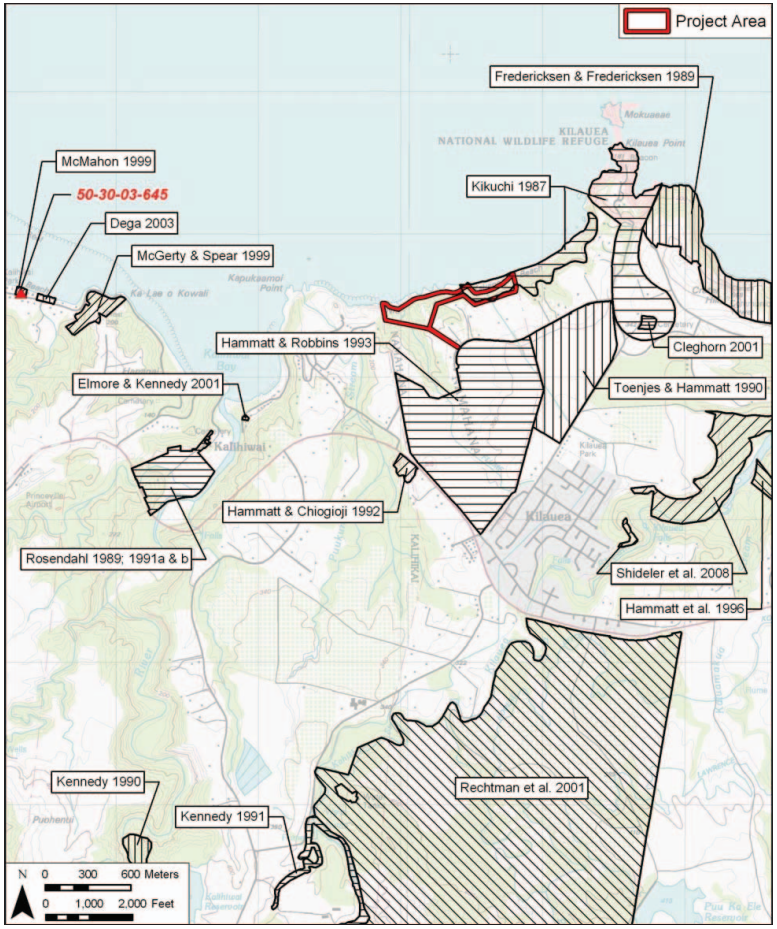

Figure 9. Map showing locations of previous archaeological studies in the vicinity of the project area

The location is uncertain (Bennett didn’t find any trace) but the description suggests Pailio Heiau was not close to the present project area.

3.3 Handy and Handy’s Native Planter Observations (1972)

Handy and Handy (1972) carried out a summary study of traditional Hawaiian agriculture and the life, lore and environment of native planters throughout the Hawaiian Islands. They did not address Namahana Ahupua‘a per se but noted the following at Kīlauea and Kāhili

> Kilauea is watered by a small river whose headwaters take the flow of streams above Kalihiwai as well as those coming down sloping kula lands above Kilauea. This is a peculiar terrain, with terraces along the north side of the river toward its seaward end belonging to Kilauea and those on the south side to the small ahupua‘a named Kahili. A mile upstream is a small terraced area, but beyond this there were no terraces, for the main stream flows in a narrow gulch, and so do other side streams which flow into the Kilauea River. Hawaiians evidently never developed lo‘i here because the neighboring kula land is too high above the streams for irrigation. This kula would have been excellent sweet-potato land. On the whole, Kilauea, despite a sizable river flowing through it, was a relatively small producer of taro because of the nature of its hinterland.
>
> Kahili is, as indicated above, part of the complex that includes Kalihiwai, Kalihikai and Kilauea. The three streams empty into the Kilauea River, which forms the boundary between Kilauea and Kalihi below the falls of the river. There are terraces on the south side of Kilauea River watered by two of Kahili’s streams. This is doubtless why this area was part of Kahili rather than of Kilauea. Only one stream had terraces back from the river. Here to the kula land was good for sweet-potato planting. (Handy and Handy, 1972:421).

3.4 Recent Studies in the Vicinity

At least two archaeological surveys have been conducted in and adjacent to areas proposed as extensions to the Kīlauea Point National Wildlife Refuge. The Kikuchi 1987 study indicates that much of the eastern portion of the present project area was covered in archaeological survey. A discussion of these and other archaeological studies in the vicinity follows.

3.4.1 Kikuchi’s Kīlauea Point National Wildlife Refuge Survey (1987)

In 1987, Wm. K. Kikuchi surveyed the present grounds of the Kīlauea Point National Wildlife Refuge and areas of proposed extension. Considering the significance to native Hawaiians of seabird nesting colonies found within the refuge, Kikuchi extended the limits of his survey to search for associated cultural features or material. One area of his survey abuts the northeastern end of the present project area at the west bank of the mouth of Kīlauea Stream. Surface remains of historic structures associated with Kīlauea Lighthouse are described, and limited subsurface testing was performed, but Kikuchi found no evidence of remains related to native Hawaiian culture.

Kikuchi (1987:4) indicates in his “Figure 3 Area Surveyed” map that an extensive area back of Kaupea Beach including much of the eastern portion of the present project area was an “Area Surveyed Outside of Refuge Area”. No details are provided at all. It is unclear whether Kikuchi himself surveyed the Kaupea Beach area (there are no references to any other archaeological studies), why the Kaupea Beach area was surveyed, or whether there were any finds (the absence of reference to finds suggests there were none).

3.4.2 Xamanek Researches Kīlauea Point National Wildlife Refuge Survey (Fredericksen and Fredericksen 1989)

Xamanek Researches (Fredericksen and Fredericksen 1989) surveyed extensions to the wildlife refuge including Crater Hill and Mōkōlea Point (parcel 19 of approximately 38 acres). Land use and history of tenure is well documented, followed by detailed descriptions of historic structural remains related to the transport and loading of sugar at Mōkōlea Point, a Second World War era radar installation on Crater Hill and Kīlauea Lighthouse. Though archaeological evidence of native Hawaiian exploitation of seabird colonies was one object of the survey, no such remains were observed.

3.4.3 Rosendahl (1989, 1991a and 1991b)

PHRI carried out a number of archaeological studies (Rosendahl 1989, 1991a and 1991b) at a Kalihiwai Valley Proposed Housesites project area on the northwest side of Kalihiwai Stream. Minimal findings were reported.

3.4.4 Toenjes and Hammatt Study of 94-Acres at Kīlauea (1990)

Two loci suggesting previous traditional Hawaiian activity were found and tested for subsurface deposits. Locus A was located in the southwest corner of the 94-acre parcel and was under papaya cultivation. Upon finding a water-rounded cobble and a small fragment of coral, an examination was made of the soil between every other row of trees in the grove. Indications of archaeological deposits were sparse and included two pieces of coral, one fragment of unidentified marine shell and several possible basalt flakes dispersed through the grove. The area of the papaya grove and scatter covered approximately 3,800 square meters (41,000 square feet).

Locus B was located in the central portion of the 94-acre parcel in an extensive former sugar cane field, then lying fallow. Much of the ground surface was clearly visible, with scattered indications of recent mechanized disturbance. The only suggestion of previous cultural activity consisted of sparsely scattered coral across an area of about 7,500 square meters (80,700 square ft.) No bone or shell material was observed in association with Locus B or anywhere else in the project area. Several possible flakes of basalt and one basalt core or possible adze blank were observed dispersed across the surface of the field apart from the coral scatter.

Subsurface testing at Locus A and Locus B, as well as in the area from which a basalt core was collected was conducted. Excavation exposed no culturally modified lithics. The presence of coral and coral sand in cane fields was noted as common, having been historically imported for the purpose of "liming" the soil. Lacking other archaeological components of Hawaiian culture, e.g. bone and shell midden, lithic debris or modified coral, the significance of these scatters was

regarded as minimal Examination of all other fields of the property indicated no archaeological remains of informational significance were present.

3.4.5 Hammatt and Chiogioji (1992)

Hammatt and Chiogioji (1992) carried out an archaeological inventory survey on a 15.17 acre property in Namahana and Kalihiwai on the *mauka* side of Kūhiō Highway approximately 3,000 feet south of the present study area. There were no significant finds. A practice of Kilauea sugar Company using marine sand with coral and shell as liming fertilizer for agricultural fields was noted.

3.4.6 Hammatt and Robbins (1993)

Hammatt and Robbins (1993) carried out an archaeological inventory survey on 204 acres adjacent to the *mauka* side of the present study area access corridor for a proposed Kilauea Golf Course project. Only one plantation-era site (consisting of three irrigation ditches) was documented.

3.4.7 Cleghorn (2001)

Cleghorn (2001) reports on archaeological monitoring carried out at the Kilauea Japanese Cemetery, (TMK: 5-2-4:49) located 2500 feet southeast of the present study area. There were no significant finds.

3.4.8 Elmore and Kennedy (2001)

Elmore and Kennedy (2001) carried out an archaeological inventory survey on a small (0.37 acre) property located on the east side of the mouth of the Kalihiwai River approximately 4,000 feet southwest of the present study area. A habitation site (SIHP # 50-30-03-671) was identified that included six burials.

3.4.9 Rechtman, Orr and Dougherty (2001) 1400-acre *Mauka* study

Rechtman Consulting (2001) carried out an Archaeological Inventory Survey of approximately 1400-acres about a mile south of the present project area in Kīlauea Ahupua‘a and Kalihi Wai Ahupua‘a at elevations from 300 feet to 764 feet. They only identified four sites all of which were related to plantation agriculture between 1881 and 1922.

3.4.10 Shideler et al. (2007) & (2008) Studies for Kilauea Falls Ranch

CSH carried out two studies for Kilauea Falls Ranch on the west side of Kīlauea Stream (aka Kahili Stream). A total of 62 features were identified within a total of five sites in a proposed agro-forestry area. Four of these five sites (SIHP # 50-30-04-579, -580, -582 and -583) are primarily or exclusively agricultural terraces The only exception at these four sites is SIHP # 50-30-04-580 features L and MM that are interpreted as temporary habitation features related to the agricultural terraces. One site (SIHP # 50-30-04-581) was understood as primarily post-contact and either a permanent habitation or work area.

The inventory survey study (Shideler et al. 2008:69) concluded that the approximately 1500-1800 mm (60-70 in.) of annual rainfall within that project area made cultivation possible without

irrigation. While it was concluded that there may well have been pre-contact ponded field (*lo‘i*) taro cultivation along the Kīlauea Stream flood plain, it was suggested that the vagaries of hurricane, tsunami, and flood may have made such planting down by the stream precarious. It was suggested that cultivation up on the steep slope may have been more secure.

The evidence from the *māhele* records indicates that there was little or no pre-contact permanent habitation within the Kilauea Falls Ranch project area per se although there was a community on the southeast side of the stream mouth from the 1840s well into the twentieth century. An interviewee, Ms. Sara H. Keahonui Jones, born in 1919 who had lived in the *makai* area of Kāhili Ahupua‘a most of her life, remembered: “the homes were all on stilts and once the water rose all the way up under the house.” The propensity of the Kāhili/Kīlauea Stream to flood may have encouraged development on the steep slope.

3.5 Background Summary and Predictive Model

Most of the archaeological studies in the flat tablelands of Namahana Ahupua‘a and vicinity (Toenjes and Hammatt 1990, Hammatt and Robins 1993, Ida and Hammatt 1997, Hammatt and Shideler 1998) have encountered very few sites other than remnants of plantation agriculture. Somewhat curiously the studies along the coastline (Kikuchi 1987, Fredericksen and Fredericksen 1989) found no pre-contact sites or deposits. Very few sites other than remnants of plantation agriculture would be expected in the flat tableland portion of Namahana. Some remnant of the road shown on the 1963 U.S. Geological Survey map (Figure 8) crossing the access way to the present project area might be extant.

On the other hand, the studies (Ching and Bordner 1978, Hammatt et al. 1996, McGerty et al. 1997, Shideler et al. 2008) of un-bulldozed valley areas that were less disturbed by plantation agriculture have reported a number of permanent habitation and agricultural complexes.

Section 4 Results of Fieldwork

4.1 Survey Findings

Cultural Surveys Hawai‘i’s fieldwork was conducted December 20, 2010 by three CSH archaeologists, Kendy Altizer, B.A., Gerald Ida, B.A. and Missy Kamai, B.A., under the general supervision of Hallett H. Hammatt, Ph.D. The fieldwork required approximately 2 person-days. In general, the purpose of the initial field work was to develop data on the nature, density, and distribution of archaeological sites within the project area.

The survey area consists of approximately 24 acres of conservation lands just west of Kīlauea Lighthouse, abutting “Secret Beach” on the north shore of the island of Kaua‘i. The conservation area has been modified in recent years by the addition of a series of staircases to access the beach, as well as to traverse the steeper portions of the area. The project area is bounded on the west side by privately owned parcels, which consist of well manicured gardens and houses.

The majority of the project area consists of steep slope and/or cliff with little possibility for cultural resources or historic properties. Taro was observed in the southern end of the project area, growing at the base of a steep *pali*. There was no evidence of human modification. No cultural material was observed within the project area. Vegetation observed includes tall stands of Ironwood trees, ti, *naupaka*, ferns, *wedelia*, buffle grass, crab grass, *hala*, *hilahila*, and palm trees.

The presence of taro on quite steep cliffs (see Figure 13 to Figure 15) was notable. These may have grown up from shoots washed down from above. Very small patches of taro and other Polynesian cultigens are a feature of small spring and waterfall pools near the coast of the north shore of Kaua‘i and it is certainly possible these are the offspring of Hawaiian plantings of some antiquity.

Somewhat similarly the bamboo shower pipe (Figure 15) could be quite modern or may have antecedents extending back in time at this location.

Figure 10. Project area overview from central portion of project area, view to north

Figure 11. Project area overview from northeast end of project area, view to southwest

Figure 12. Project area overview of northeastern end of project area showing stairs, view to south

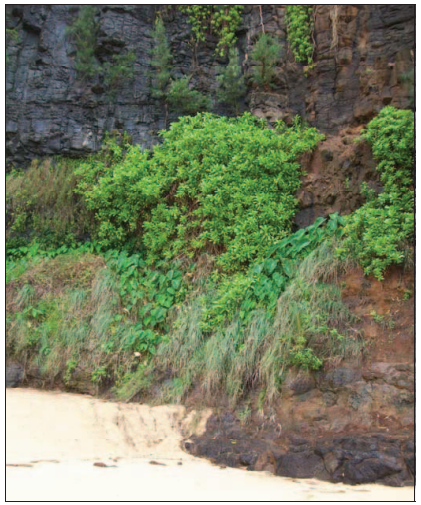

Figure 13. View of taro growing on *pali* on east side of small central headland, view to southwest

Figure 14. View of taro growing on *pali* on west side of small central headland, view to southeast

Figure 15. View of modern bamboo shower pipe (note taro on steep cliff above) on west side of small central headland, view to southeast

Figure 16. Stairs facilitating beach access, west central coastal portion of project area, view to southeast

Figure 17. General view of eastern end of project area, view to southeast

Section 5 Summary and Interpretation

Our background research and field inspection have identified no historic properties on the 23.8 acre coastal Namahana study area. None are believed to be present. The conservation area has been modified in recent years by the addition of a series of staircases to access the beach, as well as to traverse the steeper portions of the area. No historic properties are believed to have been impacted by any land-altering activities of the recent past. There is no indication that these paths and stairs have had any adverse impact to historic resources (as no historic properties were observed). The de facto channelizing and controlling of pedestrian traffic may have served to minimize erosion.

No further archaeological study is recommended.

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Appendix F:

Kilauea Neighborhood Association Meeting

April 5, 2011 @ Kīlauea Community Center

Power Point Presentation

Hand out to Association Board

Meeting Sign-in Sheets

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Secret Beach Properties, LLC After-the-Fact Conservation District Use Application (CDUA KA-3586)

Kilauea Neighborhood Association

April 5, 2011

SSFM INTERNATIONAL

Secret Beach Properties, LLC After-the-Fact Conservation District Use Application (KA-3586) 180 Day Expiration Date: August 13, 2011

Contact Information:

Mr. Michael Cain, Staff Planner
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 587-0048

Secret Beach Properties, LLC
After-the-Fact
Conservation District Use Application (KA-3586)

FIGURE 2

AERIAL PHOTO

Secret Beach Properties, LLC
Sources: State of Hawaii GIS Website and ESRI

0 480 960 1,920 Feet

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After-the-Fact
Conservation District Use Application (KA-3586)

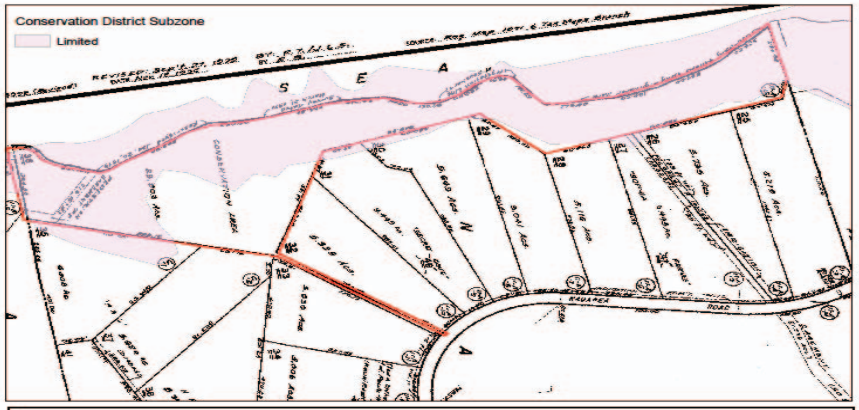

FIGURE 8

CONSERVATION DISTRICT SUBZONES

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website

0 145 290 580 Feet

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Conservation District Use Application (KA-3586)

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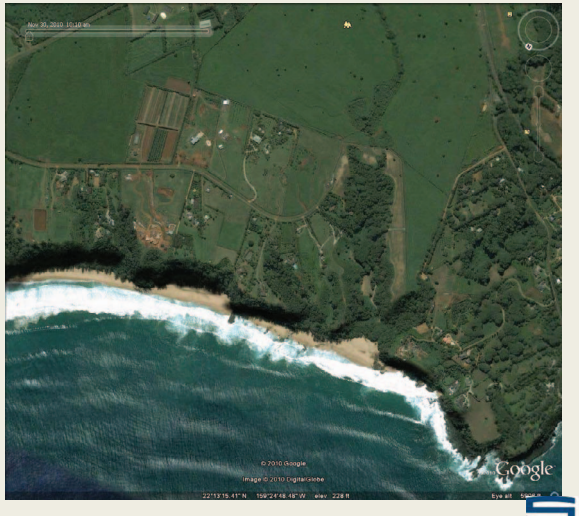
Secret Beach Properties, LLC
After-the-Fact
Conservation District Use Application (KA-3586)



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Secret Beach Properties, LLC
After-the-Fact
Conservation District Use Application (KA-3586)

- CDUA requests the following:
  - Approval of existing trail system used to maintain and control property
  - Provide shoreline access for mauka property owners and emergency responders
  - Future removal of unwanted trees/vegetation
  - Future fencing along mauka property line to prevent unauthorized uses

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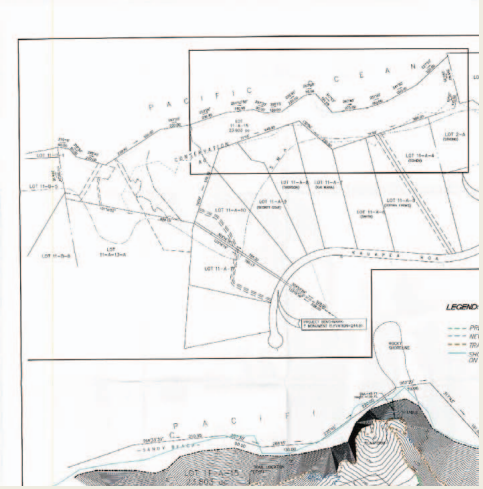

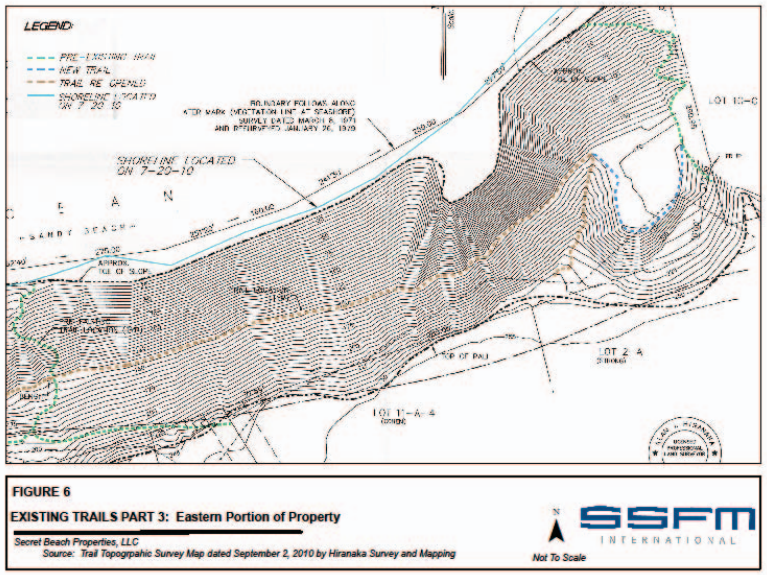

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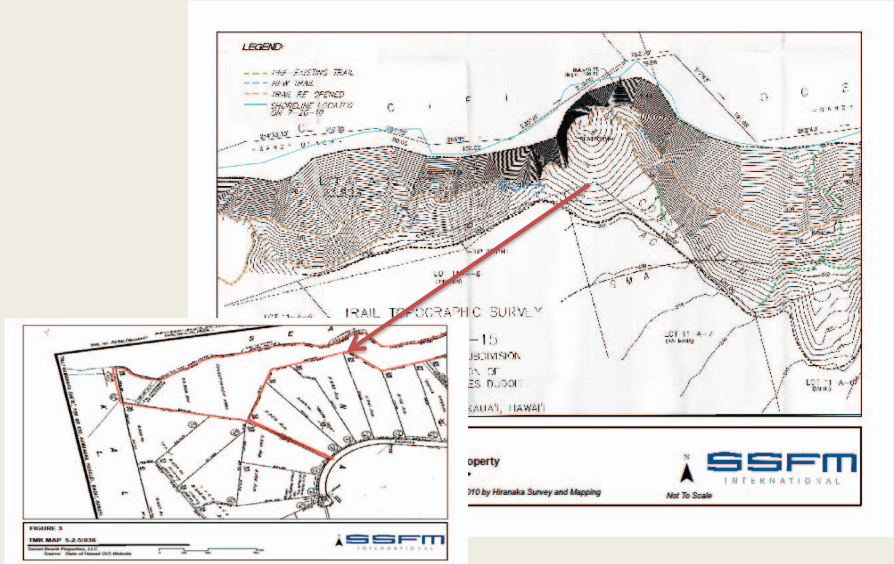
Conservation District Use Application (KA-3586)



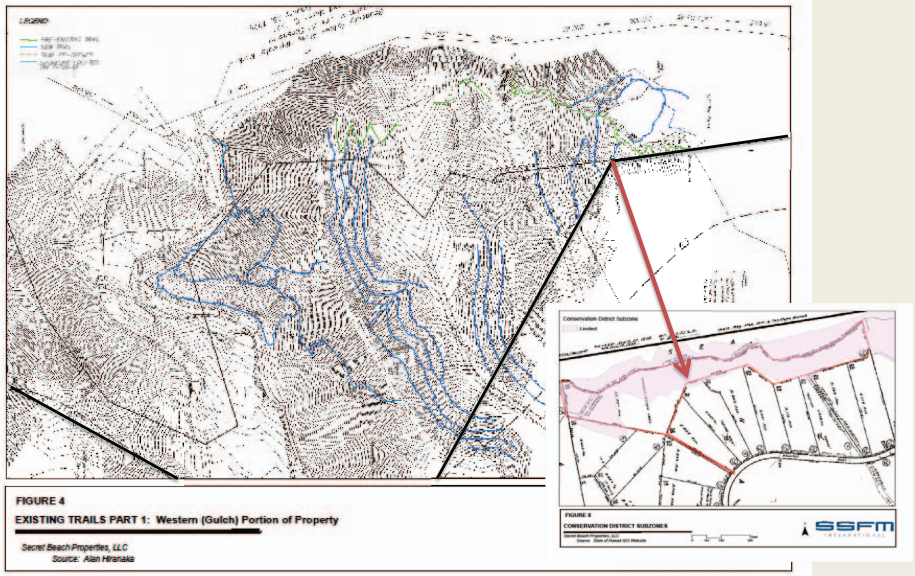


FIGURE 4

EXISTING TRAILS PART 1: Western (Gulch) Portion of Property

Secret Beach Properties, LLC
Source: Alan Hiranaka

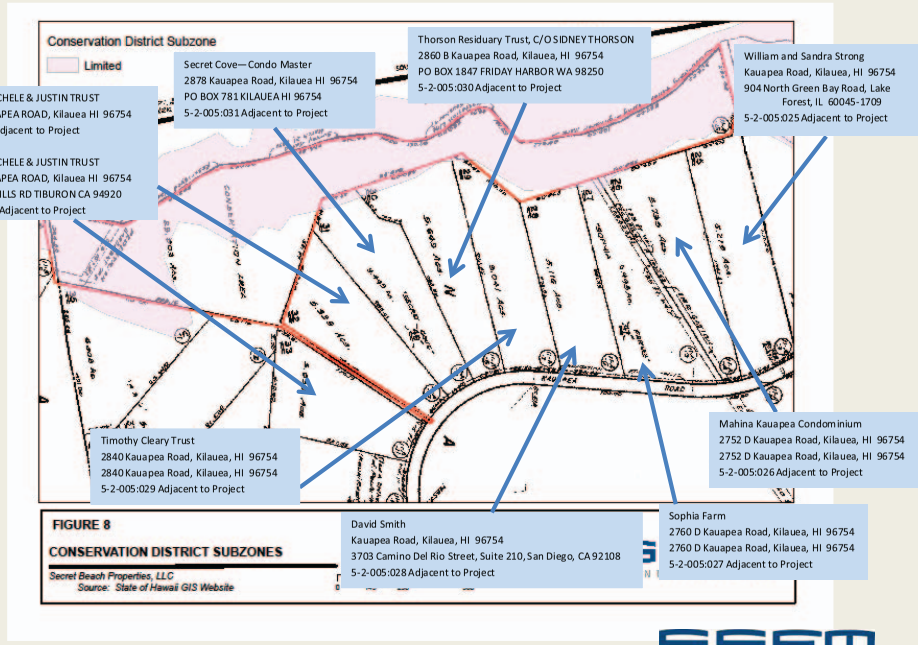


FIGURE 8

CONSERVATION DISTRICT SUBZONES

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website

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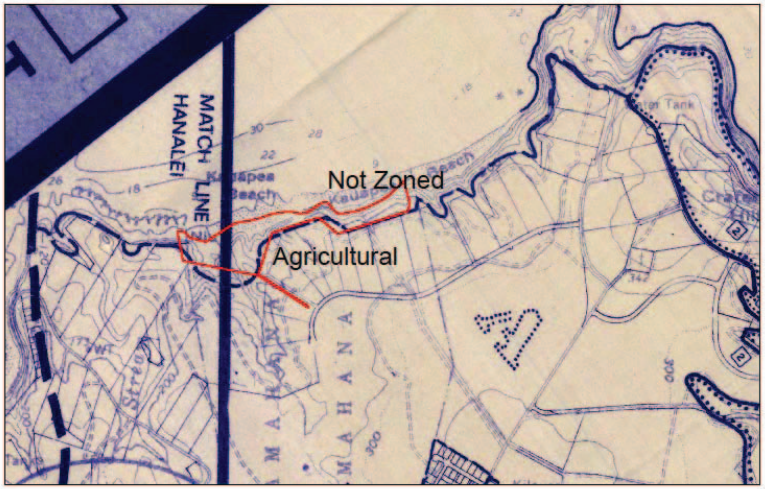

FIGURE 10

ZONING MAP

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website, County of Kauai Kilauea Zoning Map

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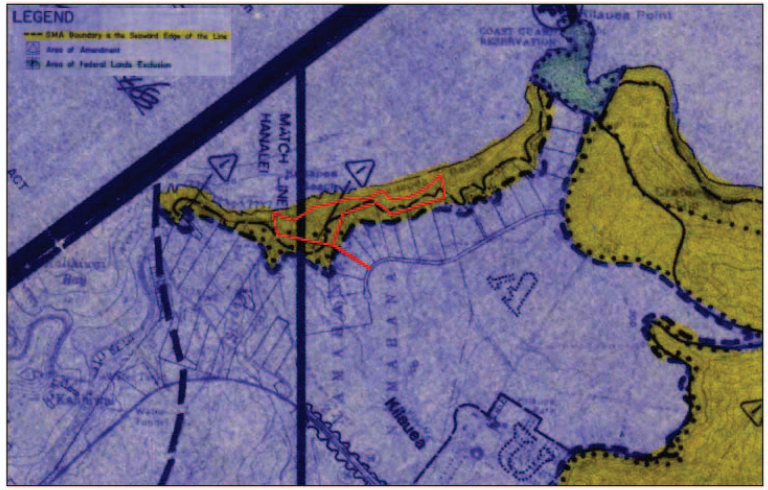

FIGURE 11

SPECIAL MANAGEMENT AREA

Secret Beach Properties, LLC
Source: State of Hawaii GIS Website, County of Kauai Kilauea Special Management Area Map

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After-the-Fact
Conservation District Use Application (KA-3586)

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Conservation District Use Application (KA-3586)

Thank You!

SSFM INTERNATIONAL

FIGURE 1
PROJECT LOCATION

Secret Beach Properties, LLC
Source: DeLorne

0 1,050 2,100 4,200 Feet

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Secret Beach Properties, LLC
Draft Environmental Assessment in Support of an
After-the-Fact Conservation District Use Application (KA-3546)

Project Description: Secret Beach Properties, LLC has submitted a Conservation District Use Application (CDUA) requesting the following:

- Approval of existing trail system used to maintain & control property;
- Provide shoreline access for mauka property owners and emergency responders;
- Future removal of unwanted trees/vegetation; and
- Future fencing along mauka property line to prevent unauthorized uses

Project Location: The property is located along the shoreline with access from Kaupea Road in Kīlauea.

Owner Applicant: Secret Beach Properties, LLC

Planning Consultant: SSFM International, Inc.
501 Sumner Street, Suite 620
Honolulu, Hawai'i 96817
Contact: Mr. Dean Uchida or
Ms. Robyn Loudermilk
Phone: (808) 531-1308

Agency Contacts: Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawai'i 96813
Contact: Michael Cain, Staff Planner
Phone: (808) 587-0048

Planning Department
County of Kaua'i
4444 Rice Street, Suite 473
Līhu'e, Hawai'i 96766
Contact: Lisa Ellen Smith, Staff Planner
Phone: (808) 241-4050

Permits Conservation District Use Application
Special Management Area Minor Permit
Shoreline Setback Determination

The Draft Environmental Assessment was published in the March 8, 2011 issue of the Office of Environmental Quality Control (OEQC) *The Environmental Notice*. A copy of the DEA is available at the Princeville Library. A digital version can be viewed and downloaded from the OEQC website at the following URL: http://hawaii.gov/health/environmental/oeqc/index.html. The 30 day comment deadline for this DEA is April 6, 2011.

A Finding of No Significant Impact (FONSI) determination is anticipated for the Final Environmental Assessment (FEA) aka FEA/FONSI. The final determination will be published in *The Environmental Notice*. In addition to the CDUA, Secret Beach Properties, LLC is also required to obtain a Special Management Area Minor Permit and a Shoreline Setback Determination from the County of Kaua'i Planning Department.

KILAUEA NEIGHBORHOOD ASSOCIATION

SIGN-IN FOR GENERAL MEETING ON APRIL 5, 2011 PAGE 1
BOARD MEMBERS, PLEASE SIGN IN NEXT TO YOUR NAME

DIRECTORS- NAME	(SIGN)	DIRECTORS- NAME	(SIGN)
JOHN CONSTANTINO		KEONE KEALOHA	
MARK FREEMAN		TAMRA MARTIN	
SHANN HASHIMOTO		GARY PACHECO	
RICK HURST		NICKI PIGNOLI	Nicki
CHRIS JAEB		DONNA APILADO-SCHUMACHER	
TIM KALLAI	Tim Kallai	LINDA SPROAT	
MIKE KAPLAN		RAE ANN YADAO-BUTAC	

VISITING COMMUNITY MEMBERS, PLEASE PRINT NAME:	PHONE #	EMAIL
1. Alan Ong	389-8828	alan.ong@amdevelopments.com
2. DAVID WARD		SAYJAZZ@HOTMAIL.COM
3. Matthew Hunt	292-6402	kilaueahlighthousevillage.com
4. PAUL KYNO	651-3287	PAUL@SLEEPINGGIANT.COM
5. Steve Thatcher	828-6669	kmarine@aloha.net
6. TERRY CAPLAN	826-6980	teaplan@hawaii.rr.com
7. DON GATLIN	826-698	don gatlin@hawaii.rr.com
8. Bill Trodman		
9. Donna Schulze	828-1534	4333 Kilauea Rd
10. Steve Colon	2654253	115 Kauluni St Kilauea 96754
11. NEAL NORMAN	651-1777	5-7848 Kuhio
12. Tom Pickett	639 4689	
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		

APRIL 5, 2011

PAGE 2

VISITING COMMUNITY MEMBERS, PLEASE PRINT NAME:	PHONE #	EMAIL
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Andy Friend		aspropertiES@hwkaii.rr.com
Harvey Cohen		hcohenatty@aol.com
Ken Taylor		taylorK021@hawaii.rr.com
Nicole Barca		barcanan419@gmail.com.
DAN SAINDON		SAINDON@SHEKG.com
TRIPP		TRIPP @ lookmon (Grand Kwa)
DAVID DINNER		
Robert Wolaver	rwolaver@aloha.net	gentlerain @ hawaii.rr.com
Jim O'Connor		JOE @ ODONNOR-HAWAII.COM
JIM COYLE		JMCOYLE@AOL.COM
Neill Sass		todd @ aloha.net
Robyn Loudermilk	SSFM	
PATTY EWING		— ON FILE
Terry Sullivan		tsKauai@aol.com
Evelyn de Buhr		
Frank Rothschild		fdr@hawaiibirds.net
Rose Marmoto		
K. Charlie Martin		martincharlie@hotmail.com
Lyle Robinson		docbobb@yahoo.com
Karen Tang		tangir@gmail.com
Janis Lyon		jlyon@nomvillantel.net
Mary Mull		PO 781 KILAUEA HI
Darbi Shakira Freeman	828-1007	

APRIL 5, 2011

PAGE 3

VISITING COMMUNITY MEMBERS, PLEASE PRINT NAME:	PHONE #	EMAIL
SHANNON SMITH FWS	828-1413	Shannon_Smith@fws.gov
Shelly Spencer Jim Spencer	828 1703	aloha_JS-Spencer@yahoo.com
HOKI KALLAI	8-6367	lokipath2@1.net.com
Chris Ordonez	779-7107	chris@balihai.com
KEIS HUBER	635-5106	KEKHUBER@YAHOO.com
DEAN UCHIDA	628-5836	duchida@SSFM.com
Felicia Cowden	652-4363	akamaimom@gmail.com
MARK GOODMAN	651-5466	
DAVID BAKER		
Tiana Kamen	tiana.kamen@gmail.com	[redacted]
Carrie Hermosura	652-8120	carrie.hermosura@gmail.com
Amy Marvin	639-8313	amy@koakauai.com
Rayne Regush	651-1318	Fayneregush@aol.com.

Appendix G:

DLNR Acceptance Letter dated February 22, 2011

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NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

CDUA: KA-3586
Acceptance Date: February 14, 2011
180-Day Expiration Date: August 13, 2011

Dean Uchida, SSFM International, Inc.
501 Summer Street, Suite 620
Honolulu, Hawaii 98817

FEB 22 2011

Dear Mr. Uchida:

NOTICE OF ACCEPTANCE AND PRELIMINARY ENVIRONMENTAL DETERMINATION
Conservation District Use Application (CDUA) KA-3586
(BOARD PERMIT)

This acknowledges the receipt and acceptance for the processing of your client's after-the-fact CDUA KA-3586 for two miles of lateral trails and two mauka-makai trails located at Kilauea, Island of Kauai, TMK: (4) 5-2-005:036. The subject property lies within the Limited subzone of the Conservation District.

According to the applicant, the trail works consists of narrow swaths of cleared vegetation, trex and planks to shore-up earthen steps, rebars that have been driven into the soil to hold the planks in place, and box wire fencing along hazardous portions of the trial. The trails are needed primarily for maintenance and control of the property. Mauka-makai trails afford the upland landowners pedestrian access to the shoreline. In addition, the mauka-makai trails provide emergency personnel (fire, rescue, police, DOCARE) with alternative access to the shoreline area, which can reduce response times in emergencies.

The applicant is also requesting approval for future removal of unwanted trees, subject to plans submitted to and approved by the Office of Conservation and Coastal Lands. Such plans would address erosion and replacement vegetation. The request also includes future fencing of the property along the mauka property boundary, which may be installed to prevent the unauthorized use of the property by adjoining landowners.

The applicant indicates that the project will have no adverse impacts on endangered flora or fauna, and no adverse impacts are anticipated to occur to archaeological or cultural resources. The Nene and the Hawaiian Golden Plover forage in the area and the Wedge Tailed Shearwater nests in the area.

After reviewing the application, the Department finds that:

1. The proposed use is an identified land use in the Limited subzone of the Conservation District, pursuant to the Hawai'i Administrative Rules (HAR) §13-5-23, L-3, EROSION CONTROL (D-1) Erosion control, flood control, and other hazard prevention devices or facilities, and, L-4,

LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS (D-1), removal of noxious plants for maintenance purposes in an area of more than ten thousand square feet that results in significant ground disturbance (e.g., clearing or grubbing). Please be advised, however, that this finding does not constitute approval of the proposal;

2. Pursuant to §13-5-40(4), HAR, HEARINGS, a public hearing shall not be required;

3. In conformance with Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and HAR, §11-200, a Finding of No Significant Impact to the Environment is anticipated for the proposed project.

As the applicant, please be advised that it will be your responsibility to comply with the provisions of Section 205A, Hawaii Revised Statutes, relating to Coastal Zone Management (Special Management Area) requirements.

Negative action as required by law, on your application by the Board of Land and Natural Resources can be expected should you fail to obtain from the County forty-five (45) days prior to the 180-day expiration date, as noted on the first page of this notice, one of the following:

1. A determination that the proposed development is outside the Special Management Area (SMA);

2. A determination that the proposed development is exempt from the provisions of the county ordinance and/or regulation specific to Section 205A-29(b), HRS; OR

3. A Special Management Area (SMA) permit for the proposed development.

Your CDUA will be placed on the agenda of the Board of Land and Natural Resources for their consideration after all reviews and evaluations of the proposal have been made. Should you have any questions, please contact us at (808) 587-0377.

Sincerely,

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

c: Kauai Board Member
KDLO/SHPD/DOFAW/State Parks/DOCARE
OHA/DOH/OEQC
US Fish and Wildlife Service
County of Kauai
Planning Department, Public Works, Police, Fire

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Appendix H:

Previous Board of Land and Natural Resources Approvals for TMK 5-2-005:036:

CDUA KA-2454

CDUA KA-2966B

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Laymon

JOHN WAIHEE
GOVERNOR OF HAWAII

WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

KEITH W. AHUE
MANABU TAGOMORI
Dan T. Kochi

AQUACULTURE DEVELOPMENT PROGRAM
AQUATIC RESOURCES
CONSERVATION AND ENVIRONMENTAL AFFAIRS
CONSERVATION AND RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION PROGRAM
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

RECEIVED
AUG - 6 1991
CHIRAISHI, YAMADA & MURASHIGE
A Law Corporation

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

REF:OCEA:WK AUG 2 1991

FILE NO.: KA-1/2/91-2454
180-Day Exp. Date: 7/1/91
90 DAY EXTENSION: 9/29/91
DOCUMENT NO.: 1249E

RECEIVED
SEP 13 PM 1:26
DLNR
OCEA

Mr. Clinton I. Shiraishi
Shiraishi, Yamada and Murashige
A Law Corporation
P.O. Box 1246
Lihue, Kauai 96766-5246

Dear Mr. Shiraishi:

Subject: After-the-Fact Conservation District Use Application for Portions of A Constructed Roadway and Application for Fence and Other Property Improvements, Kilauea, Kauai

We are pleased to inform you that Mr. Bruce Laymon's After-the-Fact Conservation District Use Application for a roadway, and application for fencing and other property improvements was approved on July 19, 1991 subject to the following:

A. Contested Hearing

Due to a request from the Kilauea Neighborhood Association for a contested hearing, the 180-Day expiration date is extended for 90 days. The new expiration date for this case is September 29, 1991.

B. Violation

1. That the applicant be assessed a fine of $500.00 for a violation of Chapter 183-41, and Title 13, Chapter 2 of the Department's Administrative Rules.

2. That failure on the part of the applicant to comply with this section within sixty (60) days after the Board's decision, the matter shall be turned over to the Department of Attorney General for disposition to include all administrative costs.

C. Application

That upon satisfactory compliance of Part A - Violation, the Board approved the after-the-fact grubbing and grading, and approved the proposed work of finishing the roadway with base coarse, grassing the shoulders, clearing the underbrush with hand tools and approved herbicides, erecting fences, posting signage, and removing trash, and other necessary property improvement to retard illegal camping, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, 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. The applicant shall comply with all applicable Department of Health Administrative Rules;

4. That the applicant affirm that appropriate measures shall be exercised to prevent debris, petroleum derivatives, eroded soil, herbicides, pesticides, etc., from entering or polluting surrounding areas and nearby perennial streams or coastal waters;

5. That the applicant affirm that any additional or future major grubbing and grading activities on the subject parcel must first be authorized by the Chairperson and/or the Board of Land and Natural Resources. This does not include periodic maintenance of grassed areas, such as mowing or weed removal;

6. A qualified archaeologist shall monitor the clearing activity. If significant historic sites are found, the State Historic Preservation Division shall be notified immediately so that a mitigation plan can be worked out. All activity near significant historic sites shall stop until an acceptable mitigation plan is approved by our office. The report presenting the results of the monitoring must be submitted to our office for review and approval;

7. Any new grading and grubbing, especially in the beach area shall have a qualified archaeologist monitor on site during this work. If significant historic sites and/or human burials are encountered, all work must stop in the immediate area until a mitigation plan is developed and approved in consultation with our office;

8. That the existing pedestrian easement on TMK 5-2-05: 36 shall be maintained. Fencing-off of this access easement shall not be allowed;

9. A drainage and erosion study delineating impacts of runoff from both areas already graded as well as areas to be graded shall be conducted for review by the Department of Land and Natural Resources. The study shall also indicate proper mitigation methods (including but not limited to re-vegetation) which shall be employed to retard any further erosion and/or run-off which may impact the beach and waters below;

10. A topographical survey showing both the existing grade and the extent of any proposed changes in the existing grade, including, but not limited to, engineering calculations as to the number of cubic yards to cut and/or filled, method of placement, etc., shall be submitted to the Department prior to any ground alterations occurring;

11. The Department of Land and Natural Resources shall review the placement and design of any signage. A map designating the location and content of such signage shall be submitted prior to actual placement of the signs;

12. That all trash and debris is to be removed from the subject property, and properly disposed of per Department of Health and DLNR Division of Forestry and Wildlife guidelines;

13. That no commercial use regarding cattle raising shall occur on the Conservation District portions of the property;

14. The applicant shall provide documentation (i.e. book/page or document 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;

15. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the grading, fencing and sign postage plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;

16. 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;

17. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

18. That all representation relative to mitigation set forth in the accepted Environmental Assessment for this proposed use are hereby incorporated as conditions of this approval;

19. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void; and

20. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this permit, with the above noted conditions, in the space provided below. Please have the applicant sign two copies. Retain one and return the other to the Department within thirty (30) days.

Should you have any questions on any of these conditions, please feel free to contact our Office of Conservation and Environmental Affairs staff at 548-7837.

Very truly yours,

William W. Paty

Receipt acknowledged

Applicant's Signature

Date 8-13-91

cc: Kauai Board Member
Kauai Land Agent
County of Kauai Planning Department
DOH/OHA/OSP
Kilauea Neighborhood Association

JOHN WAIHEE
GOVERNOR OF HAWAII

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

WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES
Keith W. Ahue
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AQUACULTURE DEVELOPMENT PROGRAM
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CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

FILE NO.: KA-1/2/91-2454
180-Day Exp. Date: 7/1/91
Contested Case Exp. Date: 9/29/91
DOCUMENT NO.: 0800E

July 19, 1991

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

After-the-Fact
Conservation District Use Application for
Portions of a Constructed Roadway, and Application
for a Fence and Other Property Improvements,
Kilauea, Kauai

DEFERRAL: In a letter to the Department of Land and Natural Resources, dated June 6th, the Kilauea Neighborhood Association requested that they be interveners in this case and the Board of Land and Natural Resources consider this as a contested case.

APPLICANT: Bruce A. Laymon
P. O. Box 645
Kapaa, Kauai, Hawaii 96746

LANDOWNER: Kane Enterprises
P. O. Box 729
Bartlesville, OK 74005

LOCATION/ TMKs: Kilauea, Kauai
5-2-05: 35, 36 and 37

AREA OF PARCEL/ USE: 23.803 acres

SUBZONE: Limited

DESCRIPTION OF AREA/CURRENT USE:

The subject area is located at Kilauea, Kauai (Exhibit A). The affected properties are identified as TMKs: 5-2-005: 35, 36 and 37 (Exhibit B). Portions of the properties are situated in the State Agricultural District and the State Conservation District, Limited Subzone (Exhibits C and D).

As identified by the applicant, the project site is bordered to the north by Kauapea Beach (also known as Secret Beach) and to the south, east and west by various other parcels and homesites.

The project site ranges in elevation from mean sea level to approximately 200 feet above mean sea level. There are numerous small valleys and a steep cliffside on the northeast portion of the property.

The flatter uphill portions of the properties are being used to raise cattle by the applicant, who is a lessee. The remainder of the site consists of steep rocky terrain with heavy underbrush growth of lantana, catclaws, buffalo grass, haole koa and various vines. Several common plant life also exists on the slopes such as kamani, lauhala, bananas, papaya, java plum, guava, christmas berry, and ironwood pine. No rare native plants are known to be growing on the property.

Access to the property is off Kauapea Road over a 15 ft "pole" portion of TMK 5-2-05: 36. There is also an unimproved public pedestrian easement leading to the sea located near the northwesterly corner of the property.

PROPOSED USE:

Portions of this application are submitted after-the-fact, while others are proposed and have not yet occurred.

Both components are in response to State Department of Health concerns regarding illegal campers on the property (Exhibits E and F)

A) After-the-Fact Component:

In response to DOH letters, the applicant in September 1990, initiated the clearing of the subject properties of undergrowth to make it easier and safer for the applicant and enforcement officers to inspect, patrol and control the area, and to make arrests of vagrants and illegal campers or encourage their removal.

Since the area within the Conservation District is steep and rugged and difficult for workers to maneuver their way down to the beach area with their equipment and tools, the applicant thought that the work could be expedited if he cleared a path down to the beach area with the use of a John Deere 450 bulldozer (JD 450).

On September 24, 1990, while the operator was clearing a path with the JD 450, the equipment slid into a valley within the Conservation District, and the operator was unable to move it out. To save the JD 450, the applicant ordered the use of a John Deere 850 Bulldozer (JD 850) to cut a "roadway" from the mauka area within the Agricultural District to the makai Conservation District area where the JD 450 was located. The roadway is about 10 feet wide. The JD 450 was retrieved on September 26, 1990, the same day that a DLNR inspector verbally ordered that no further work within the Conservation District be performed without a use permit. The applicant has complied with this order.

The roadway cut by the JD 850 starting from a point within the Agricultural District and extending into the Conservation District is shown on Exhibit G. The length of the roadway is approximately 400 feet, of which only about 30 feet is within the Conservation District.

In creating this emergency roadway, the applicant asserts that no trees within the Conservation District were removed.

The applicant acknowledges that the work within the Conservation District was performed without a use permit. He was ignorant of this requirement, which he also acknowledges is no excuse. However, in mitigation, he asserts that he was of the belief that what he attempted to do was something desired by, and was with the blessing of, the various government officials.

B) Proposed Work:

The applicant proposes to complete the subject roadway and to maintain it to assist in the enforcement program. Base course will be placed on the road and the shoulders grassed to prevent erosion.

Additionally, the applicant proposes to contour certain areas and to clear the underbrush such as lantana, haole koa, etc. with gas-powered weed trimmers, which he asserts provide excellent hiding places for vagrants and illegal campers. The applicant also desires to place field fences to delineate boundaries of the private properties and the Conservation District and assist enforcement officers in performing their duties and to prevent vagrants from going through the property. The applicant also desires approval to apply government approved herbicide by a licensed person, under his direct supervision, to prevent growth of noxious plants and to control the growth of underbrush. He also wants to place "No Trespassing" signs at various locations of the property and place signs within the Conservation District with language that states that the area is within the State Conservation District and that camping is not allowed.

An undetermined amount of trash and rubbish will also be removed from the property accumulated from the illegal camping.

Finally, the applicant proposes to grass the property and raise cattle. As identified, no commercial cattle raising will occur on portions of the State Conservation District (Exhibit H).

SUMMARY OF COMMENTS:

This application was referred to the following agencies for review and comment: the State of Hawaii Department of Health, Office of Hawaiian Affairs, Office of State Planning, Department of Land and Natural Resources, Division of Aquatic Resources, Division of Forestry and Wildlife, Division of Land Management, Division of State Parks, Historic Preservation Division, Division of Conservation and Resources Enforcement, Division of Water Resource Management and the Natural Area Reserves System, and the County of Kauai, Department of Planning. Comments received include;

State of Hawaii
Department of Health

We have reviewed the subject application and offer the following comments:

1. This entire action results from a sequence of events initiated by complaints of illegal camping and improper sewage disposal on Kauapea Beach, the subject property and the adjacent lands. The action taken by the land owner(s) is a direct response to the orders to correct the violations, as stated by the Sanitation Program of the Kauai District Health Office.

   In view of the fact that illegal campers have been removed from the property and no additional sewage is being generated by the occupants, it is evident that the "proposed" action not only meets the intention of the Department of Health's concerns for correction, but also serves as a more permanent solution.

2. The statements pertaining to the removal of grubbed material trash and derelict cars in Section V1, Summary of Proposed Uses, should include that both of these will be properly disposed at a solid waste management facility that is permitted by the Department of Health.

3. Due to the general nature of the proposed project, we reserve the right to impose further environmental health restrictions when more detailed information is submitted.

We recommend that this application be looked upon favorably.

Office of Hawaiian Affairs

This application is based on a need to conform to the Department of Health citation for violation of illegal camping by vagrants.

It appears that the land owner and lessee are being required to keep illegal campers from using this area. The application ask permission to carry out measures which would allow the land owner and lessee to comply with the Department of Health requirements but appear to be counterproductive measures for property in a conservation district area.

Chiefly we are concerned about the protection of native plants that may exist in the area. The construction of a roadway, the clearing of underbrush, the use of pesticides and the planting of grass for cattle grazing would all have a negative impact on native plants.

We suggest that if the applicant is allowed to carry out his proposed plan that these measures be done in a limited and controlled manner. We encourage the land owner and lessee to recognize the importance of the conservation district while complying with the requirements of the Department of Health.

Office of State Planning

We have reviewed the subject application and have no comment to offer at this time.

Department of Land and Natural Resources
Division of Aquatic Resources

No significant adverse impact to aquatic resources is expected from the activities proposed provided precautions are taken to prevent eroded soils, debris, petroleum products, herbicides, pesticides and other contaminants from flowing, blowing or leaching into the perennial stream(s) and coastal waters.

Division of Forestry and Wildlife

We have no objections to the after-the-fact request for property improvements.

Division of Land Management

Land Agent:

The application does not directly affect land or programs under our jurisdiction. Indirectly, however, there should be considerable benefit to adjacent State beach property in terms of discouraging unauthorized camping.

Our own pending program to install "No Camping" signs along the beach could be enhanced by this request.

The Division of State Parks has no comments on the proposed project.

Historic Preservation Division

(Comments of February 15, 1991)

No archaeological surveys have taken place in the project area, so it is uncertain if significant historic sites are present.

According to our files, there is a significant historic site in the vicinity (50-30-03-135, Kauonili Heiau). Our files do not provide the exact parcel location, but the site appears to be located in parcel 36. There is also the possibility that other significant sites (i.e., burials in the sand dunes and in the sand substrate are in the area).

Therefore, in order for this project to have "no adverse effect" on significant historic sites, we recommend the following condition be attached:

1. An archaeological survey shall be conducted to determine the presence or absence of significant historic sites. The report presenting the results of the survey must be submitted to our office for review and approval. This survey must be completed prior to any grubbing or grading.

2. If significant historic sites are present, then an acceptable mitigation plan must be developed in consultation with our office.

(Comments of May 22, 1991)

We are revising our comments of this after-the-fact CDUA. Our staff archaeologist conducted a field check of this project on May 15, 1991. Much of the parcels have already been grubbed and graded.

According to the application, the applicant wishes to continue clearing the beach access path and do further grubbing and grading.

We believe that historic sites might be present in the project area, based on the presence of native plants and sand substrate and dunes. In order for this project to have "no adverse effect" on significant historic sites, we recommend the following conditions be attached:

1. A qualified archaeologist shall monitor the clearing activity. If significant historic sites are found, the State Historic Preservation Division shall be notified immediately so that a mitigation plan can be worked out. All activity near significant historic sites shall stop until an acceptable mitigation plan is approved by our office. The report presenting the results of th monitoring must be submitted to our office for review and approval.

2. Any new grading and grubbing, especially in the beach area shall have a qualified archaeologist monitor on site during this work. If significant historic sites and/or human burials are encountered, all work must stop in the immediate area until a mitigation plan is developed and approved in consultation with our office.

Division of Conservation and Resources Enforcement

A field inspection was conducted on February 19, 1991. Please refer to enforcement report KA-91-024.

Division of Water Resource Management

DWRM recommends that this project be kept within the agricultural district only because of the steep terrain in the Conservation District and its proximity to the shoreline.

Further, the "after-the-fact" roadway grading and grubbing should have met the requirements of the County grading ordinance and the SMA. Should the fencing portion be approved, the fencing should not block the access to the beach, as shown on the tax map.

The proposed land use will have no effect on the existing Natural Area Reserves Program.

County of Kauai:
Planning Department

(Comments of March 11, 1991)

We have reviewed the subject Conservation District Use Application to allow for an unimproved roadway and security fence, and generally support this proposed scope of work. These improvements appear to be necessary in light of the State Department of Health's concerns of unhealthy conditions created on-site by vagrants and illegal campers. However, our agency concerns are as follows:

1. We note that Parcel 36 and portions of Parcel 35 lie within the Special Management Area (SMA) of the County of Kauai. An SMA-Minor Permit will be required.

2. The County's Cultural Data Maps indicate that portions of the project area may fall within areas having moderate sensitivity. Therefore, we recommend that an extensive archaeological survey be conducted before any earth disturbing activities commence. In addition, the work crews shall be briefed on the provisions of Chapter 6E of the Hawaii Revised Statutes.

   We recommend that the petitioner work with the DLNR, Historic Sites Section, on an acceptable scope of work.

3. We are concerned that the grubbing and grading on the steep slopes would create high erosion conditions. We recommend that those areas containing slopes 20% or greater be cleared by hand to avoid disruption to the soil, and that regrassing occur immediately in those areas cleared by heavy equipment.

4. The shoreline fronting these parcels is referred to a "Secret Beach" (Kauapea Beach). Historically, portions of a public beach access path traversed over portions of Parcels 35 and 36. Recent fencing of the property has restricted access to the beach. We recommend that the petitioner grant an easement for beach access.

5. The 1991 Hawaii Ocean Resources Management Plan which was prepared for the Hawaii Ocean and Marine Resources Council by the Department of Business, Economic Development & Tourism (DBED) recommends the establishment of Marine Life Conservation Districts (MLCD) which provide for protection of marine and coastal ecosystems. Kauapea Beach and Mokolea Point are being considered for status within the MLCD. We recommend that you contact DBED for their comments and input on this matter.

(Comments of May 22, 1991)

The Planning Department of the County of Kauai issued a Special Management Area Minor Permit authorizing after-the-fact permit for grubbing, grading and herbicide application (Exhibit I).

ANALYSIS:

Following review and acceptance of the application for processing, the applicant, by letter dated February 12, 1991, was notified that:

1. The proposed use is a conditional use within the Limited subzone of the Conservation District according to Administrative Rules, Title 13, Chapter 2, as amended;

2. No public hearing pursuant to Section 183-41, Hawaii Revised Statutes (HRS), as amended, was required; and

3. In conformance with Title 11, Chapter 200, of the Administrative Rules, a negative declaration was determined for the proposed action.

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human behavior.

Section 13-2-21(b)(1) relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

A. VIOLATIONS

In submitting this application "after-the-fact," the applicant has acknowledged that portions of the subject area specifically within the State Conservation District has been grubbed and graded in violation of Chapter 183-41, HRS, and Title 13, Chapter 2 of the Department's Administrative Rules.

As such, staff concludes that the grubbing activity constitutes one (1) violation, and the grading activity one (1) violation, for a total of two (2) violations of the Department's Administrative Rules. Each violation is subject to a maximum Board imposed fine of $500.00.

Staff notes that although the roadway was surveyed as being approximately 400 feet long, only approximately 30 feet is within the Conservation District portions of the property. Further, the applicant initiated the potential illegal activity, only after being officially notified by the State Department of Health to take corrective actions to prevent illegal camping activities.

Staff notes that the applicant has been attentive to the DLNR issued Cease and Desist Order, issued September 26, 1990.

B. APPLICATION

Staff has reviewed submitted agency comments.

The Department of Health acknowledges their involvement in this matter and has noted that the proposed project "not only meets the intention of the DOH's concerns for correction, but also serves as a more permanent solution." They note that the removal of this discarded trash should be property disposed of at a DOH permitted solid waste management facility.

The Office of Hawaiian Affairs is concerned about the potential impact on native plants. Staff notes that project area has been described as not containing endangered native plants.

Staff has incorporated for Board consideration, a condition relative to safeguards advised by the Division of Aquatic Resources comments related to water contamination, and Historic Preservation Division comments related to potential historic sites.

Staff finds that the proposed project should be in conformance to those conditions imposed on the County of Kauai SMA Minor Permit.

Staff notes that "maintenance and protection of desired vegetation, including removal of dead, deteriorated and noxious plants" is a "permitted" use within the Limited subzone.

As such, staff recommends:

RECOMMENDATION:

A. Contested Hearing

Due to a request from the Kilauea Nieghborhood Association for a contested hearing, the 180-Day expiration date is extended for 90 days. The new expiration date for this case is September 29, 1991.

B. Violation

1. That the applicant be assessed a fine of $500.00 each for two (2) violations of Chapter 183-41, and Title 13, Chapter 2 of the Department's Administrative Rules, for the following:

   a. illegal grubbing of shrubbery; and

   b. illegal grading of the area.

2. That total violation fine of $1,000.00 ($500 x 2) be established; and

3. That failure on the part of the applicant to comply with this section within sixty (60) days after the Board's decision, the matter shall be turned over to the Department of Attorney General for disposition to include all administrative costs.

C. Application

That upon satisfactory compliance of Part A - Violation, the Board approve the after-the-fact grubbing and grading, and approve the proposed work of finishing the roadway with base coarse, grassing the shoulders, clearing the underbrush with hand tools and approved herbicides, erecting fences, posting signage, and removing trash, and other necessary property improvement to retard illegal camping, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, 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. The applicant shall comply with all applicable Department of Health Administrative Rules;

4. That the applicant affirm that appropriate measures shall be exercised to prevent debris, petroleum derivatives, eroded soil, herbicides, pesticides, etc., from entering or polluting surrounding areas and nearby perennial streams or coastal waters;

5. That the applicant affirm that any additional or future major grubbing and grading activities on the subject parcel must first be authorized by the Chairperson and/or the Board of Land and Natural Resources. This does not include periodic maintenance of grassed areas, such as mowing or weed removal;

6. A qualified archaeologist shall monitor the clearing activity. If significant historic sites are found, the State Historic Preservation Division shall be notified immediately so that a mitigation plan can be worked out. All activity near significant historic sites shall stop until an acceptable mitigation plan is approved by our office. The report presenting the results of the monitoring must be submitted to our office for review and approval;

7. Any new grading and grubbing, especially in the beach area shall have a qualified archaeologist monitor on site during this work. If significant historic sites and/or human burials are encountered, all work must stop in the immediate area until a mitigation plan is developed and approved in consultation with our office;

8. That the existing pedestrian easement on TMK 5-2-05: 36 shall be maintained. Fencing-off of this access easement shall not be allowed;

9. A drainage and erosion study delineating impacts of runoff from both areas already graded as well as areas to be graded shall be conducted for review by the Department of Land and Natural Resources. The study shall also indicate proper mitigation methods (including but not limited to re-vegetation) which shall be employed to retard any further erosion and/or run-off which may impact the beach and waters below;

10. A topographical survey showing both the existing grade and the extent of any proposed changes in the existing grade, including, but not limited to, engineering calculations as to the number of cubic yards to cut and/or filled, method of placement, etc., shall be submitted to the Department prior to any ground alterations occurring;

11. The Department of Land and Natural Resources shall review the placement and design of any signage. A map designating the location and content of such signage shall be submitted prior to actual placement of the signs;

12. That all trash and debris is to be removed from the subject property, and properly disposed of per Department of Health and DLNR Division of Forestry and Wildlife guidelines;

13. That no commercial use regarding cattle raising shall occur on the Conservation District portions of the property;

14. The applicant shall provide documentation (i.e. book/page or document 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;

15. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the grading, fencing and sign postage plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;

16. 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;

17. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

18. That all representation relative to mitigation set forth in the accepted Environmental Assessment/Environmental Impact Statement for this proposed use are hereby incorporated as conditions of this approval;

19. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void; and

20. Other terms and conditions as prescribed by the Chairperson.

Respectfully submitted,

Edward E. Henry

EDWARD E. HENRY
Staff Planner

Attachments

Approved for Submittal:

WILLIAM W. PATY

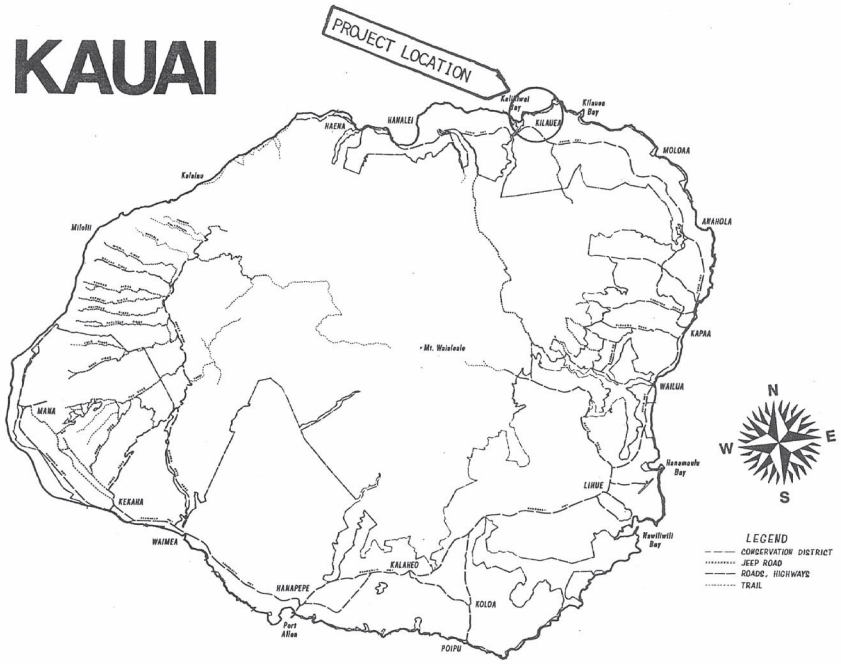


EXHIBIT A

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL

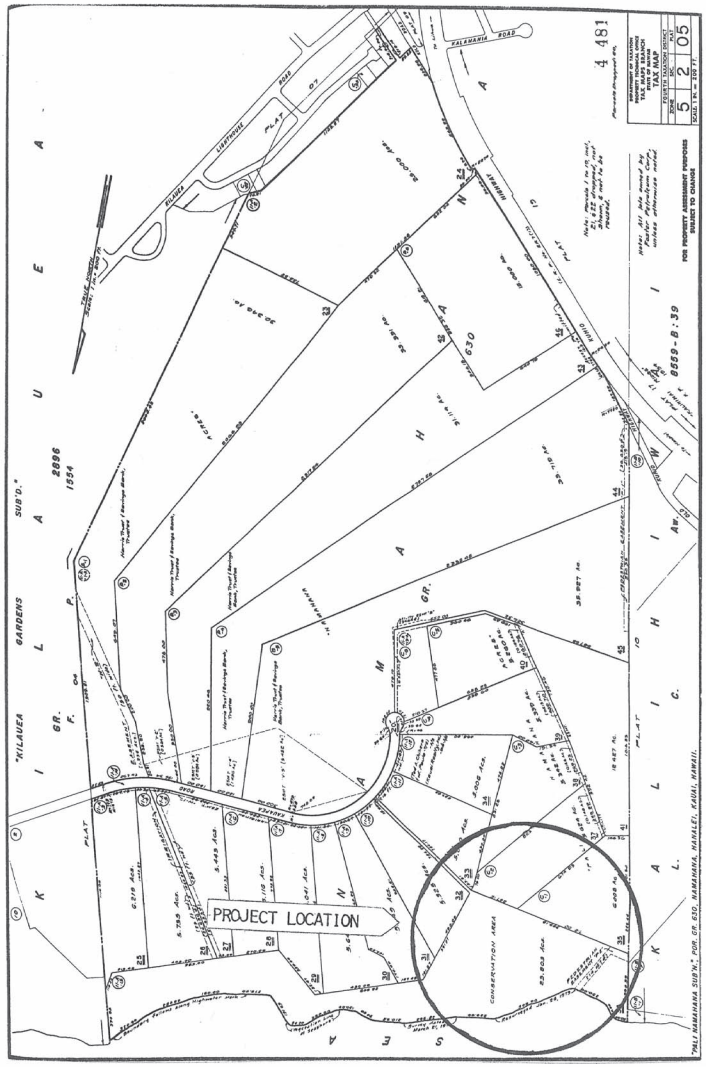
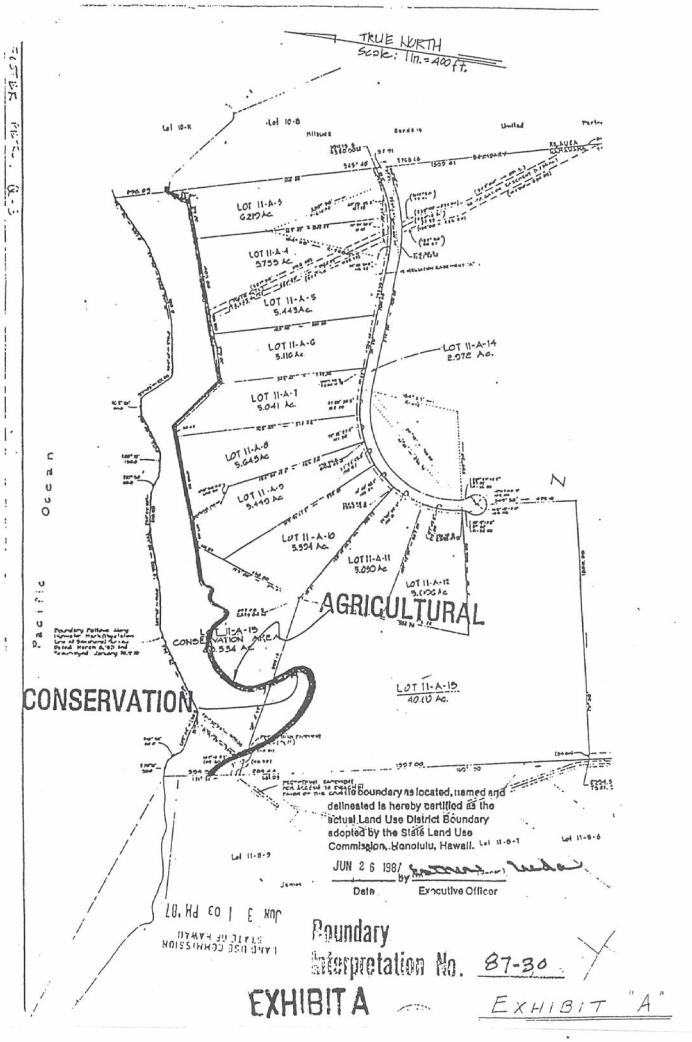


EXHIBIT B

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL



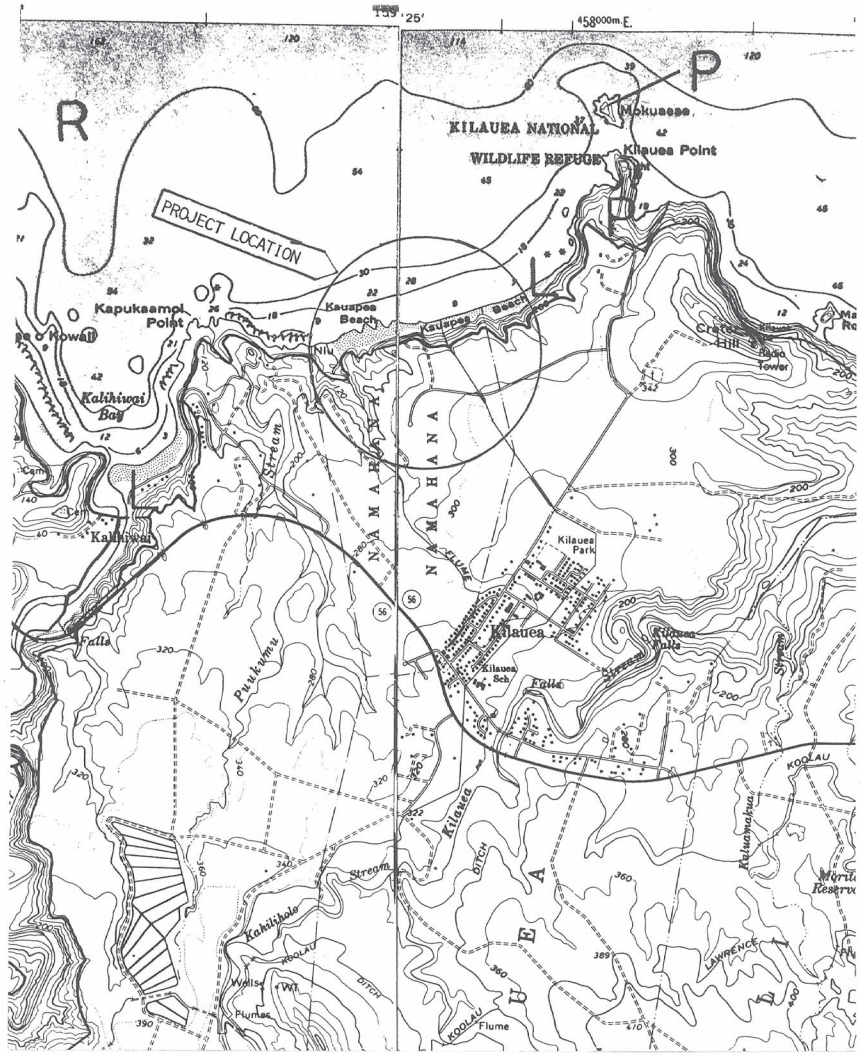


EXHIBIT C

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
- PROTECTIVE
- RESOURCE
- LIMITED
- GENERAL

EXHIBIT D

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
- PROTECTIVE
- RESOURCE
- LIMITED
- GENERAL

JOHN WAIHEE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH
KAUAI DISTRICT HEALTH OFFICE
3040 UMI STREET
LIHUE, HAWAII 96766

JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

RON METLER, M.D.
DISTRICT HEALTH SERVICES ADMINISTRATOR

Certified P-556 434 151

July 13, 1990

Kane Enterprises
110-½ E. Frank Philips Blvd.
P.O. Box 729
Barttesville, OK 74005

Dear Sir:

SUBJECT: Illegal Camping - Kauapea Beach, Kauai

As a result of a complaint about illegal campers at Kauapea Beach, an investigation was made by this department on July 11, 1990.

The results of the investigation confirmed the presence of campers on the beach at TMK: 5-2-5:36 Lot 11-A-15. Since there are no approved sanitary facilities available, camping is not permitted.

It is the responsibility of the property owner to prevent illegal camping by posting, patrolling, or suitable alternatives.

Illegal camping, i.e. camping at sites without approved sanitary facilities, is in violation of Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, Section 11-62-06. Any person who violates this chapter or any rule shall be fined not more than $10,000 for each separate offense according to Act 212, Session Laws of Hawaii, 1989. Each day of violation shall constitute a separate offense. Whereas the preceding shall be considered a civil action, the director is also authorized to impose administrative penalties in accordance with the provisions of Act 212.

You are hereby ordered to take steps to resolve this matter within ten (10) working days of receipt of this letter.

If you have any questions regarding this letter, please contact me at (808) 245-4323. 241-3323

Sincerely,

Dean Jamieson
Registered Sanitarian, Kauai

THROUGH:

Gerald N. Takamura
Supervising Sanitarian, Kauai

DJ:GNT/plo

EXHIBIT E

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL

JOHN WAIHEE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH
KAUAI DISTRICT HEALTH OFFICE
3040 UMI STREET
LIHUE, HAWAII 96766

JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

RON METLER, M.D.
DISTRICT HEALTH SERVICES ADMINISTRATOR

Certified P 453 959 578

September 12, 1990

Kane Enterprises
110-½ E. Frank Phillips Blvd.
P.O. Box 729
Barttesville, OK 74005

Dear Sir:

SUBJECT: NOTICE OF VIOLATION FOR ILLEGAL CAMPING
KAUAPEA BEACH, KAUAI
TMK: 5-2-5:36 Lot 11-A-15

On July 12, 1990, you were sent a notice to remove the campers on the subject property. Although this office was contacted by your legal counsel with an indication that action would be taken, an inspection of the property on August 30, 1990 showed the presence of illegal campers and that no action has been taken.

This letter shall serve as a second notice to you that you are in violation of Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, and you are to take corrective action within ten (10) working days upon receipt of this letter. Failure to do so will subject you to further legal and administrative action by this department.

Illegal camping, i.e. camping at sites without approved sanitary facilities, is in violation of Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, Section 11-62-06. Any person who violates this chapter or any rule shall be fined not more than $10,000 for each separate offense according to Act 212, Session Laws of Hawaii, 1989. Each day of violation shall constitute a separate offense. Whereas the preceding shall be considred a civil action, the director is also authorized to impose administrative penalties in accordance with the provisions of Act 212.

If you have any questions regarding this letter, please contact me at (808) 241-3323.

Sincerely,

Dean Jamieson
Registered Sanitarian, Kauai

THROUGH:

Gerald N. Takamura
Supervising Sanitarian, Kauai

DJ:GNT/plo
c: County Prosecuting Attorney
State Attorney General

EXHIBIT F

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL

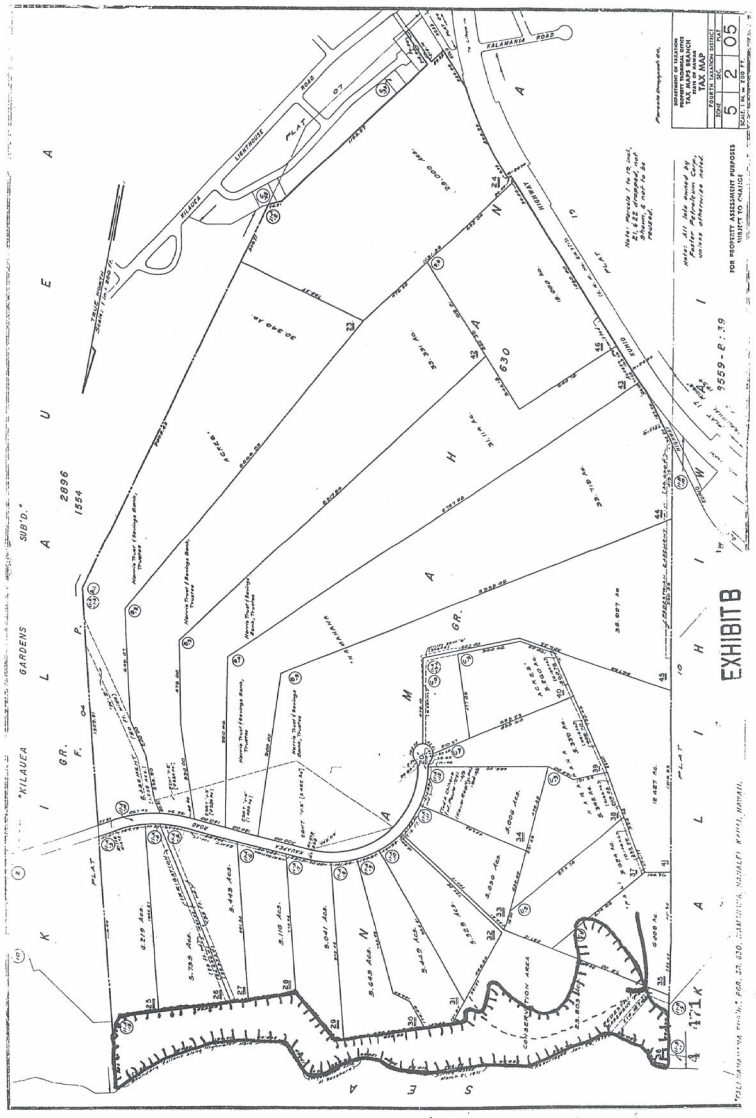


EXHIBIT G

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL

SHIRAISHI, YAMADA & MURASHIGE
ATTORNEYS AT LAW
A LAW CORPORATION
P.O. BOX 1246
LIHUE, KAUAI, HAWAII 96766-5246

SHERMAN T. SHIRAISHI
DENNIS R. YAMADA
CALVIN K. MURASHIGE

OF COUNSEL:
CLINTON I. SHIRAISHI

2970 KRESS STREET
LIHUE, KAUAI, HAWAII
TELEPHONE: (808) 245-3361
TELECOPIER: (808) 246-0486

March 13, 1991

Dept. of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, HI 96809

Attn: Mr. Ed Henry

RE: CDUA KA-2454
TMK 5-2-05: 35, 36 and 37
Applicant: Bruce A. Laymon

This is to confirm that no commercial cattle ranching will occur in the Conservation District portion of the property.

Clinton I. Shiraishi
CLINTON I. SHIRAISHI

CIS:fc

cc: Mr. Bruce A. Laymon
Mr. Henry Kane
Mr. Bay Yee

RECEIVED
'91 MAR 15 AM 8:24
DLNR
OCEA

EXHIBIT H

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL

JOANN A. YUKIMURA
MAYOR

PETER A. NAKAMURA
PLANNING DIRECTOR

ROLAND D. SAGUM, III
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766

May 22, 1991

Bruce A. Laymon
P. O. Box 645
Kapaa, HI 96746

Subject: SMA (M)-91-10
TMK: 5-2-05: 35, 36, and 17

Based on the information submitted, we have completed our review and assessment of the subject proposal and hereby issue a Special Management Area Minor Permit.

Attached is the approved County of Kauai Special Management Area Minor Permit authorizing after-the-fact permit for grubbing, grading, and herbicide application.

Please note the conditions attached and issued with the SMA Minor Permit.

Also be informed that other permits or conditions from other agencies may be required prior to construction. The applicant is responsible for resolving these conditions with the other respective agency(ies).

PETER A. NAKAMURA
Planning Director

Attachment

EXHIBIT I 1 OF 3

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL

May 17, 1991

state/cdua91.01

SMA(M)91-10 MINOR PERMIT CONDITIONS:
Applicant: Bruce A. Laymon
TMK: 5-2-05: 35, 36, and 17 (CDUA File No. KA-1/2/91-2454)

1. The existing pedestrian easement identified on the attached portion of TMK: 5-2-05: 36 as Pedestrian Easement "P-2" [14,167 square feet] shall be maintained. Fencing-off of this access easement shall not be allowed as part of the overall fencing of the property for grazing.

2. A drainage and erosion study delineating impacts of runoff from both areas already graded as well as areas to be graded shall be conducted for review by the Planning Department. The study shall also indicate proper mitigation methods (including but not limited to re-vegetation) which shall be employed to retard any further erosion and/or run-off which may impact the beach and waters below.

3. Per the 5/16/91 transmittal from the Department of Land and Natural resources - State Historic Preservation Division (DLNR-SHPD):

   "We believe historic sites might be present in the project area based on the presence of native plants and sand substrate and dunes. To assure a 'no adverse effect' to any possible sites in the area we recommend the following conditions be placed on the SMA permit:

   1. A qualified archaeologist should monitor the clearing of the beach access path. If significant sites are found, the State Historic Preservation Division should be notified immediately so that a mitigation plan can be worked out.

   2. Any new grading and grubbing, especially in the beach area shall have a qualified archaeological monitor on site during this work."

   These conditions shall be incorporated as part of this SMA minor permit.

4. A topographical survey showing both the existing grade and the extent of any proposed changes in the existing grade, including, but not limited to, engineering calculations as to the number of cubic yards to cut and/or filled, method of placement, etc., shall be submitted prior to any ground alterations occurring.

5. The Planning Department shall review the placement and design of any signage. A map designating the location and content of such signage shall be submitted prior to actual placement of the signs.

Attachment

EXHIBIT I 2 OF 3

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL

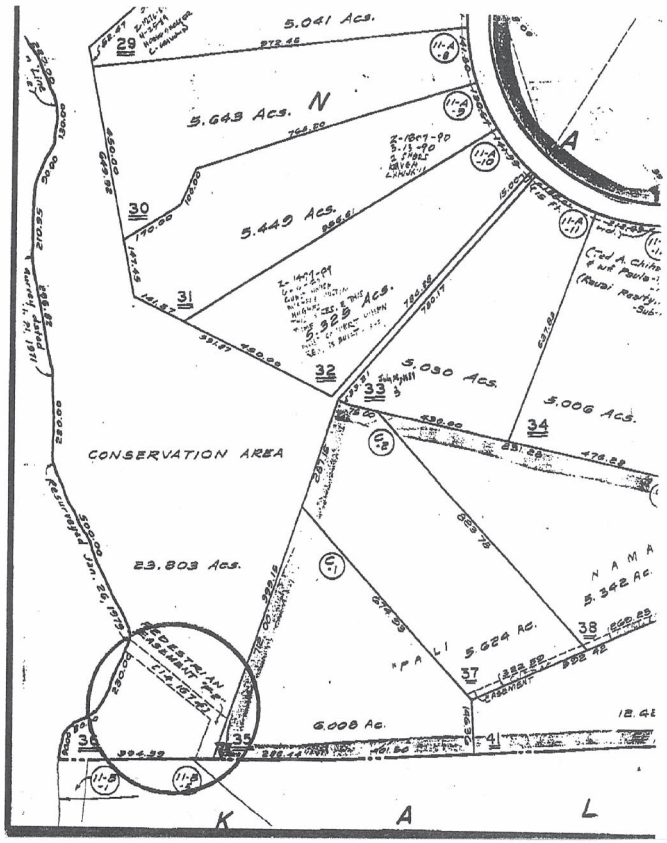


EXHIBIT I 3 OF 3

NORTH

CDUA NO. KA- 1/2/91 - 2454
APPLICANT Bruce A. Laymon
AGENT Clintin Shiraishi
TMK 5-2-005: 35, 36, &37

SUBZONE
PROTECTIVE
RESOURCE
LIMITED
GENERAL

D-8

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division, Planning Branch
Honolulu, Hawaii

Ref. File No.:ENF-99-13
DOCARE: KA-99-164

August 13, 1999

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

REGARDING: Alleged Unauthorized Construction of a Stairway and Unauthorized Clearing and Tree Cutting at Kilauea, Kauai

BY: Mr. Steven Cohen
640 W. End Ave.
New York, NY 10024-1019

LANDOWNERSHIP: Mr. Henry Kane
P.O. Box 727
Bartlesville, Oklahoma 74005-0729

AGENT: Walton Hong

LOCATION/ TMKs: Kilauea, Kauai
5-2-005:036 (Kane)

SUBZONE: Limited

DESCRIPTION OF AREA:

The location of the alleged unauthorized land use is a coastal bluff area above Secret Beach, in Kilauea, Kauai (Exhibits 1-3).

AT ITS MEETING HELD ON
August 13, 1999. por

ITEM D-8

ALLEGED UNAUTHORIZED LAND USES:

In April 1999, the Land Division, Planning Branch received an enforcement report from the Department of Land and Natural Resources (DLNR), Division of Conservation and Resources Enforcement (DOCARE), Kauai Branch. The report alleges that unauthorized work was conducted on the coastal bluff above Secret Beach at Kilauea, Kauai. The unauthorized work involves a portion of parcel 5-2-005:036.

Although the investigator's report indicates that unauthorized work occurred on parcel 5-2-005:25, the work actually occurred on the parcel owned by Mr. Kane (TMK:5-2-005:0036), which is a thin parcel stretching along the coastal bluff, most of which is zoned conservation.

The work consists of new stairway approximately 300-400 feet long constructed with wooden steps. The stairway extends down the coastal bluff to Secret Beach. Concrete slabs were constructed to provide a landing. Trees and boulders were cut to provide for the alignment. On another portion of the parcel, it appears that trees were cut, possibly to improve views and to improve access to and through the coastal bluff.

The stairway was constructed by Mr. Steven Cohen who owns a parcel mauka of Mr. Kane's parcel (TMK:5-2-005:25, Cohen). Apparently Mr. Kane gave Mr. Cohen some type of an easement over his land so that Mr. Cohen could reach Secret Beach. Mr. Cohen proceeded to build an improved hardened stairway down the coastal bluff at substantial cost. Staff was told by several sources that the stairway cost was in the area of $25,000 to $35,000.

There are reports of additional work that may have taken place on Mr. Kane's land such as tree cutting and trail building. However, the facts on these matters are not well established/documented and are not the subject of this report.

DISCUSSION:

It is clear from the investigator's report, that much of this work was done recently. No State, County or Federal permits were obtained for the subject work.

It is also clear that the Department of Land and Natural Resources has sufficient cause to enforce this matter since it is evident that work occurred within the Conservation District, Limited subzone, nor has the alleged denied having authorized the work. Staff contacted the State Land Use Commission to verify that Mr. Kane's land is in the Conservation District. The Conservation District follows his mauka property boundary in the area of the unauthorized work.

Additionally, Mr. Cohen has taken full responsibility for the stairway construction and is willing to work with the Department to resolve the issue.

RESOLUTION OF ALLEGED UNAUTHORIZED LAND USES

Title 13-5, Hawaii Administrative Rules:

The Department's Administrative Rules identify a list of uses that "may" be developed in the Conservation District, and also define land use as follows:

> "The placement or erection of any solid material on land if that material remains on the land more than fourteen days.."

Since the stairway qualifies as a land use under the definition of land use, a permit or approval of some type should have been obtained by the alleged.

ISSUES:

It is staff's understanding that Mr. Cohen was not aware of the need for a Conservation District Use Permit. Mr. Cohen lives in New York, so it is probable that he is not familiar with local permit requirements. However, the local contractor should have been aware of these requirements. It is a unfortunate to see local contractors ignoring permit requirements. Contractors should also be held accountable, when they disregard rules and regulations and damage natural resources.

In this case, staff feels that the Department can entertain an after-the-fact permit for the stairway, since potential negative impacts are not immediately obvious, nor does it appear that the offense was a willful violation of land use laws.

In addition, it should be noted that Mr. Cohen although not the landowner is accepting all responsibility for this situation.

FINDINGS:

1. That the alleged did if fact, authorize or allow the construction of the stairway;

2. That the stairway does lie within the State Land Use Conservation District, Limited subzone;

As such, staff recommends as follows:

A. That the Board of Land and Natural Resources finds that the alleged violated the provisions of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes by failing to obtain the appropriate approvals for the construction of a stairway;

B. That the Board of Land and Natural Resources impose a fine of $2,000 pursuant to Chapter 183C, HRS. In addition, that the Board impose fines to cover administrative costs totaling $5 00 [$400.00 DOCARE and $100.00 Planning Staff];

C. That the owner of parcel # 36 (Mr. Kane) immediately notify the abutting landowners in writing that no work, including tree cutting or trail building, is permitted on the subject land. Copies of the letters shall be provided to the DLNR;

D. That upon payment of the fine by the alleged, within thirty (30) days of the date of the Board's action, the alleged or the landowner shall submit a completed Conservation District Use Application for the stairway within sixty (60) days of the Board's action, to determine its final disposition;

E. That in the event of failure of the alleged to comply with items B, C, and D the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,

SAMUEL J. LEMMO
Staff Planner

Attachments

Approved for Submittal

TIMOTHY E. JOHNS, Chairperson
BOARD OF LAND NATURAL RESOURCES

D-14

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division, Planning Branch
Honolulu, Hawaii

File No.:CDUA KA-2966B
180-Day Exp. Date: May 8, 2000

April 14, 2000

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

REGARDING: Conservation District Use Application (CDUA) No. KA-2966 for the After-The-Fact Approval of a Private Trans-Pali Stairway at Kauapea Beach, Kauai

APPLICANT: Steven Cohen
640 W. End Ave.
New York, NY 10024

LANDOWNER: Kane Enterprises
P.O. Box 727
Bartlesville, Oklahoma 74005

LOCATION: Kauapea Beach (Secret Beach), Namahana, Kilauea, Kauai

TMK: (4)5-2-05:36

AREA OF USE: Approximately 2000 Sq. Ft.

AREA OF PARCEL: 23.803 acres

SUBZONE: Limited

AGENT: Walton D. Y. Hong
3135-A Akahi St.
Lihue, HI 96766

as amended
APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON
April 14, 2000.

BACKGROUND, DESCRIPTION OF AREA AND CURRENT USE:

The subject application concerns an after-the-fact approval for a private trans-pali stairway at Kauapea Beach (Secret Beach), Namahana, Kilauea, Kauai (Exhibits 1-4). The stairway presently

extends between the bluff line, at approximately 200 ft. above sea level near the parcel at TMK (4)5-2-05:25, down to the building setback area 40 ft. behind the shoreline. The stairway is contained entirely on the subject parcel in the Conservation District Limited Subzone at TMK (4)5-2-05:36 (Exhibits 2-4). The subject parcel, parcel 36, extends from beyond the bluff line to the shoreline and is owned by Kane Enterprises of Bartlesville, Oklahoma. The land parcel adjacent to the stairway, parcel 25, is owned by William and Sandra Strong of Lake Forest, Illinois.

The applicant, Steven Cohen of New York, New York, sold parcel 25 to the Strongs on April 30, 1999; on that same day, Mr. Cohen acquired the neighboring land parcel at TMK (4)5-2-05:26. Mr. Cohen is the current owner of parcel 26. Kane Enterprises was not aware of the construction of the stairs and Mr. Cohen has accepted full responsibility for the stairway. On August 13, 1999, the Board of Land and Natural Resources found Mr. Cohen in violation of Conservation District Statute and Rule for building the subject stairs on his neighbor's property, the subject parcel, without a CDUP. The Board fined Mr. Cohen $2000 (Exhibit 5). Mr. Cohen has since paid the fine and administrative fees of $500 and has submitted this application for an after-the-fact approval of the stairway. In concurrence with the conditions of the Board in resolving the violation, Kane Enterprises, the landowner of the subject parcel, has notified adjacent landowners that land uses, including stairway building and tree cutting, are not permitted on the subject parcel. The landowner, Kane Enterprises, has also approved the processing of this application.

The stairway is approximately 300-400 ft. long and consists of cut-off railroad ties set into the slope and in one location consists of a concrete foundation with wooden stairs (Exhibits 6-7). Because of the steep topography, the stairs zigzag down the face of the pali. In photos supplied by the applicant, the stairway is not visible from the shoreline property line, nor from a location makai of the shoreline (Exhibit 8). However, the stairway is visible from other angles at the shoreline and beach. The shoreline fronting the subject parcel is a long sandy beach. In the West, toward Kalihiwai Stream and the West end of the subject parcel, the topography turns rocky both on and offshore. During the summer months, the waters are fairly calm. However, during the winter and at times of inclement weather, the waves approach the base of the cliff.

According to the applicant, the subject parcel contains the natural flora of the area, including ironwood trees, guava trees, java plums, ferns, and grasses. The fauna include doves, mynahs, and sparrows. Newell Shearwaters may nest in the bluff area, although none were observed by the applicant in the vicinity of the stairway

during construction. Except for the foregoing, the applicant is not aware of any endangered or threatened species which were affected by stairway construction.

The subject parcel does not contain any other existing structures or utilities. However, a public pedestrian easement does exist on the West side of the subject parcel (Exhibit 3). The owner of the subject parcel has also either verbally, or in writing, given adjacent landowners permission to cross the subject parcel to reach the beach. Neither the applicant, nor the applicant's agent, Walton D. Y. Hong, of Lihue, Kauai have provided information concerning ownership and terms of use of either easement or any other encumbrance to the land. However, staff has found an unrecorded lease set to expire this August 27, 2000 in department CDUP files for the subject parcel. The lessee of said lease is Bruce A. Laymon. Staff does not know if said lease is still in effect. Mr. Laymon applied for and was granted an after-the-fact Conservation District Use Permit (CDUP), KA-2454, on September 1, 1991 for an access road near the public pedestrian easement on the subject parcel (Exhibit 9). This access road descends the pali and currently allows vehicles to access the beach. Staff is not aware of the status of the applicant's or landowner's compliance with CDUP KA-2454 or of the level of use the road receives.

DESCRIPTION OF PROPOSED USE:

The applicant seeks after-the-fact Conservation District Use Permit (CDUP) approval for the subject stairway. The subject stairway consists in the most part of stairs of railroad ties, sunken into the ground. The ground was first cleared of existing vegetation, and where necessary, cuts were made into the side of the bluff to allow the placement of the stairs. In one location a concrete foundation was laid where wooden steps and a railing were constructed. There are approximately 250 stairs.

The applicant maintains that the owners of Lot 25, in whose favor the stairway was built, will be solely responsible for the maintenance and repair of the stairway as necessary. The maintenance of the stairway will primarily consist of periodic trimming of vegetation to prevent the stairway from being overgrown by the surrounding vegetation. Maintenance of the stairway would consist of resetting or replacing the railroad ties as they may become loose or deteriorated in the future. Staff has not requested that the applicant submit a management plan for the stairway, as the trimming of vegetation and resetting/replacing railroad ties will take place as needed.

The stairway will not be open to the public, however, should an emergency occur on the beach and someone uses the stairway to get to the nearest residence, access to a telephone in the residence would be permitted. Should no one be home at the time, the stairway would nonetheless allow that person to be within a developed residential area where telephone communication is available. Beach users would only learn about the access to an emergency telephone through word of mouth. It is unclear if there is a residence currently constructed on parcel 25, which abuts the stairway area.

PROJECT ALTERNATIVES:

1. No Action:

   As the project has already been completed, this alternative is not applicable.

2. Removal of the Stairway:

   This alternative could have both short-term and long-term erosion impacts. Short-term erosion control might be to flatten out the steeper portions of the stair area after taking out the railway ties to minimize the slope and surface runoff and to replant the disturbed area with vegetation. Long-term erosion control would be to permit the natural vegetation to regrow and eventually cover the former stair area. There would not be any plans to regrade the route of the stairway to restore the original slope, as such grading might entail substantial earthmoving and increased erosion and equipment slipping concerns.

Staff is of the opinion that the risk of impacts from the removal of the stairway outweigh any impacts from retaining the stairway.

SUMMARY OF COMMENTS:

This application was referred to the divisions of Aquatic Resources, Historic Preservation and Forestry and Wildlife and the Land Division's Kauai District Land Agent and Engineering Branch for review and comment on November 24, 1999. The application was also referred to the state Department of Health, Office of Hawaiian Affairs, Office of Environmental Quality Control, the County of Kauai, Planning Department and to the U.S. Fish and Wildlife Service, for review and comment in October, 1999.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Historic Preservation:

This project will have "no effect" on significant historic sites.

Forestry and Wildlife:

No objections.

COUNTY OF KAUAI:

No substantive comments.

STATE OF HAWAII:

No substantive comments.

FEDERAL:

No substantive comments.

ANALYSIS:

Following review and acceptance for processing, the applicant, by letter dated November 24, 1999, was notified that:

1. The proposed land use is considered an identified land use within the Limited Subzone of the Conservation District and is specifically identified under Section 13-5-23(c) (L-4), of the Hawaii Administrative Rules; and

2. No public hearing will be required since the use is not of a commercial nature.

In addition, at this time the department has concluded that:

3. In conformance with Title 11, Chapter 200, Hawaii Administrative Rules and Chpater 343 Hawaii Revised Statutes, a Finding of no Significant Impact (FONSI) was filed for the proposed project on March 16, 2000 by the Department; and

4. Documentation of the project's compliance with the provisions of Chapter 205A, HRS relating to the Special Management Area (SMA) requirements found to be complete through a letter from the County of Kauai, Planning Department, issuing a Special Management Area Minor

Permit for the subject after-the-fact project past the 40 foot building setback (Exhibit 10).

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

Is the Proposed Land Use Consistent with the Purpose of the Conservation District and the Limited Subzone?

The purpose of the Conservation District is to regulate land use for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The objective of the Limited Subzone is to limit uses where natural conditions suggest constraints on human activities.

The stairs have a minimal impact on the natural resources of the area. The stairway does promote public health, safety and welfare by affording safe access to the shoreline for residents, as well as an alternate access to a telephone should any emergency arise on the beach. However, it is clear that there will be no notification of the emergency telephone access; knowledge of the emergency telephone access will be only through work of mouth.

The use of the stairs, as compared to residents attempting to climb up and down the cliff by other means, will minimize further disruption of the flora in the area and minimize erosion. The use of the stairway will be limited as there will be no public access.

The Proposed Land Use Complies with Provisions and Guidelines Contained in Chapter 205A, HRS, entitled "Coastal Zone Management."

The stairway will not be open to the general public; it will provide better access to the coastline and coastal recreational opportunities only for the occupants of the residence at the top of the bluff. There are no known historic or archeological resources in the vicinity of the stairway. The stairway has a limited visibility from the shoreline or the surrounding properties and therefore has a limited impact on the quality of coastal scenic and open space resources. The stairway could reduce hazard to life by providing an escape route in the event of a tsunami if its existence were known to beach goers.

The Proposed Land Use Will Not Cause Substantial Adverse Impact to Existing Natural Resources Within the Surrounding Area, Community or Region.

Vegetation which was removed during the construction of the stairway has re-grown and no endangered or threatened species of flora or fauna were encountered during the construction of the stairway. No archaeological remains or sites were uncovered during the construction of the stairway.

The Proposed Land Use, Including Buildings, Structures, and Facilities, Shall Be Compatible With the Locality and Surrounding Areas, and Appropriate to the Physical Conditions and Capabilities of the Specific Parcel.

The stairway is compatible with the surrounding area, in that it is cut into the hillside and is not readily visible from the shoreline or neighboring properties.

The Existing Physical and Environmental Aspects of the Land, such as Natural Beauty and Open Space Characteristics, Will Be Preserved or Improved Upon.

The existing physical and environmental aspects of the land have been preserved. While vegetation was removed during the construction of the stairway, the vegetation has regrown. Cuts made into the side of the bank for the stairway have also been covered with the new vegetation. Thus, the stairway is not visible when viewed from the shoreline and abutting properties, except at the very beginning or the end of the stairway, thus preserving the natural beauty and open space of the area.

Subdivision of Land Will Not Be Utilized to Increase the Intensity of Land Uses in the Conservation District.

The use does not contemplate subdivision of the underlying parcel.

The Proposed Land Use Will Not Be Materially Detrimental to the Public Health, Safety, and Welfare.

Rather than being detrimental, the stairways is a benefit to the public health, safety and welfare, in that it provides an alternate means of getting to a telephone or calling for assistance for any emergency at the beach. The only public right of way to Secret Beach is at the southwestern end of the beach. As the beach is probably half a mile or longer, any emergency occurring at the northern portion would require a person to travel the entire distance along the shoreline to the other end to summon help. The subject stairway is located at the opposite end of the beach from the public right of

way, and could prove to be the difference between life and death in an emergency.

The stairway is not materially detrimental to the public health, safety and welfare. It does not generate any pollution, and is not visually offensive. As a private stairway, the public will not be exposed to any safety concerns in the use thereof, such as slipping or tripping.

DISCUSSION:

Staff is of the opinion that retention of the stairway will control erosion at the subject site better that removal of the stairway. The two major impacts of the stairway occurred during construction. First, vegetation was removed to construct the stairway, however, vegetation has grown back naturally at the stairway construction site. Second, the natural grade of the pali slope was disturbed during construction. Any erosion from the removal of vegetation and grading has run its course at this time.

Staff is not aware if the owners of parcel 25 have been notified and agree to be responsible for stairway maintenance. However, this issue can be resolved as the owners of the subject parcel are ultimately responsible for any improvements on their property. Staff has no objections if new owners of parcel 25 agree to maintain the stairway for the landowners of the subject parcel.

Staff is concerned that this is the second after-the-fact permit for the subject parcel while under the same ownership. If approved, in addition to it being sent to the applicant, staff will send this permit to the landowners of the subject parcel to obtain their acknowlegement.

STAFF RECOMMENDATION:

That the Board of Land and Natural Resources approve this application for the After-The-Fact Approval of a Private Trans-Pali stairway at Kauapea Beach, Kauai, subject to the following conditions:

1. The applicant, the land owner or his agent shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of Chapter 13-5, HAR including the standard permit conditions listed in 13-5-42, HAR;

2. The applicant, the land owner, his successors and assigns, shall comply with all applicable Department of Health

The Board amended the staff recommendation by adding the following to the end of condition no. 6:

"... in the permit ;; and the applicant shall not place any obstructions at the bottom or top of the stairway to prevent access."

administrative rules;

3. The applicant, the land owner, his 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;

4. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant or the land owner shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

5. All representations relative to mitigation set forth in the accepted environmental assessment for the after-the-fact approval are incorporated as conditions of this permit;

6. The applicant shall maintain the stairway in the interest of public safety for the time that the stairway is extant, provided that the applicant or land owner shall mitigate all impacts of stairway maintenance according to the methods outlined in the permit;

7. The applicant shall consult with the department to monitor and maintain the stairway improvements within the Conservation District and shall make modifications or demolitions only with a site plan approval from the department. The applicant or landowner shall assume all future liability and other costs for any modifications, repairs to improvements;

8. The applicant or land owner shall notify the department in writing prior to and at the conclusion of any work, construction or demolition on the land;

9. In issuing the permit, the department and board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;

10. Other terms and conditions as prescribed by the chairperson;

11. The applicant or land owner shall provide documentation (e.g. book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument for the subject property; and

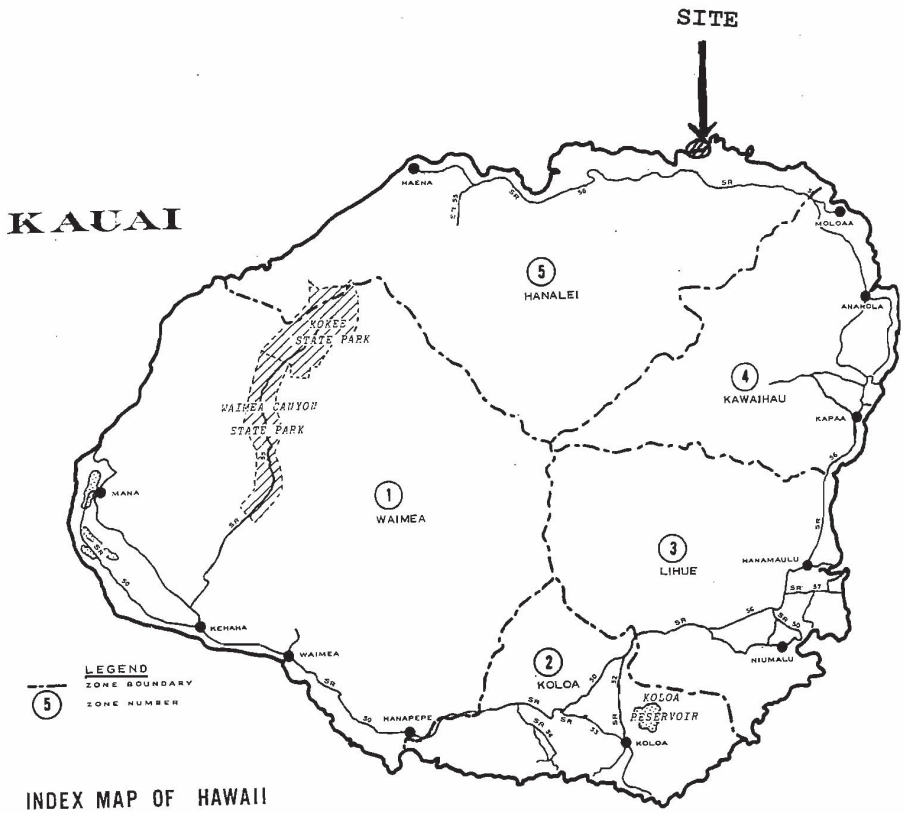
12. Failure to comply with any of these conditions shall render this permit void.

Respectfully submitted,

Eric A. Hill
Staff Planner

Approved for submittal:

TIMOTHY E. JOHNS, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES



INDEX MAP OF HAWAII
4th DIVISION

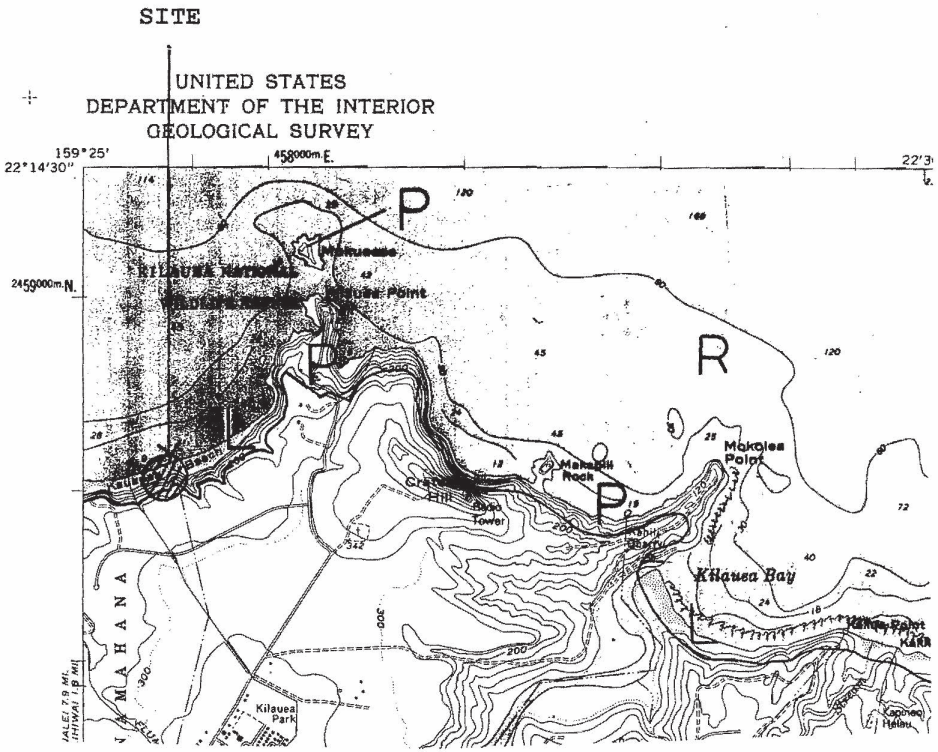


EXHIBIT 2 **Area/Subzone Map** **PG. 1 of 1**

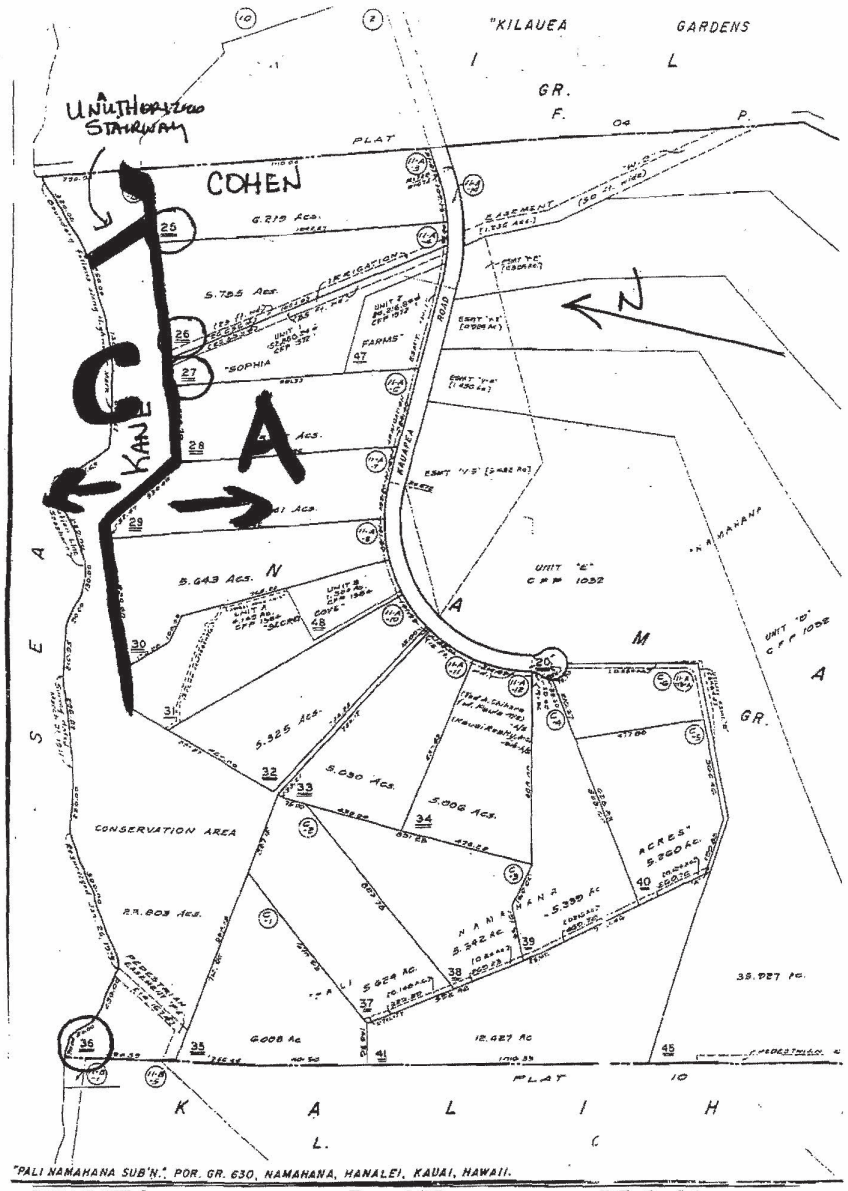


EXHIBIT 3 **Parcel Map** **PG. 1 of 1**

5-2-005:36

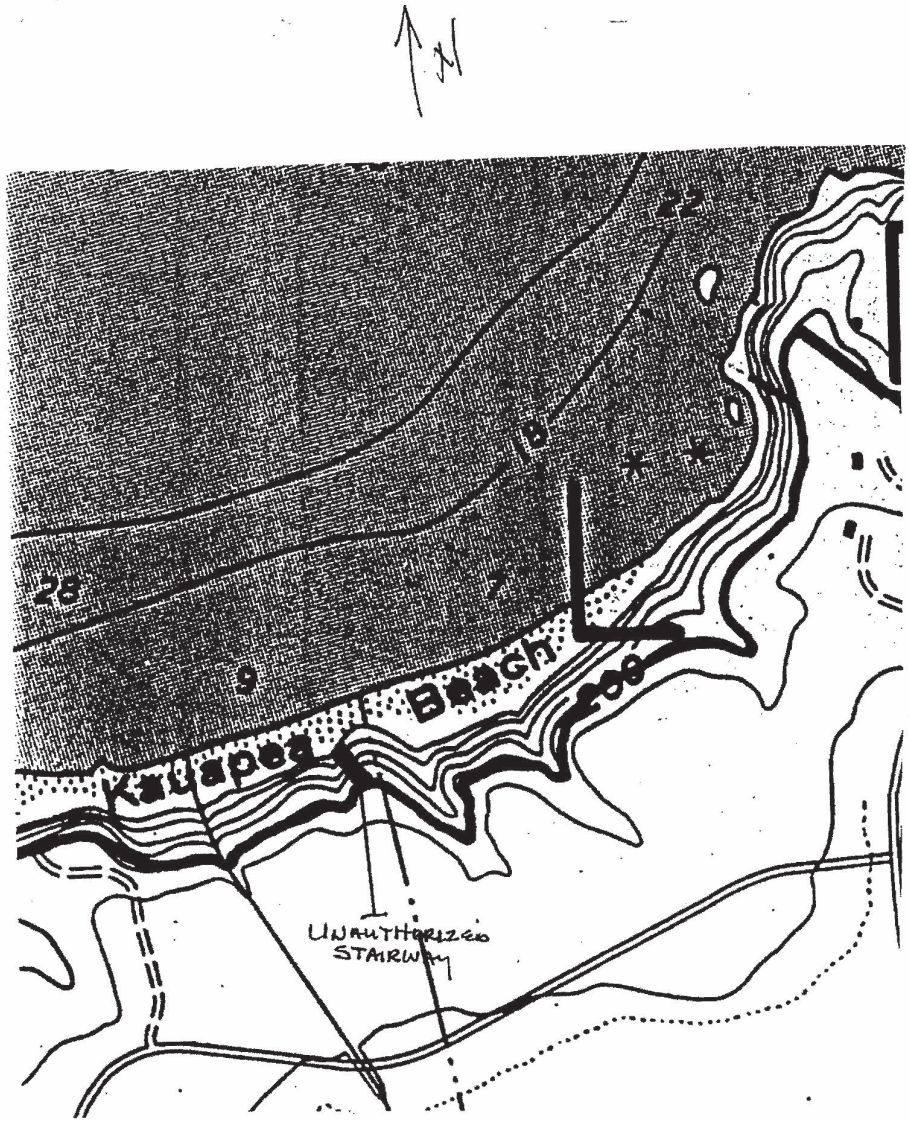


EXHIBIT 4 **Subzone Map** **PG. 1 of 1**