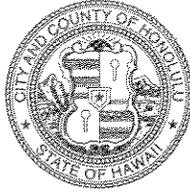


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 523-4432 • FAX: (808) 527-6743
DEPT. INTERNET: www.honoluluapp.org • INTERNET: www.honolulu.gov

MUFI HANNEMANN
MAYOR



HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

2004/ED-20(pd)

June 3, 2005

Ms. Genevieve Salmonson, Director
Office of Environmental Quality Control
State of Hawaii
State Office Tower, Room 702
235 South Beretania Street
Honolulu, Hawaii 96813-2437

RECEIVED
JAN -7 10:40
OFFICE OF ENVIRONMENTAL
QUALITY CONTROL

Dear Ms. Salmonson:

**FINAL ENVIRONMENTAL ASSESSMENT
CHAPTER 343, HAWAII REVISED STATUTES (HRS)
ENVIRONMENTAL ASSESSMENT (EA)/DETERMINATION
FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

Recorded Owner/

Applicant : Edward J., Jr. and Kathryn Weldon
Agent : Analytical Planning Consultants (Donald A. Clegg)
Location : 4771 Kahala Avenue - Kahala
Tax Map Key : 3-5-6: 6
Request : After-the-fact Shoreline Setback Variance
Proposal : To retain unauthorized sand fill within the 40-foot shoreline setback area

Attached and incorporated by reference is the Final EA (FEA) prepared by the applicant for the above project, pursuant to Chapter 343, HRS. We have determined that the preparation of an Environmental Impact Statement (EIS) is not required, and have issued a Finding of No Significant Impact (FONSI). In accordance with procedural provisions, the applicant has responded to all comment letters received during the 30-day comment period, which began with the initial publication of a notice of availability of the DEA in The Environmental Notice on August 23, 2004. The comment letters and the applicant's responses are included in the FEA.

Ms. Genevieve Salmonson, Director

Page 2

June 3, 2005

The shoreline survey was certified on February 11, 2004, and thus has expired. A new certified shoreline survey will be required prior to processing the shoreline setback variance.

Enclosed is a 3 1/2" floppy disk with a "Project Summary", a Publication Form, and 4 copies of the Final Environmental Assessment. We request publication of a notice of this document in The Environmental Notice.

Should you have any questions, please contact Pamela Davis of our staff at 523-4807.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'HENRY ENG', written over a horizontal line.

for HENRY ENG, FAICP
Director of Planning
and Permitting

HE:pl
Attachments

Doc. 372773

FINAL ENVIRONMENTAL ASSESSMENT

**SHORELINE SETBACK VARIANCE FOR
IMPROVEMENTS AT 4771 KAHALA AVENUE**

APPLICANT AND OWNER:

Mr. Edward Weldon
Honolulu, Oahu, Hawaii

ACCEPTING AUTHORITY:

City and County of Honolulu
Department of Planning and Permitting

PREPARED BY:

Analytical Planning Consultants, Inc.
928 Nuuanu Avenue, Suite 502
Honolulu, Hawaii 96817

And

Land Planning Consultants LLC
3123 East Manoa Road Honolulu, HI 96822

MAY 2005

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

Table of Contents

1. GENERAL INFORMATION.....3

2. LOCATION AND GENERAL DESCRIPTION OF THE PROPOSED PROJECT.....4

 2.1 Location4

 2.2 Project Update – Fence Design Revisions Since the Draft EA7

 2.3 Request: Shoreline Setback Variance for Sand Fill.....7

 2.4 Certified Shoreline Surveys8

 2.5 Background and Description of Sand Fill.....15

 2.6 Other Permits Required.....17

 2.6.1 Minor Shoreline Structure Permit17

 2.6.2 Technical Characteristics – Fence Structure.....17

3. ENVIRONMENTAL SETTING, POTENTIAL IMPACTS AND MITIGATION MEASURES27

 3.1 General Description and Shoreline Characteristics27

 3.2 Soils and Nearby Stream Characteristics27

 3.3 Flood Zone and Natural Coastal Hazards29

 3.4 Flora and Fauna.....30

 3.5 Air, Noise and Water Quality30

 3.6 Coastal Use31

 3.7 Visual Resources.....32

 3.8 Archaeological and Cultural Resources.....33

4. PERMITS REQUIRED34

5. ALTERNATIVES CONSIDERED35

 5.1 No Action Alternative.....35

 5.2 Remove Portion of Sand Fill.....35

 5.3 Preferred Alternative.....35

6. FINDINGS AND REASONS SUPPORTING ANTICIPATED DETERMINATION....36

 6.1 Significance Criteria36

 6.2 Findings and Reasons Supporting Anticipated Determination.....38

7. AGENCY AND PUBLIC CONSULTATION39

8. REFERENCES40

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

List of Figures

1.	Location Map.....	5
2.	Project Area TMK Map.....	6
3.	Portion of Sand Fill in 40-foot Setback Area.....	9
4.	Certified Shoreline Survey February 11, 2004.....	10
5.	2004 Certified Shoreline Survey Photos.....	11
6.	2004 Certified Shoreline Survey Letter from DLNR.....	12
7.	Certified Shoreline Survey February 23, 1987.....	13
8.	1987 Certified Shoreline Survey Letter from DLNR.....	14
9.	Aerial Photo of Prior Houses on Subject Property.....	16
10.	Photos of Sample Tension Wire Fences.....	20
11.	Proposed Fence – Site Plan.....	21
12a.	Proposed Fence – Elevation and Typical Post.....	22
12b.	Proposed Fence – Partial Section Profile.....	23
13.	Illustration – Proposed Fence – Partial Section.....	24
14.	Future Location of New Fence.....	25
15.	New Fence Buffered from View.....	26
16.	Soils Type.....	28

Appendices

- Appendix A Justification for a Shoreline Setback Variance
- Appendix B Letter Report from EKNA Services, Inc.
- Appendix C Letter from Robert Bruce Graham Jr., Attorney, Ashford & Wriston
- Appendix D T.S. Dye & Colleagues, Archaeologists, Inc.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

1.0 GENERAL INFORMATION

- A. Applicant:** Mr. Edward J. Weldon, Jr.
- B. Recorded Fee Owner:** Mr. Edward J. Weldon, Jr. & Mrs. Kathryn Weldon
1152 Kealaolu Avenue
Honolulu, Hawaii 96816
- C. Agent:** Analytical Planning Consultants
928 Nuuanu Avenue, Suite 502
Honolulu, Hawaii 96817
Donald Clegg, President
Phone: 536-5695 Fax: 599-1553
- D. Request:** Shoreline Setback Variance: for after-the-fact approval for the portion of sand fill that is located within the shoreline setback area.
- Minor Shoreline Structure: for fence structure
- E. Property Profile:**
- | | |
|----------------------------|--------------------------------------|
| Location: | Kahala, Oahu, Hawaii |
| Site Address: | 4771 Kahala Avenue, Honolulu, Hawaii |
| TMK: | (1) 3-5-6: 006 |
| Lot Area: | 41,730 square feet |
| State Land Use: | Urban |
| County Development Plan: | Residential |
| Zoning: | R-5 Residential |
| Height Limit: | 25 feet |
| Special District: | No |
| Shoreline Management Area: | Yes |
| Shoreline Setback: | Yes |
| Flood Zone: | AO (Depth 1) |
| Existing Land Use: | Residential |
- F. Agencies Consulted:**
- City & County of Honolulu, Department of Planning & Permitting
 - State of Hawaii, Department of Land & Natural Resources
 - State of Hawaii, Office of Environmental Quality Control
- G. Permits Required:**
- Shoreline Setback Variance
 - Minor Shoreline Structure Permit
 - Building Permit

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

2.0 LOCATION AND GENERAL DESCRIPTION OF THE PROPOSED PROJECT

2.1 Location

The Kahala neighborhood is located along the eastern coastline of Oahu and the Kahala Beach narrow coastal plain is situated between Black Point (Kupikipikio Point) and Wailupe Beach. The Kahala Beach shoreline is developed with relatively large lot single family residential homes, the City's Waialae Beach Park, and the Kahala Mandarin Oriental Hotel and Waialae Country Club and Golf Course. Further east of the golf course is Wailupe Beach Park and the Wailupe Peninsula. The Kahala area is generally intensively developed with both residential and commercial uses.

The project site, TMK 3-5-6: 006 at 4771 Kahala Avenue, Honolulu, Hawaii, is located in a fully developed residential neighborhood along Kahala Beach. The 41,730 square foot subject property is located along the shore at the end of a private driveway (various owners) that services multiple lots. A single family residence is under construction on the site for the owner/applicant (Building Permit No. 546873). The property, which fronts the ocean, is bordered on two sides by single family residences and on the third side is a City-owned concrete drainage channel. The property is approximately one-quarter mile away from Waialae Beach Park. The current owners purchased the property in 1998. Previously, the lot was occupied by two single family homes that have been demolished.

The project site's State land use designation is Urban and the City and County of Honolulu's zoning classification is R-5 Residential. Landscaping on the site consists of coconut trees and grass. The site has been disturbed due to the construction and demolition of two previous house structures, and recently the construction of the new single family residence, which is located over 55 feet landward of the certified shoreline. A general location map for the project site is shown in **Figure 1** and a tax map is shown in **Figure 2**.

The owner's east property line is adjacent to a concrete storm drainage canal owned by the City and County of Honolulu (TMK 3-5-6: 033), which is referred to on the FEMA Flood Insurance Rate Map as the "Waialae Major Drain". Approximately 800 feet further east of the property is the Kapakahi Stream channel that runs through Waialae Beach Park. According to the *Oahu Coral Reef Inventory* study by AECOS, Inc., there are six public rights-of-way along Kahala Avenue that provide access to Kahala Beach, which can also be accessed from Waialae Beach Park.

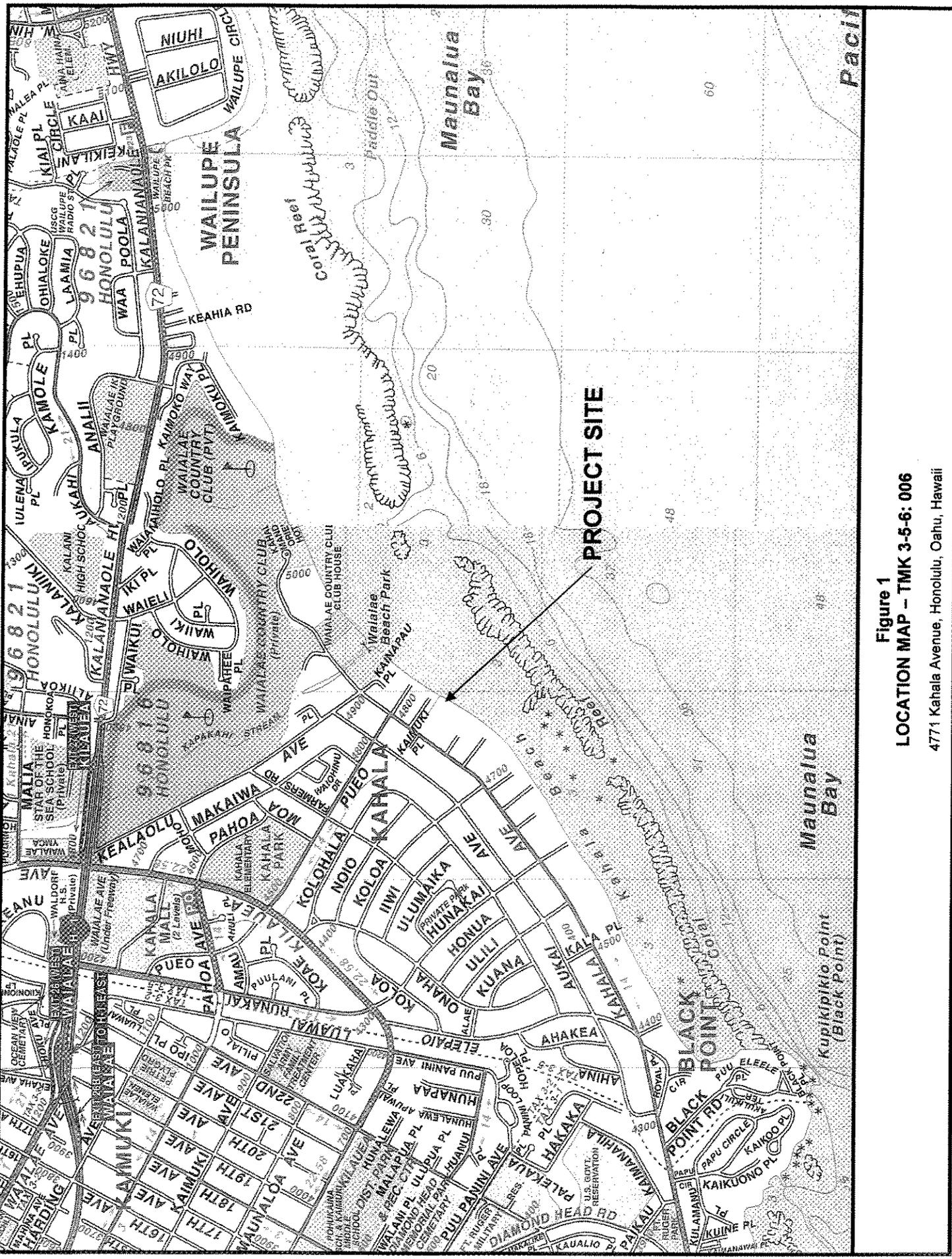


Figure 1
 LOCATION MAP – TMK 3-5-6: 006
 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

The project property is located in a thoroughly developed residential neighborhood, typically with single-family houses along the shore area. Almost all of the lots along the shoreline have houses constructed as near the shore as legally possible, or inside of what perhaps would be the shoreline setback zone today.

2.2 Project Update – Fence Design Revisions Since the Draft EA

The design of the proposed fence and fence footings has been revised in response to comments from the community; the Waiialae-Kahala Neighborhood Board; various individuals, City and State agencies that submitted comment letters during the Draft EA public comment period; and meetings with community members and the City Department of Planning and Permitting staff and administration.

The revised fence and fence footings now constitute a Minor Shoreline Structure. This preliminary understanding was discussed and confirmed at the March 1, 2005 meeting between the City Department of Planning and Permitting staff and administration, the owner's architect, and the owner's land use permit agent. Detailed drawings of the revised fence and fence footing were presented at that meeting and thoroughly reviewed by all of those present. The owner must submit an application and all the required materials for a Minor Shoreline Structure Permit for the revised fence design.

There is **no** buried wall support for the fence in the revised design. Rather, small (12-inches in diameter) individual buried fence footings two to three feet (2-3 feet) below grade will be provided. The actual fence above ground is a tension wire fence with 2-inch by 3-inch stainless steel posts that are set approximately six feet apart to present a minimalist appearance, while maintaining structural integrity. A full description of the fence and fence footings, as well as drawings, is provided in Section 2.6 "Other Permits Required". A letter report prepared by Ms. Elaine Tamaye, President of *EKNA Services, Inc., Engineers and Environmental Consultants*, regarding the fence and fence footings in relation to shoreline processes is in **Appendix B**.

2.3 Request: Shoreline Setback Variance for Sand Fill

The applicant is requesting a shoreline setback variance for the following:

- (1.) The applicant is seeking a shoreline setback variance for the **portion** of sand fill that was placed within the 40-foot shoreline setback area. A Notice of Violation No. 2003/NOV-09-103 (SV) was issued on September 16, 2003.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

According to the owner, in early and mid-2003 he purchased 117 tons of white sand from Grace Pacific Corporation. According to the owner, approximately 80 percent of 117 tons or 93.6 tons of the sand fill was deposited on ocean-side portion of the lot. However, not all of the 93.6 tons of sand fill is located within the 40-foot shoreline setback area. See **Figure 3** which illustrates that only approximately 60% or 56.2 tons of sand fill is actually located within the setback area. The 56.2 tons of sand fill within the 40-foot shoreline setback area is the subject of the Shoreline Setback Variance. It is important to understand that, when spread out the sand fill was only approximately **six (6) inches deep**, varying in depth because the prior topography of the property was very uneven at that time the sand fill was deposited.

2.4 Certified Shoreline Surveys

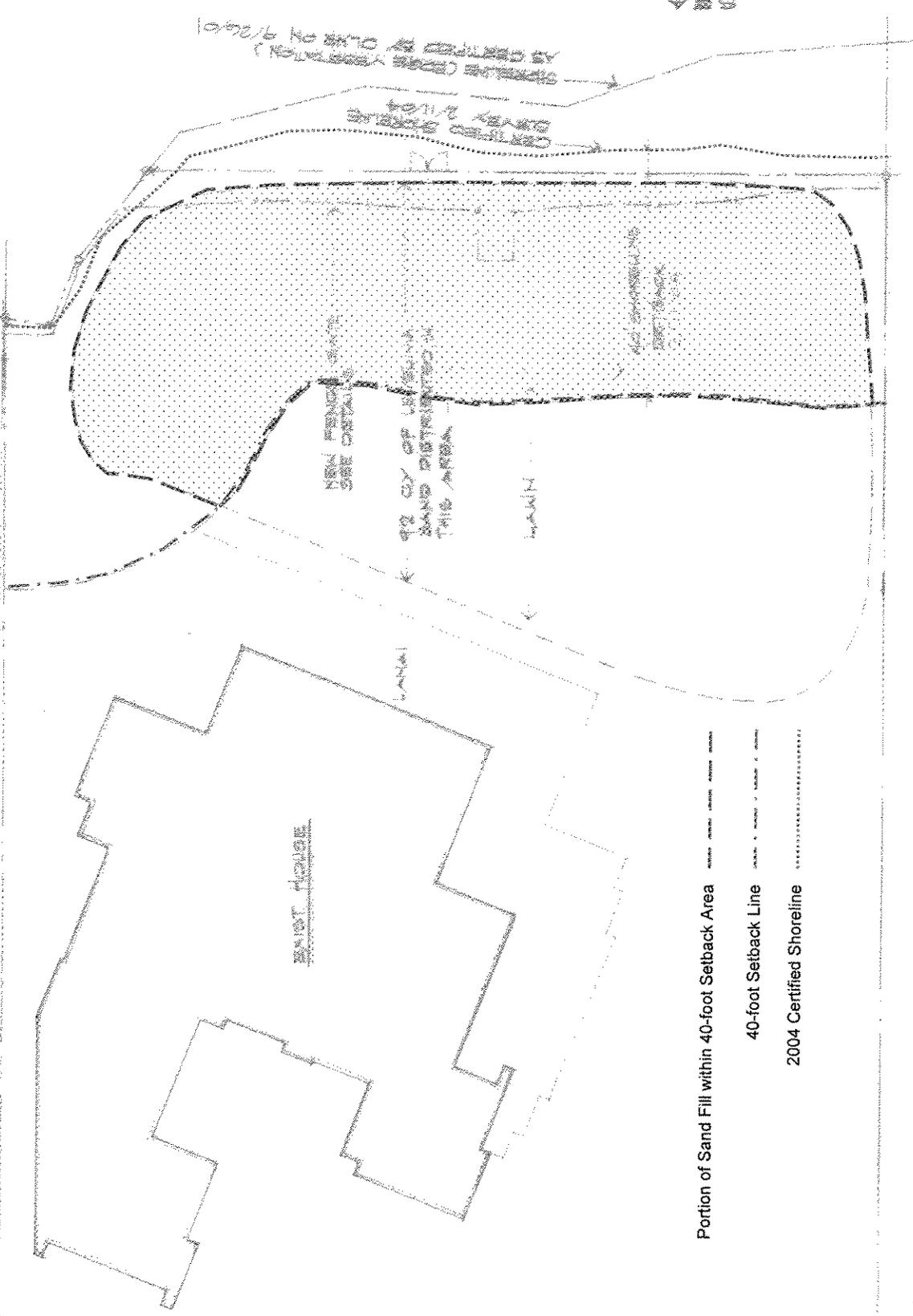
The most recent shoreline survey for the subject property, **Figure 4**, was certified by the Chairman, Board of Land and Natural Resources, on February 11, 2004. **Figure 5** contains photos, taken in November 2003, which clearly depict the debris line makai of the existing fence. These photos were part of the official shoreline survey submittal to the Department of Land and Natural Resources, and were copied from the certified shoreline file at the Department of Accounting and General Services (DAGS), Land Survey Division office. **Figure 6** is the February 11, 2004 letter from the State Department of Accounting and General Services, Survey Division which states that, "The State of Hawaii should have no objections to adopting the debris line as the shoreline...." (emphasis added).

Prior certified shoreline surveys are on file at the State DAGS Land Survey Division. All prior certified shoreline surveys on file show the certified shoreline as makai of the 2004 certified shoreline. This means that earlier certified shorelines were closer to the ocean, not closer inland of the applicant's property.

For example, **Figure 7** is the February 23, 1987 certified shoreline from 18 years ago, which is clearly labeled "Shoreline (vegetation line) as of February 10, 1987". The 1987 certified shoreline is located makai of the 2004 certified shoreline. **Figure 8** is the February 23, 1987 letter from the State Department of Accounting and General Services, Survey Division which states that, "The State of Hawaii should have no objections to adopting the vegetation line as the shoreline...." (emphasis added). Therefore, 18 years ago there was vegetation on the property which demarcated the shoreline as even closer to the ocean than the 2004 certified shoreline.

It should be noted that the certified shoreline was called out as a **vegetation line**. This means that in 1987 there was vegetation on the property, prior to the current owner, and that vegetation line demarcated the shoreline as even closer towards the ocean water than the 2004 certified shoreline. Therefore, claims that the current owner has somehow "moved" the shoreline towards the ocean are clearly not based on historical facts.

SEA SETBACK S. O. HONOLULU DISTRICT



10/22/06 NO SAND AS REQUIRED BY ORDINANCE (REQUIRE SAND) SETBACK

10/11/04 DISTURBANCE TO SAND

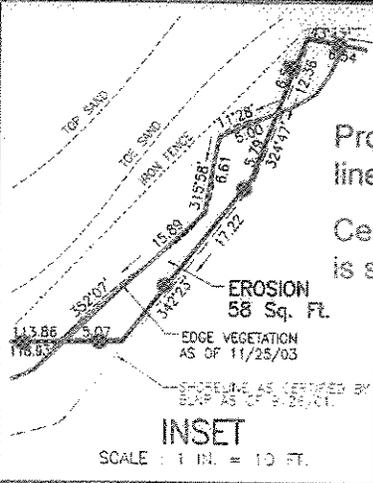
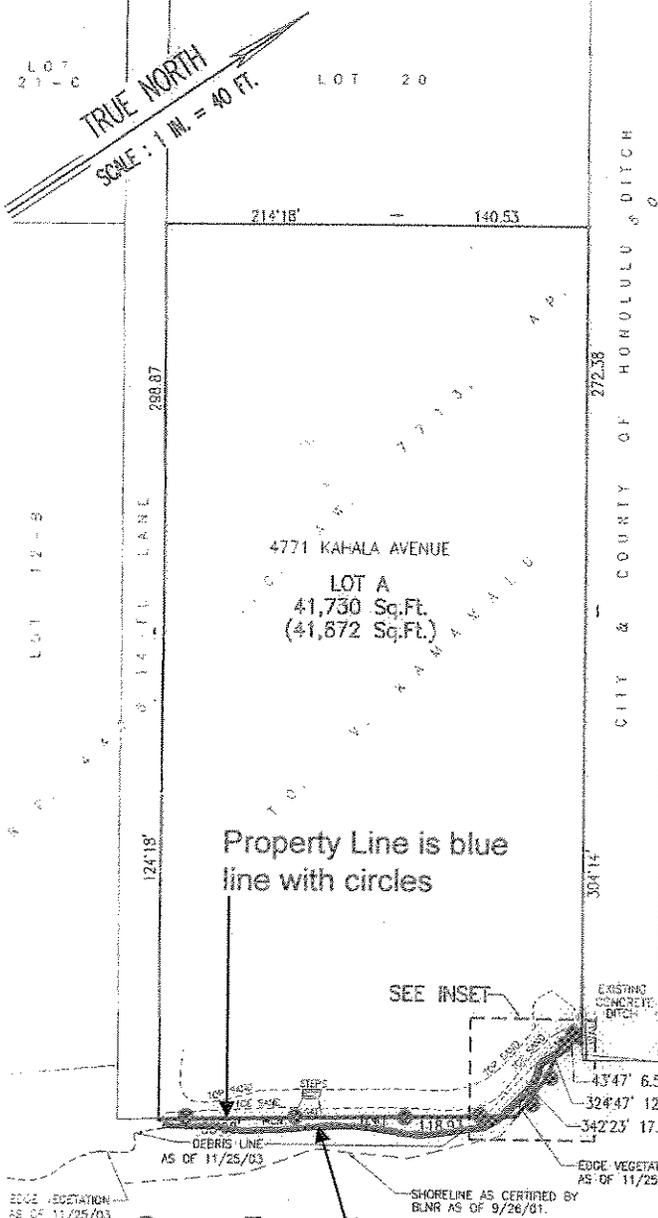
10 22 06

Figure 3

PORTION OF SAND FILL IN 40-FOOT SETBACK AREA

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

SEA SETBACK S. O. HONOLULU DISTRICT



Property Line is blue line with circles
 Certified Shoreline is solid red line

Property Line is blue line with circles

Certified Shoreline is solid red line



MAP SHOWING
 SHORELINE AFFECTING LOT A
 PORTION SECTION A, WAIALAE BEACH LOTS

AT WAIALAE-NUI, HONOLULU, OAHU, HAWAII

SCALE : 1 IN. = 40 FT.

JANUARY 6, 2004

WALTER P. THOMPSON, INC.

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

James R. Thompson

The boundary between the property shown here and the property shown on the map of the City & County of Honolulu, Hawaii, is as shown on the map of the City & County of Honolulu, Hawaii, dated FEB. 11, 2004.

Source: James R. Thompson Licensed Professional Land Surveyor

Figure 4
 SHORELINE SURVEY - CERTIFIED FEBRUARY 11 2004

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

Not To Scale
 See Full Size Plans

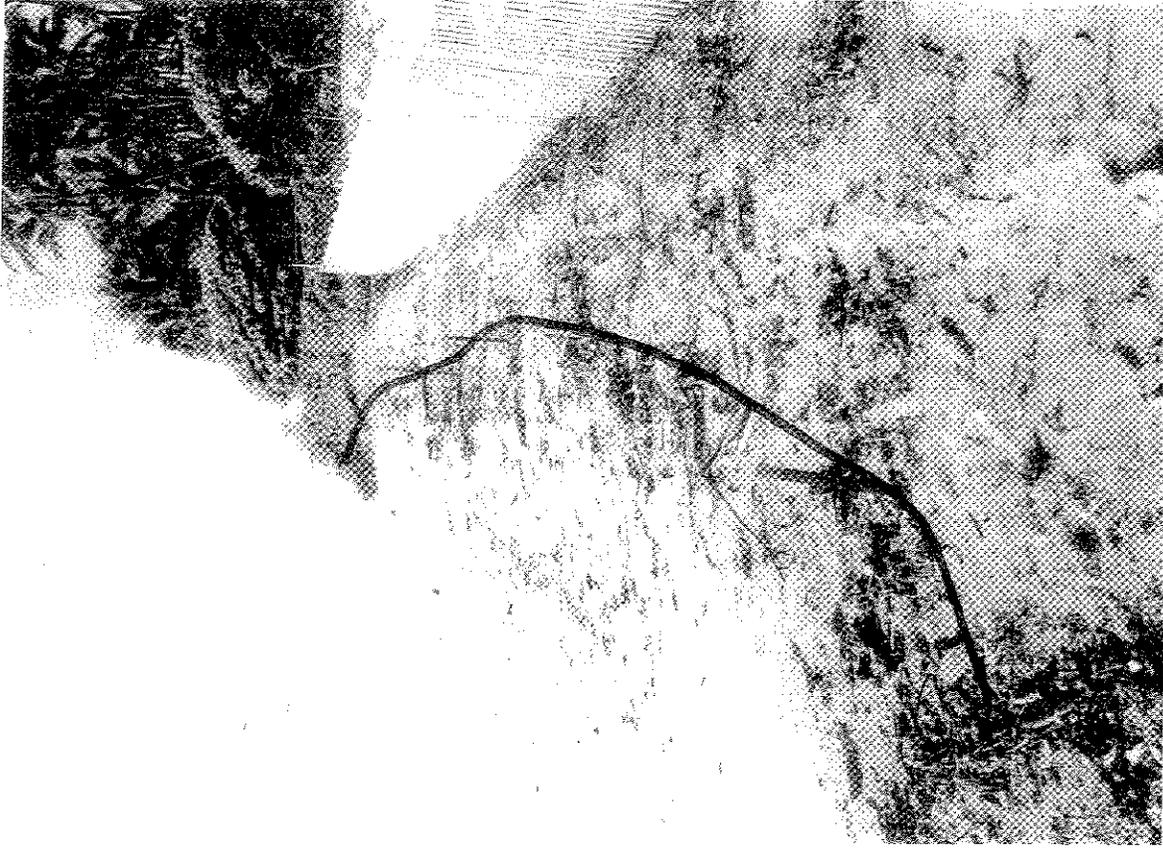


Figure 5

2004 Certified Shoreline Survey – Official Photos Submitted to DLNR – Taken November 3, 2003

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

KATHERINE H. THOMASON
Acting Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
SURVEY DIVISION
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

Response Refer to:
O-13(04)
OA-297-3

February 11, 2004

Shoreline Determination
T.M.K. 3-5-06:06
Waialae-Nui, Honolulu, Oahu, Hawaii

Ms. Dierdre S. Mamiya, Administrator
Land Division
Dept. of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii

Attn.: Mr. Nicholas Vaccaro, Land Agent

Dear Ms. Mamiya:

Your request dated January 18, 2004 for shoreline determination has been reviewed.

The State of Hawaii should have no objections to adopting the debris line as the shoreline as delineated on the map prepared by Mr. James R. Thompson, Licensed Professional Land Surveyor.

Nine (9) copies of the map are enclosed for your approval. Upon certification, please return the copy marked "SURVEY OFFICE COPY" to the Survey Division.

Very truly yours,

RANDALL M. HASHIMOTO
State Land Surveyor

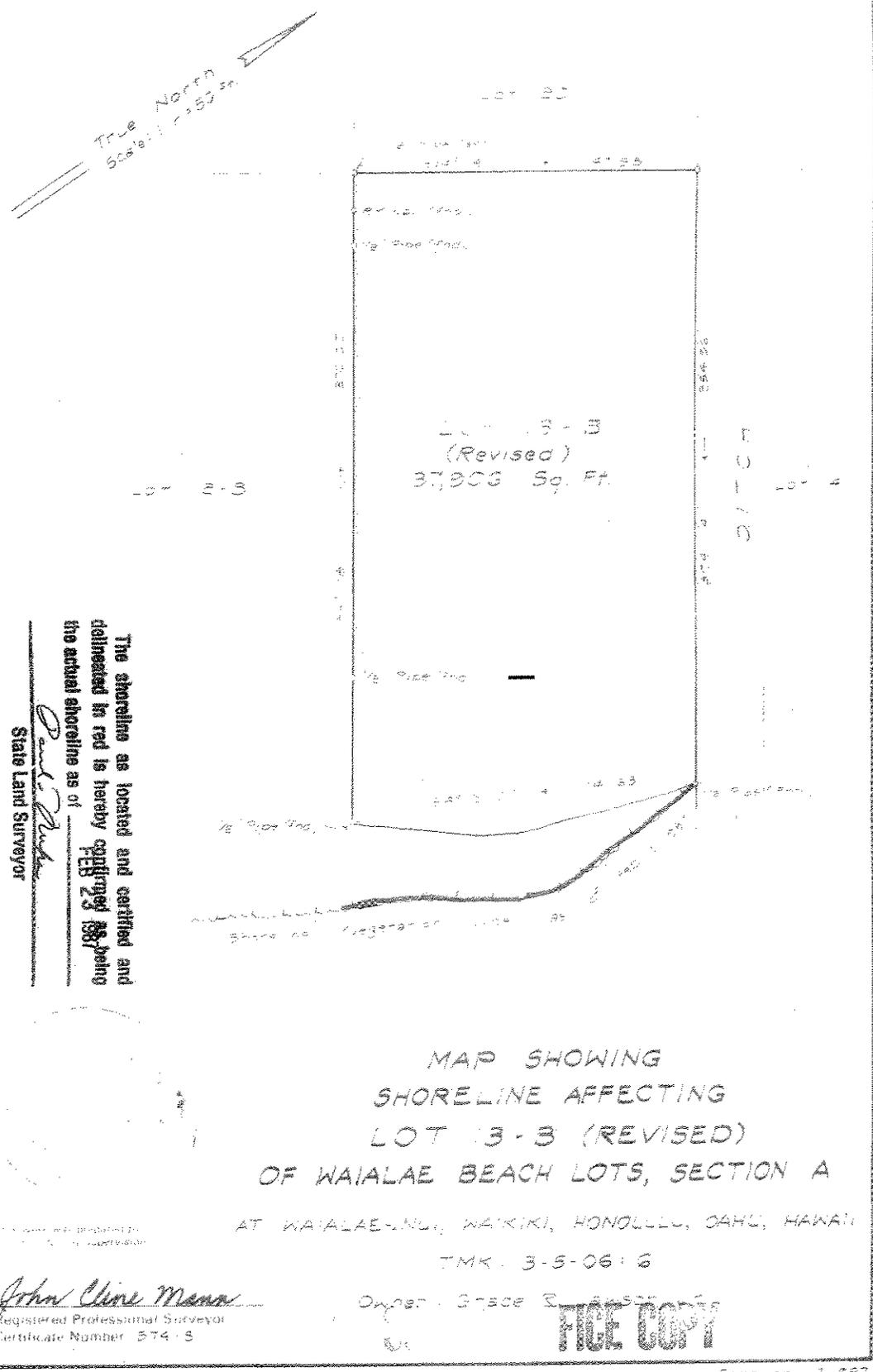
Enclosures

RKS:gsm

Figure 6

2004 Certified Shoreline Survey – Official Letter from State DAGS Survey Division

4771 Kahala Avenue, Honolulu, Oahu, Hawaii



The shoreline as located and certified and delineated in red is hereby confirmed as being the actual shoreline as of **FEB 29 1987**

David J. Mana
State Land Surveyor

MAP SHOWING
SHORELINE AFFECTING
LOT 13-B (REVISED)
OF WAIALAE BEACH LOTS, SECTION A
AT WAIALAE-MAUNA, WAIKIKI, HONOLULU, OAHU, HAWAII
TMK: 3-5-0616

John Clive Mana
Registered Professional Surveyor
Certificate Number 574-S

Owner: Grace S. ...
FIVE COPY

Figure 7
1987 Certified Shoreline Survey
4771 Kahala Avenue, Honolulu, Oahu, Hawaii

0-49(87)

February 17, 1987

Shoreline Determination
DAG: 1-5-86:6
Kaialoa-Kali, Honolulu, Oahu, HI

Mr. John Clive Kern
Assistant Director of Surveying
Kern, Townsend & Associates, Inc.
501 Kalia Street, Suite 421
Honolulu, Hawaii 96814-0411

Dear Mr. Kern:

Your request dated February 17, 1987 for shoreline determination has been reviewed.

The State of Hawaii should have no objections to adopting the vegetation line as the shoreline as delineated in your map.

Three (3) copies of the approved map are enclosed for your information and use.

Very truly yours,



PAUL W. KSB
State Land Surveyor

Enclosures

cc: DDD, TWC

SH:cv

Figure 8

1987 Certified Shoreline Survey – Official Letter from State DAGS Survey Division

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

An outside factor should be acknowledged. The City cleans the sand bar at the mouth of the City's drainage canal and subsequently disperses and grades the canal-sand along the beach front. Thereby, the City removes or covers established vegetation and artificially affects the natural shoreline, moving it in the landward direction.

Again, the applicant is seeking approval of a shoreline setback variance for the portion of sand fill that was placed within the 40-foot shoreline setback area based on the location of the February 11, 2004 BLNR certified shoreline survey.

2.5 Background and Description of the Sand Fill

In general, according to Ms. Elaine Tamaye, President of *EKNA Services, Inc., Engineers and Environmental Consultants*, and a 26-year veteran ocean engineer, anytime sand is placed near a beach area it will be beneficial because the new sand provides a supplemental source of sand for the beach. Secondly, the owner planted the sand fill area with grass, which stabilizes the sand fill.

The need for the sand fill was not due to actions of the current owner/applicant. The owner had the sand fill placed in the ocean-side yard in order to level the property to prepare for construction of the new permitted single family residence. Figure 9, an aerial photo, shows how substantial the two previous houses were. When they were demolished, the topography of the property was significantly impacted and was not returned to a suitable condition for new construction to take place.

The previous owner, who had the two houses demolished, did not leave the property in a suitable condition for new construction. When the applicant purchased the lot in 1998, the property was vacant and the ground was very uneven. The depth of the lot was (1.) lower than adjacent properties; and (2.) lower than the property's previous existing grade when the houses were there because the foundations, slabs, and base materials were removed when the two houses were demolished.

The sand fill was necessary:

1. To fill in the significantly uneven topography due to previous demolition;
2. To create a level and even base elevation suitable for new construction;
3. To raise the grade of the property to a sufficient elevation to comply with flood elevation requirements, as dictated by governing agencies.

OCEAN SIDE BEACH



Figure 9

Subject Property – Since Demolished – Former 2 Houses on the Site

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

According to City records, the Minor Shoreline Structure Permit for the makai fence was approved in December 2002. The owner had the fence installed in February 2003. Later that summer in 2003, the sand fill was placed in the yard, after the existing makai fence was built.

The new house is being constructed over 55 feet away from the certified shoreline. When the owner had the 93.6 tons of sand fill placed on the property, approximately 60%, or 56.2 tons, were placed within the actual 40-foot shoreline setback area, as illustrated in **Figure 3**. It is important to understand that, when spread out over the entire 3,900 square feet, the sand fill was only approximately **six (6) inches deep**, varying in depth because the prior topography of the property was very uneven at that time the sand fill was deposited.

2.6 Other Permits Required

2.6.1 Minor Shoreline Structure Permit

The redesigned fence structure now constitutes a Minor Shoreline Structure, and as such is no longer the subject of the Shoreline Setback Variance or the environmental assessment. However, the owner is required to apply for a Minor Shoreline Structure Permit for the fence and gate. As requested by the City's Department of Planning and Permitting staff and administration at the aforementioned March 1, 2005 meeting, a complete description and set of drawings of the fence structure is provided here in the Final EA. A separate Minor Shoreline Structure Permit application and required supporting materials will be submitted to the Department of Planning and Permitting. A Shoreline Management Area (SMA) permit is not required because the fence is an accessory structure to the single family dwelling on the property.

2.6.2 Technical Characteristics – Fence Structure

The applicant is requesting a Minor Shoreline Structure Permit to install a tension wire fence, fence footings, a gate, and about five (5) wooden planks to be used as steps where the gate will be. All of these features are collectively referred to as "the fence structure".

The existing 6-foot high chain-link fences along the side property lines are proposed to remain in place. They were approved under 2002 Minor Shoreline Structure Permit – 16. No changes are proposed for the chain-link fences along the side property lines. These chain-link fences will be included in the **new** Minor Shoreline Structure Permit application for the redesigned tension wire fence along the makai property line.

The proposed fence structure will be located only along the oceanfront side of the property. The fence structure would be placed about 2 to 8 feet mauka of the makai property line, with one

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

exception. The new fence will be placed in the same alignment as the existing fence (approved as 2002/MSS-16) where the property line is mauka (or landward) of the certified shoreline. The September 16, 2004 letter from the State Department of Land and Natural Resources, Land Division explains that the applicant "...should ensure that footings for that section of (new) fence near the canal do not extend seaward of the current fence alignment to avoid the need for a land disposition." This is because the existing fence (2002/MSS-16) was constructed prior to the 2004 certified shoreline survey. A small portion of the 2004 certified shoreline, nearest the canal, now lies landward of the existing fence, which was constructed in 2002 – prior to the 2004 certified shoreline survey.

The following is a description of the proposed fence, posts and footings. The proposed fence is designed to present a minimalist appearance while maintaining structural integrity. **Figure 10** contains photos of similar tension wire fences. A complete full size set of scaled drawings, including site plan and elevations for the proposed fence structure is attached to this Final EA. **Figure 11** depicts the site plan and **Figure 12** shows a partial elevation for the proposed fence structure. **Figure 13** is an illustration that depicts the existing fence and re-designed fence. The following is a description of the proposed fence, posts and footings.

- The proposed fence structure is an open tension wire metal fence with 2-inch by 3-inch vertical steel fence posts that will be no more than four feet six inches (4' 6") in height above finished grade.
- The steel posts support horizontal stainless steel wire rope that is placed 4 inches apart.
- The vertical steel fence posts will be placed approximately 6 feet apart. This dimension is recommended by the manufacturer.
- Each post will have an individual concrete foundation that will be 12-inches in diameter and placed to a depth sufficient to guard against the occasional storm surge. The tops of the individual footings will be set sufficiently deep (elevation 4.0) so that the footings are not exposed during typical weather conditions. According to the applicant's architect, based on borings conducted at the site, it is not anticipated that rock substructure will be encountered.
- There will not be a metal bar across the top. Instead, there will be 2 horizontal metal bars (three-quarter inch by two and one-half inch stainless steel) that will interspersed will be with the tension wire in order provide stiffness for the posts and the overall fence structure.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

- The fence posts and bars will be buffered with vegetation to mitigate visual impacts and blend with the surrounding vegetation.
- The fence alignment has been designed to “meander” along a swale to avoid a hard line appearance. Naupaka landscaping material, that same that already exists on adjacent and nearby properties, will cover some of the fence and soften its appearance.
- The re-designed fence will be located two feet to five feet landward of the existing fence, as illustrated in **Figure 14**. **Figure 15** shows how the fence will be buffered from view by existing Naupaka.
- The proposed swale will be constructed entirely within the applicant’s property, and will not affect the beach or the high water run-up.

Again, the redesigned fence structure is no longer the subject of this environmental assessment. A Minor Shoreline Structure Permit application will be submitted City’s Department of Planning and Permitting along with the required supporting materials. A Shoreline Management Area (SMA) permit is not required because the fence is an accessory structure to the single family dwelling on the property.

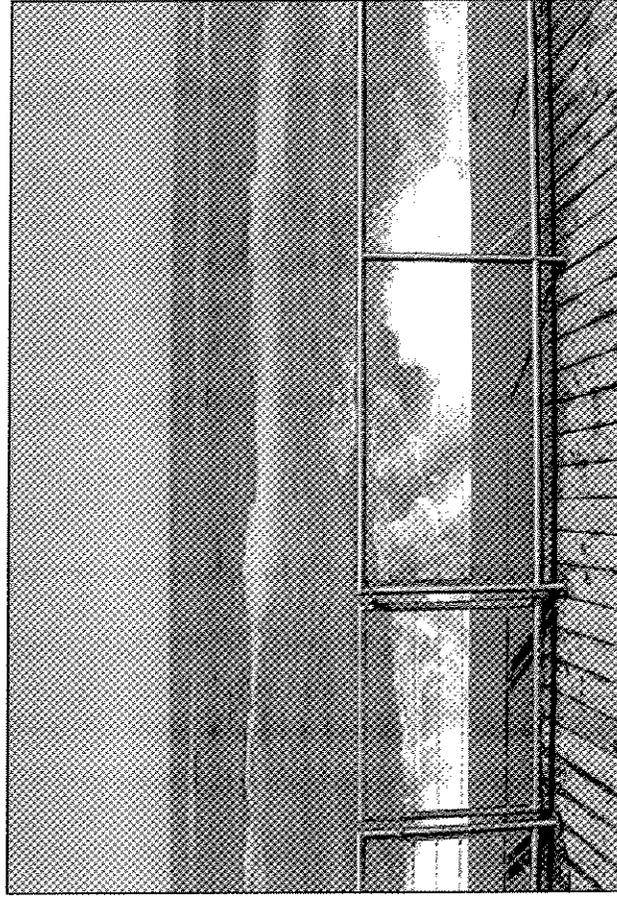
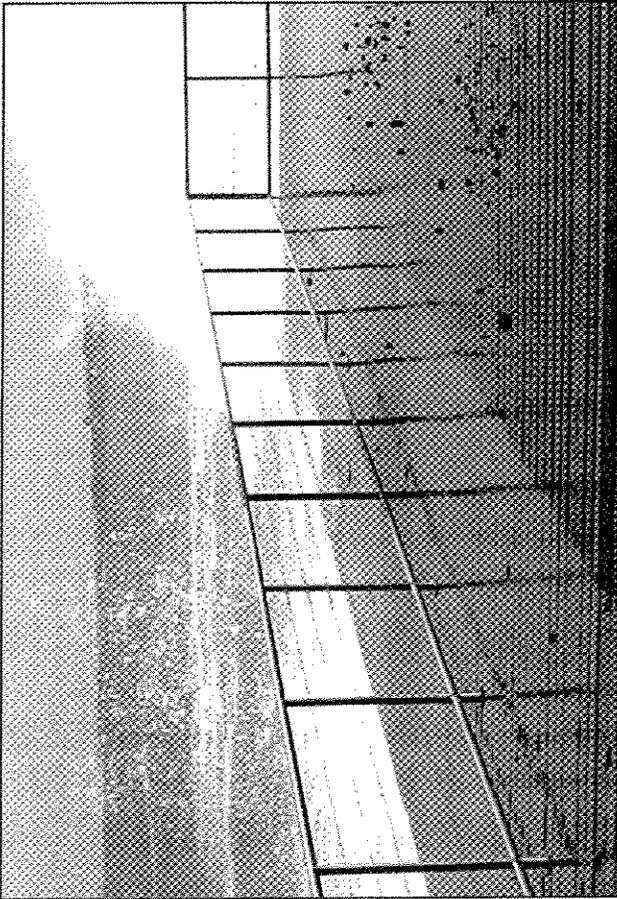
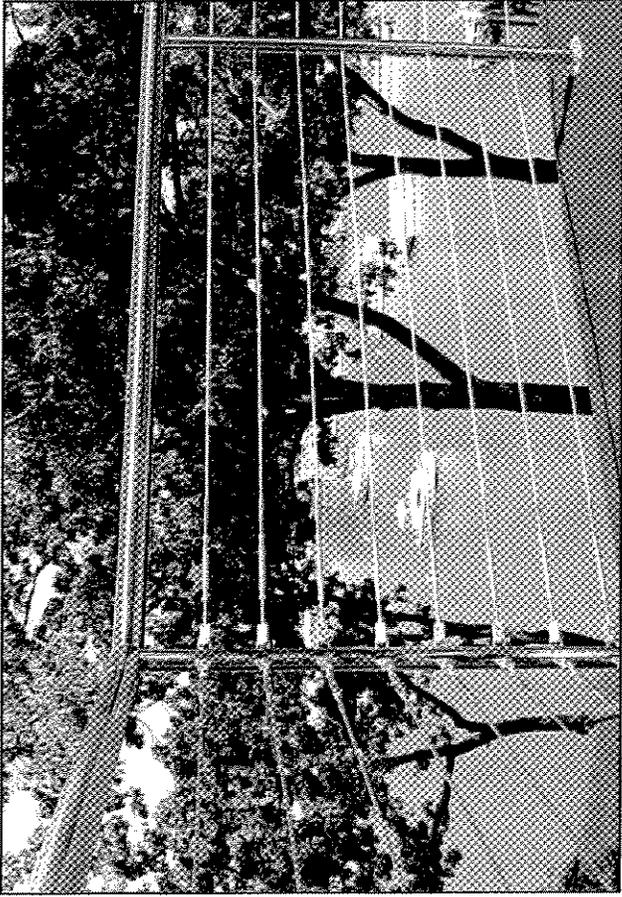
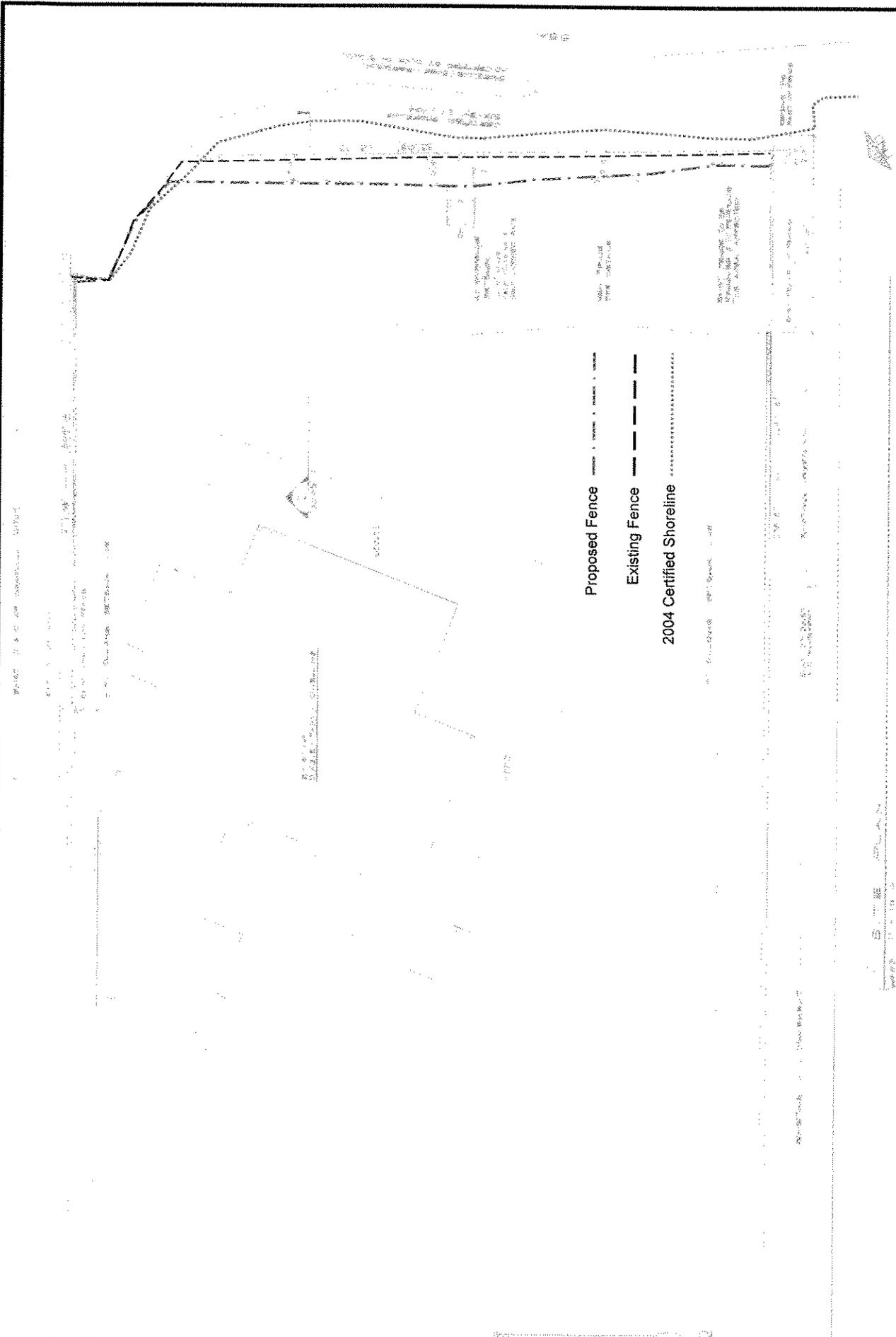


Figure 10
Photos of Sample Tension Wire Fences
4771 Kahala Avenue, Honolulu, Oahu, Hawaii

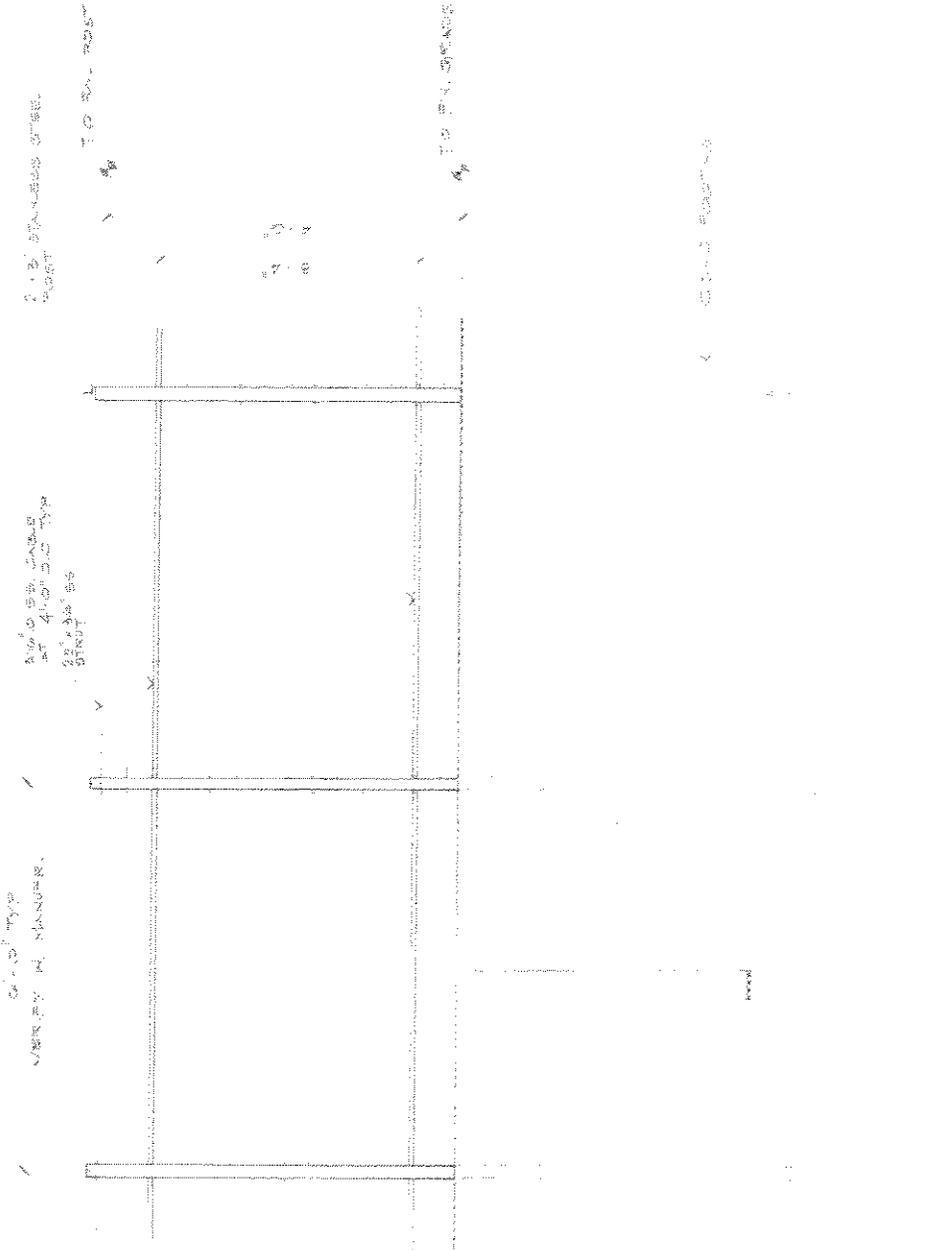


Source: Stringer Tusher Architects
 Not To Scale See Full Size Drawings

Figure 11

Proposed Fence – Site Plan

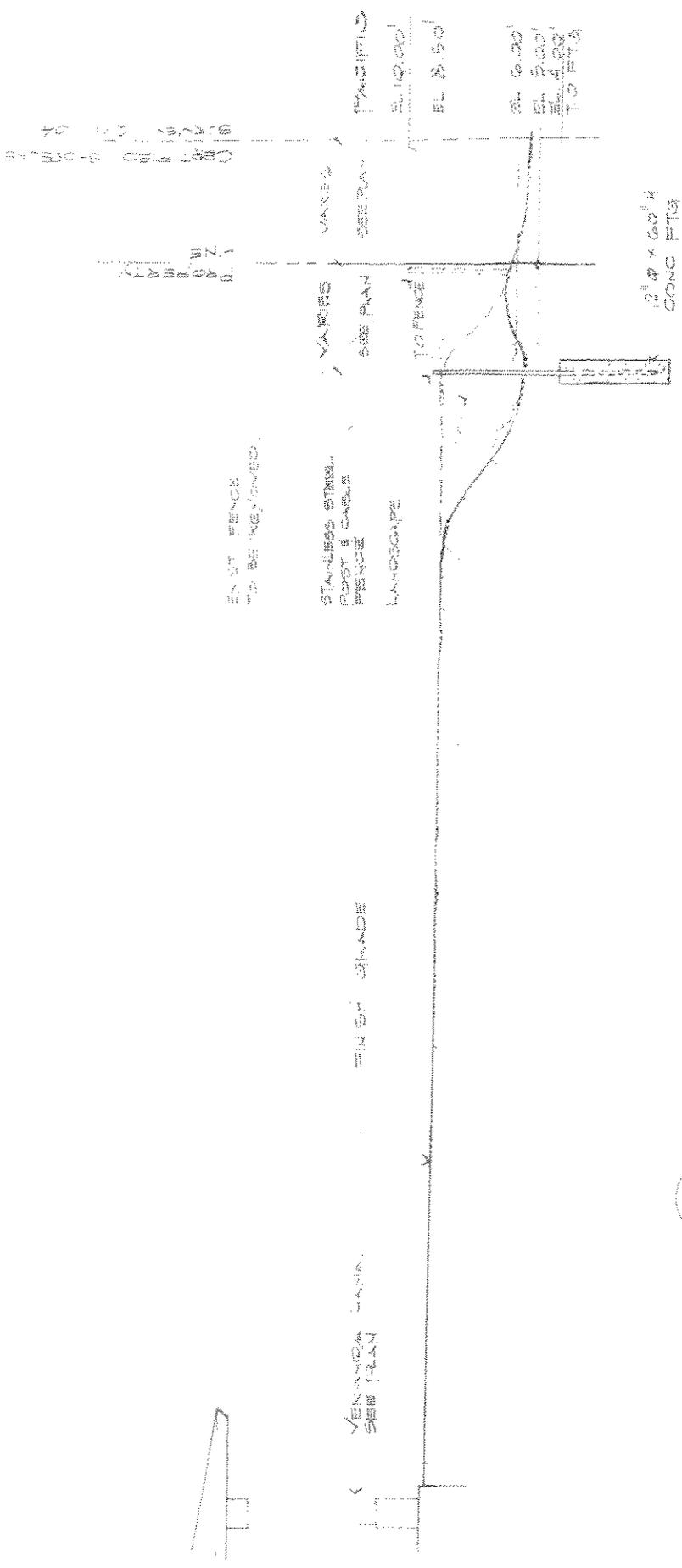
4771 Kahala Avenue, Honolulu, Oahu, Hawaii



Stringer Tusher Architects
 Not To Scale See Full Size Drawings

Source: Stringer Tusher Architects
 Not To Scale See Full Size Drawings

Figure 12a
Proposed Fence – Elevation and Typical Post
 4771 Kahala Avenue, Honolulu, Oahu, Hawaii



2 PARTIAL SECTION PROFILE
 APR 03 1" = 5'-0"

Source: Stringer Tusher Architects
 Not To Scale See Full Size Drawings

Figure 12b
 Proposed Fence – Partial Section Profile
 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

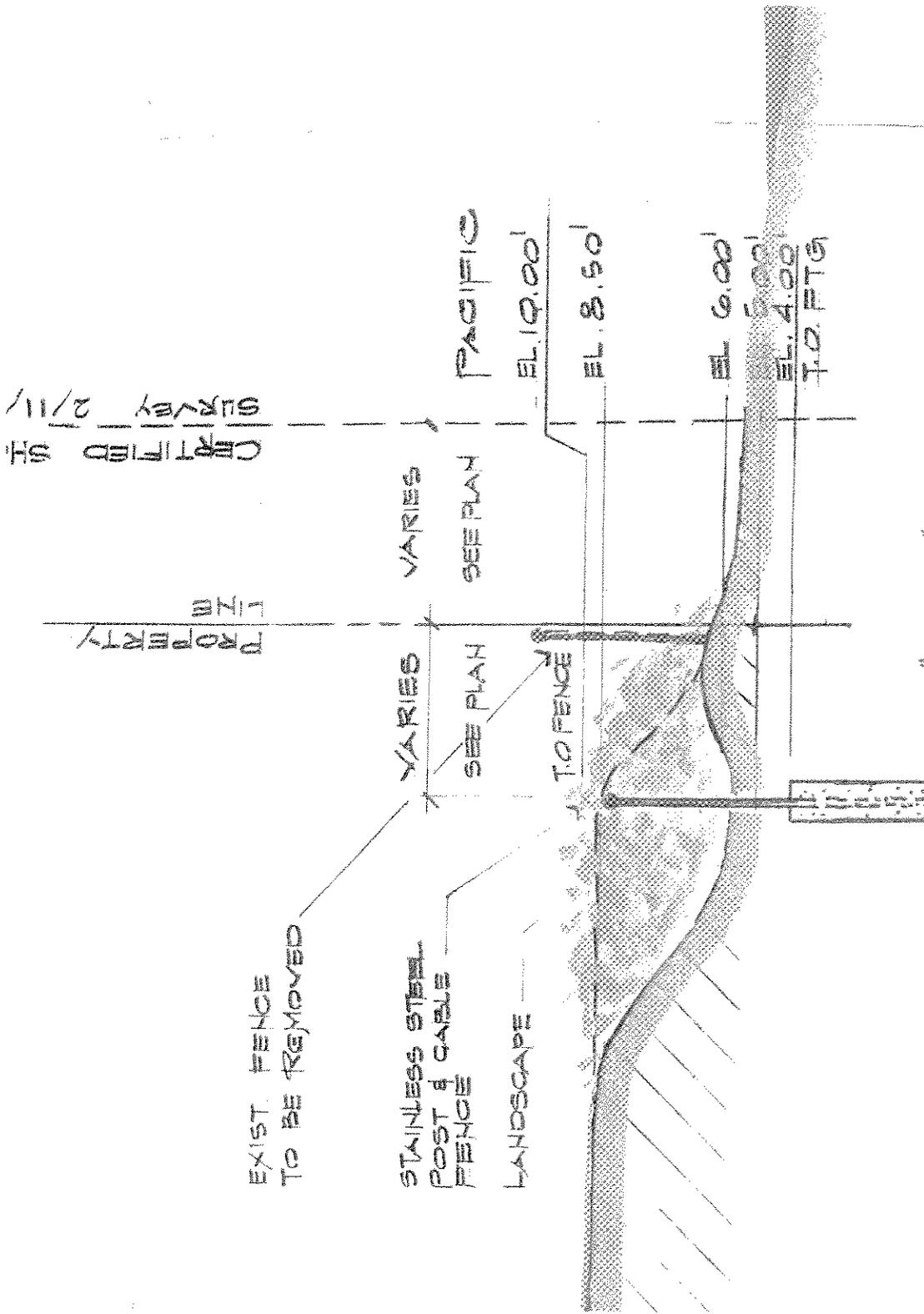


Figure 13

Illustration - Proposed Fence - Partial Section

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

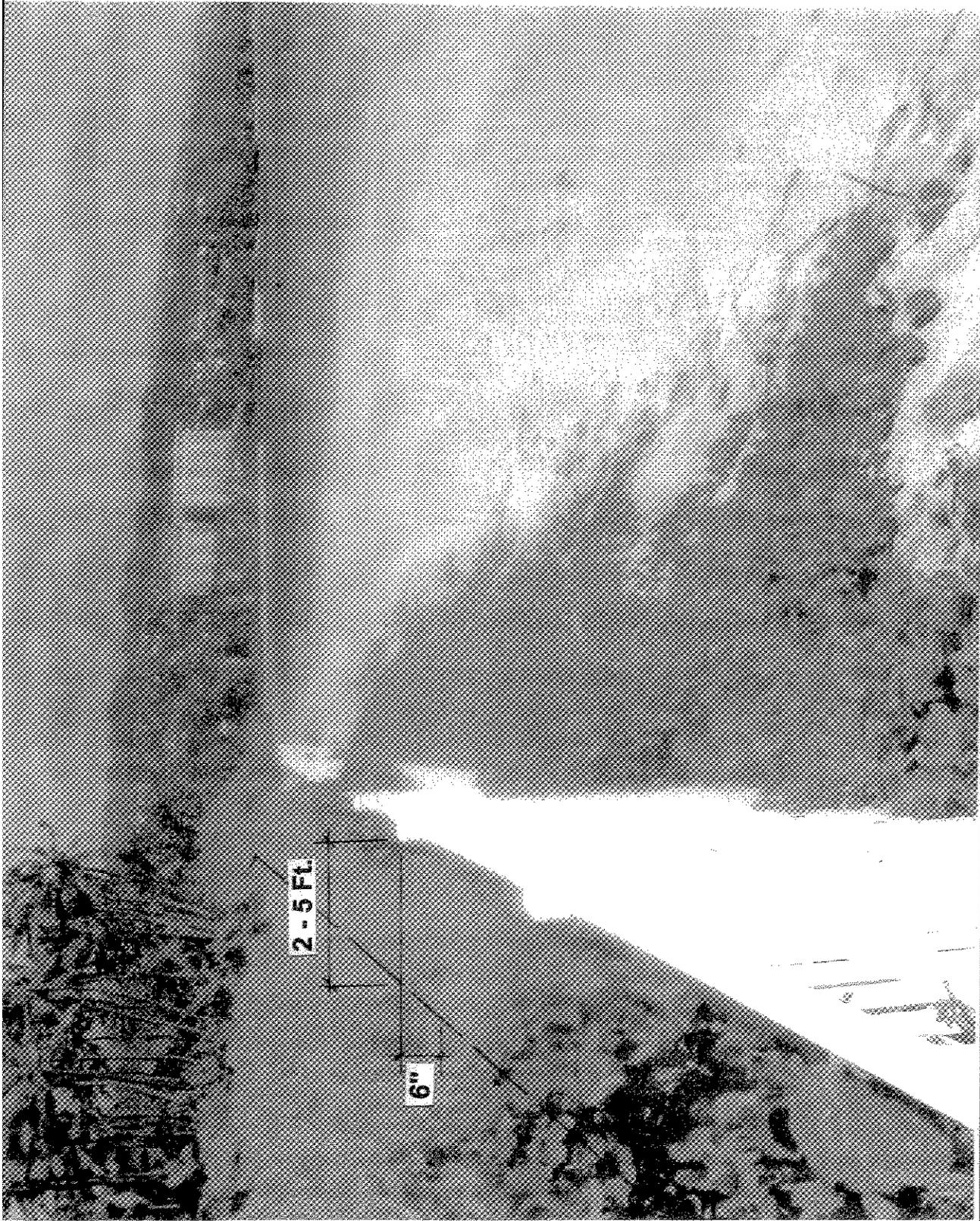


Figure 14

Lines Depict Future Location of New Fence – Mauka of Existing Fence (to be removed)

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

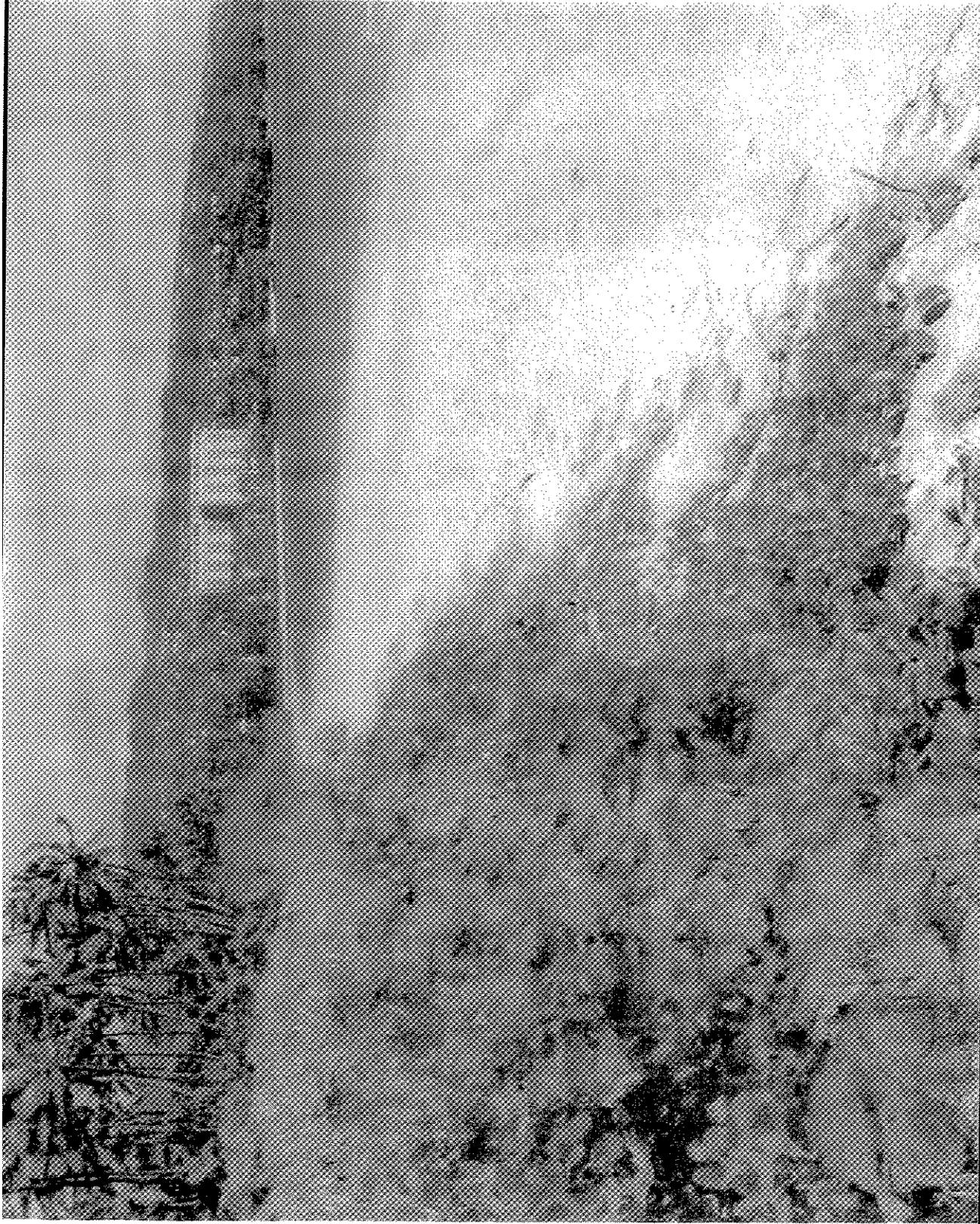


Figure 15

New Tension-Wire Fence Buffered from view by Naupaka

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

3. ENVIRONMENTAL SETTING, POTENTIAL IMPACTS AND MITIGATION MEASURES

3.1 General Description and Shoreline Characteristics

The subject property is located along the shoreline fronting Kahala Beach which stretches from Black Point to the Kahala Mandarin Oriental Hotel. The Kahala Beach narrow coastal plain is comprised of ancient beach and dune sand, emerged reef and alluvium. The area inland and behind Black Point and Diamond Head is described as a strip of sand dunes, blown inland during a higher stand of the sea that has since lithified. (AECOS, Inc., 1979)

A relatively wide, shallow and extensive reef platform, located about 1,500 feet from shore, protects the coast fronting the subject property from high wave action. The reef flat off Kahala Beach is an area of consolidated limestone separated by large sand deposits. The reef is a continuous platform east of Black Point towards the Kahala Hotel. A wide sand channel crosses the reef in front of the Waialae Stream mouth. (AECOS, Inc., 1979)

Potential Impacts and Mitigation Measures

As stated in the EKNA Services, Inc. letter report, any sand that was deposited on the Weldon's property within the 40-foot shoreline setback area is **beneficial** because the sand fill provides a supplemental source of sand for the beach fronting the Weldon's property. The sand fill area is approximately 20 feet mauka of the certified shoreline. No impacts are anticipated. No mitigation is warranted.

3.2 Soils and Nearby Stream Characteristics

The soils are comprised of the Jaucas Sand series and Beach Sand as shown in **Figure 16**. Jaucas Sand consists of excessively drained, calcareous soils that occur as narrow strips on coastal plains, adjacent to the ocean. They developed in wind- and water-deposited sand from coral and seashells. They range from nearly flat to strongly sloping. The subject property is relatively flat. The Beach Sand area lies seaward of the property's certified shoreline. Beaches occur as sandy, gravelly, or cobbly areas on all the islands. They are washed and rewashed by ocean waves. The beach fronting the subject property consists of mainly light-colored sands and some rocks. (U.S. Department of Agriculture, 1972)

About 800 feet east of the project site, the Kapakahi Stream enters the ocean through a channelized outlet at Waialae Beach Park. The shoreline to the east of the stream mouth is a narrow rubble beach, while the shoreline to the west of the stream mouth is more sandy

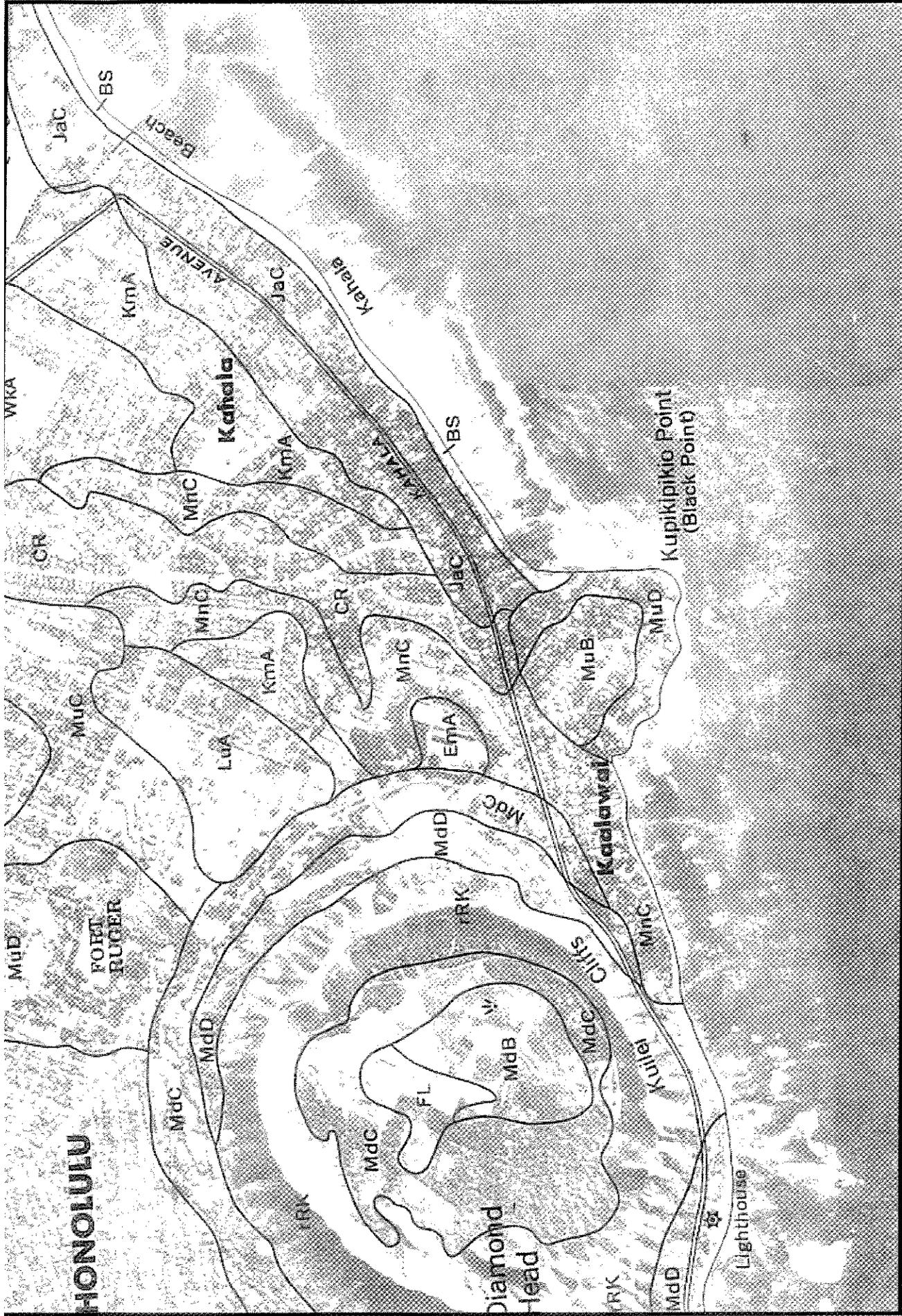


Figure 16

Soil Types

4771 Kahala Avenue, Honolulu, Oahu, Hawaii

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

(AECOS, Inc., 1979). Also, a smaller City drainage channel – referred to on the FEMA map as the “Waiialae Major Drain” - is located along the parcel’s east property line. (AECOS, Inc., 1979)

Potential Impacts and Mitigation Measures

The sand fill on the Weldon’s property, which was purchased from Grace Pacific Corporation and produced on Oahu, is the lightest color of sand available for purchase and was thoroughly washed and cleaned in its production process. The sand fill was placed in the **interior** of the Weldon’s property and was planted and therefore stabilized with grass. As stated in the EKNA Services, Inc. letter report, any sand that was deposited on the Weldon’s property within the 40-foot shoreline setback area is **beneficial** because the sand fill provides a supplemental source of sand for the beach fronting the Weldon’s property. No impacts to existing soils or the nearby stream are anticipated. No mitigation is warranted.

3.3 Flood Zone and Natural Coastal Hazards

The subject property is located in flood zone AO (Depth 1) according to the Federal Emergency Management Agency (FEMA), Flood Insurance Rate Maps (FIRM). The FIRM maps defines the AO (1) zone as having flood depth of 1 to 3 feet, usually sheet flow on sloping terrain. Average depth determined. For areas of alluvium fan flooding velocity also determined.

In terms of coastal hazards, according to Fletcher (2002), the Diamond Head coastal zone stretches from Waikiki to Hawaii Kai, in the eastern portion of Maunalua Bay. One of Hawaii’s shallowest and widest reef flats exists along Maunalua Bay. Diamond Head Crater and Kupikipikio Point(Black Point), formed by recent volcanic eruptions, are steep headlands that separate the beaches of Waikiki from the narrow sand and gravel beaches of Kahala. The saddle-like topography west of Waiialae Beach Park, directs runoff either toward Honolulu through the Ala Wai canal or east toward the canal at Waiialae Beach Park. This area is also far removed from the Koolau Range and the coastal slope is great, so stream flooding is ranked moderately low.

The threat of high waves that annually reach this coast in spring and summer is ranked moderately high. Erosion is high along the entire coast except at the steep Wailupe and Black Point headlands. The hazard of sea-level rise is moderately low here where it is experiencing low rates of rise compared to other areas in Hawaii. The volcanic/seismic hazard is ranked moderately high as it is along all of Oahu’s southern shores, due to their proximity to the Molokai Seismic Zone. (Charles Fletcher’s book *Atlas of Natural Hazards in the Hawaiian Coastal Zone*, 2002 (prepared in cooperation with the University of Hawaii, State of Hawaii Office of Planning and the National Oceanic and Atmospheric Administration).

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

It is noted that in a comment letter received on the Draft EA that an area resident wrote, "*There are no waves at all, any time of the year that reach this beach. In the past 30 years the only waves we have ever seen on Kahala Beach was during Hurricane Iniki.*"

In terms of coastal hazards and the threat of potential erosion, the comments vary. Fletcher's study states that there is the possibility of wave activity along this stretch of coast. It is also noted that there is an inner reef flat that slows down wave activity moving towards the beach. Additionally, the resident's comment letter shares their experience that Kahala Beach is not subject to wave activity.

Therefore, the potential threat of erosion to the sand fill (or the fence structure) appears to be none to minimal because, based on residents' observation over the past 30 years, this portion of Kahala Beach is not subject to wave activity, except in the event of a hurricane.

Potential Impacts and Mitigation Measures

The sand fill was placed in the interior of the Weldon property, approximately 20 feet landward of the certified shoreline. No adverse impacts are anticipated from flood or wave hazards. No mitigation is warranted.

3.4 Flora and Fauna

There are no known significant habitat areas for either land or aquatic flora or fauna found directly on or near the subject property. Vegetation on the subject property and in the fully developed residential neighborhood consists of typical residential landscape materials, ornamental plants, coconut trees, and grassed yards.

The inner reef flat off Kahala Beach is dominated by algae and some very low occurrence of edible seaweeds. Corals contribute less than one percent of the bottom cover. According to the AECOS, Inc. 1979 study, only eight species of fishes were recorded on the shallow reef platform. Large fishes, especially surgeonfishes, are abundant along the reef face.

Potential Impacts and Mitigation Measures

Since the property does not contain any threatened or endangered species of flora or fauna, adverse impacts are not anticipated. No mitigation is warranted.

3.5 Air, Noise and Water Quality

The 2003 deposit of sand fill on the Weldon's property likely caused some short-term air and noise impacts due to the delivery trucks. Also, dust was likely created when the sand fill was

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

placed in the owner's yard. Based on information provided by the owner, the sand fill was placed within the existing yard and there were no impacts to water quality. Offshore water is classified as class "A" in the Department of Health's water quality regulations. Waialae Stream contributes runoff from residential property into nearshore waters. Underwater visibility is limited to 10 to 20 feet over the shallow reef platform. Visibility is reduced to 5 to 10 feet at the surfline. Nearshore water currents vary from southerly to westerly. (AECOS, Inc., 1979)

Potential Impacts and Mitigation Measures

Since the sand fill has already been placed in the owner's yard, the short-term temporary impacts to air and noise quality have already occurred. Those impacts would have been related to the delivery trucks and the process of depositing the sand fill. Based on information provided by the owner, the sand fill was placed within the existing yard and there were no impacts to water quality. No future impacts are anticipated. No mitigation is warranted.

3.6 Coastal Use

The City has a number (6 are listed below) of Public Beach Access Rights-of Way in the vicinity of the Weldon property. According to an April 2005 telephone conversation with Mr. Terry Hildebrand, Planner, City Department of Design and Construction, Planning Branch, Facilities Division, the following are City Public Beach Access Rights-of-Way:

Kahala Avenue at Koloa Street	TMK: 3-5-6: 32	<u>This is just 7 lots west of Weldon</u>
	3-5-5: 73	
	3-5-5: 76	
Kahala Avenue at Hunakai	TMK: 3-5-4: 54	
Kahala Avenue at Elepaio	TMK: 3-5-3: 39	
Kahala Avenue at Kahala Place	TMK: 3-5-3: 41	

Coastal use in the vicinity of the subject property is related to use of Kahala Beach, as well as swimming and fishing. Some portions of this coast line do not have a sandy beach frontage. The coastline in the vicinity of the subject property is primarily developed as private single family house lots, the Kahala Mandarin Oriental Hotel and Waialae Golf Course. The closest beach park is the City's Waialae Beach Park located approximately 800 feet east of the property.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

Potential Impacts and Mitigation Measures

The existing sand fill and the proposed redesigned fence structure are all located on private property. The improvements do not impact public recreation resources. With regard to lateral access along the beach, the Weldon's have no obligation to provide for a public walk way on their property. It is unreasonable and unconstitutional to require the Weldon's to permit the public and their dogs to use forty feet of the Weldon's beach front property. The liability issue alone makes it unreasonable. The proposed fence will serve to remind the public of the Weldon's property line, and to preclude accidental intrusions on the Weldon's property by the general public.

Appendix C contains a letter from the Weldon's attorney regarding this subject. The following is an excerpt from the letter. The Hawaii Revised Statutes Section 115-5 states,

“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 the waves, usually evidenced by the edge of vegetation or by the debris left by the wash of the 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.”

As their attorney states, “Nothing proposed by the Weldons creates a hazardous or unsafe condition, nor renders an existing public access right impassable or unsafe.” No impacts are anticipated. No mitigation is warranted.

3.7 Visual Resources

The project site is located on Kahala Avenue, which is designated a “coastal roadway” in the City's 1987 “Coastal View Study”. The subject property is located in a fully developed residential neighborhood and is not visible from Kahala Avenue. The Coastal View Study designates Waialae Beach Park as having “significant stationary views”. The subject property is visible from the Park's shoreline area.

Potential Impacts and Mitigation Measures

The existing sand fill is located in the interior of the Weldon's property and about 20 feet landward of the certified shoreline. The sand fill, landscaped with grass similar to other properties along this beach, does not create a visual intrusion. No mitigation is warranted.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

3.8 Archaeological and Cultural Resources

The subject property is located in the Kona District on Oahu and in the Waialae Nui ahupuaa. The Hawaiian land division, known as an ahupuaa, generally runs from the top of the mountains to the edge of the coral reef in the sea.

On September 2, 2003 Mr. Weldon retained *T.S. Dye & Colleagues, Archaeologists, Inc.* to conduct recovery operations and prepare an archaeological report that was then submitted to the State Historic Preservation Division. The December 4, 2003 archaeological report prepared for the owner by *T.S. Dye & Colleagues, Archaeologists, Inc.* is included as **Appendix D**.

According to the December 2003 report, "Human skeletal remains were inadvertently exposed during excavations for a utility line...". Figure 1 of the December 2003 archaeological report shows the location as near the existing pool house. It should be noted that the 2003 utility line excavation work and the area where the archeological sites were found is more than 250 feet landward of the existing fence and the proposed fence project, and more than 150 feet landward of the sand-fill area.

No further archeological or historic sites were found over the last two (2) years (since 2003) during the construction of the new single family residence, the placement of sand fill, or construction of the existing fence.

The owner and his contractors will be responsible that if during any future construction or any renovation plans, should significant archaeological features be uncovered, all work will stop and immediate archaeological consultation will be sought with the Department of Land and Natural Resources, State Historic Preservation Division in accordance with applicable regulations.

Potential Impacts and Mitigation Measures

The existing sand fill has already been placed on the property. It should be noted that the 2003 utility line excavation work and the area where the archeological sites were found is more than 150 feet landward of the sand-fill area. No further archeological or historic sites were found over the last two (2) years (since 2003) during the construction of the new single family residence, the placement of sand fill, or construction of the existing fence. No impacts related to the existing sand fill are anticipated. No mitigation is warranted.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

4. PERMITS REQUIRED

The following is a list of permits and approvals.

EXISTING SAND FILL

Permit/Approval	Responsible Agency
Chapter 343, HRS compliance	City and County of Honolulu Department of Planning & Permitting
Shoreline Setback Variance for the portion of sand fill deposited on the Weldon's property within the 40-foot shoreline setback area (after-the-fact permit)	City and County of Honolulu Department of Planning & Permitting
Grading permit for sand fill (after-the-fact permit)	City and County of Honolulu Department of Planning & Permitting

Other Permits Required

Minor Shoreline Structure for redesigned fence structure	City and County of Honolulu Department of Planning & Permitting
Building Permit for redesigned fence structure	City and County of Honolulu Department of Planning & Permitting

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

5. ALTERNATIVES CONSIDERED

5.1 No Action Alternative

The request is for after-the-fact approval for a shoreline setback variance for the portion of sand fill placed within the 40-foot shoreline setback area. If “no action” is taken at this time, the sand fill will remain.

5.2 Remove the portion of Sand Fill in the Shoreline Setback Area

Removing the 56.2 tons of sand fill from only a portion of the ocean-side yard that is within the 40-foot shoreline setback area would remove only about 6-inches of sand fill. The removal of the grass and the sand fill would not improve the condition of the adjacent public beach. The removal of the sand fill would not serve a constructive purpose or result in any benefits to the owner, the City or the public. The condition of the Weldon’s property would be significantly disturbed and disrupted. Removal of the sand fill and the grass lawn could increase the potential for de-stabilization of the beach.

5.3 Preferred Alternative

The preferred alternative is for the sand fill to remain. The owner realizes now that a shoreline setback variance and a grading permit for the sand fill should have been obtained prior to depositing the sand fill in the makai portion of the property. Removal of the sand fill would not create a beneficial situation for the property owner or for the City and County of Honolulu. The sand fill was necessary to fill in the uneven topography of the lot before any construction would be possible.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

6. FINDINGS AND REASONS SUPPORTING THE ANTICIPATED DETERMINATION

Chapter 200 of Title 11, Administrative Rules of the State Department of Health establishes criteria for determining whether an action may have a significant impact on the environment (11-220-12). The Rules establish “significance criteria” for making the determination. The relationship of the proposed project to the thirteen criteria is provided below.

6.1 Significance Criteria

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

The after-the-fact sand fill request involves no loss or destruction of natural or cultural resources. According to EKNA Associates, Inc., any sand that was deposited on the Weldon’s property within the 40-foot shoreline setback area is **beneficial** because the sand fill provides a supplemental source of sand for the beach fronting the Weldon’s property.

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

The property where the sand fill was placed, and the surrounding area, is zoned for private residential use. Allowing the sand fill to remain will preserve the beneficial use of the property as residential land, and will not negatively impact other beneficial uses of the environment such as recreation.

3. **Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders;**

Allowing the existing sand fill to remain on private property does not conflict with long-term environmental policies or goals or guidelines of the State of Hawaii as expressed in chapter 344, HRS.

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

The economic and social welfare, and cultural practices of the community or State will not be and are not affected by the existing sand fill.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

5. Substantially affects public health;

There are no public health concerns relating to the existing sand fill.

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

There are no anticipated secondary impacts.

7. Involves a substantial degradation of environmental quality;

As stated throughout this Final Environmental Assessment, allowing the existing portion of sand fill to remain within the 40-foot shoreline setback area and 20 feet landward of the certified shoreline will not result in a substantial degradation of environmental quality.

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

The sand fill was necessary to fill in the shallow and uneven topography in order for any construction to take place on the property. Building Permit No. 546873 was obtained for the single family residence that is under construction on the site. The existing sand fill was landscaped and is now maintained as a yard. The sand fill will not have cumulative effects on the environment and does not involve a commitment for a larger action.

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

The subject property was previously disturbed and developed when two single family residences were constructed and later demolished on the site, prior to the applicant purchasing the property. There are no known rare, threatened or endangered species or related habitat at or near the subject property.

10. Detrimentially affects air or water quality or ambient noise levels;

The existing sand fill will not impact air or water quality or ambient noise levels. There have been some minor short-term air or noise quality impacts related to the delivery and leveling of the sand fill to the site. No long term impacts are anticipated.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

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

The property is zoned for Residential use. The sand fill was placed on the property where the lot was previously disturbed and developed with two single family houses. The property is being redeveloped with the construction of one single family residence. The existing sand fill is not expected to increase the flood hazard for the subject property or surrounding properties.

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

The existing sand fill is located in the interior of the Weldon's property and about 20 feet landward of the certified shoreline. The sand fill, landscaped with grass similar to other properties along this beach, does not create a visual intrusion.

- 13. Requires substantial energy consumption.**

The prior placement of the sand fill did not require substantial energy consumption.

6.2 Findings and Reasons Supporting Anticipated Determination

The findings of this assessment are that no negative impacts would result from the placement of sand fill within the 40-foot shoreline setback area on private property. Therefore, the action should not result in significant impacts on the environment. A Finding of No Significant Impact (FONSI) is anticipated, and a Negative Declaration is determined to be in order.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

7. AGENCY AND PUBLIC CONSULTATION AND REVIEW

The following is a list of agencies and individuals who were either consulted in the preparation of the Draft Environmental Assessment and/or provided comments on the Draft EA. Copies of all comment and response letters are in Appendix E.

Agencies

City and County of Honolulu

- Department of Planning and Permitting
- Department of Planning and Permitting – Civil Engineering Branch
- Police Department

State of Hawaii

- Department of Health
- Department of Land and Natural Resources – Engineering Division
- Department of Land and Natural Resources – Historic Preservation Division
- Department of Land and Natural Resources – Land Division
- Department of Land and Natural Resources – Office of Conservation and Coastal Lands
- Office of Environmental Quality Control
- Office of Hawaiian Affairs

Individuals and Groups

Lester H. Fukuda, P.E., FACEC – Chair, Waiialae-Kahala Neighborhood Board

John and Lucinda Pyles

Kelley C. Roberson, Member, Sub-District #1, Waiialae-Kalaha Neighborhood Board

Sierra Club, Hawaii Chapter

Electronic Mail Sent to Pam Davis, Planner, Department of Planning and Permitting

From Kahalabob@aol.com dated:

September 13, 2004

September 14, 2004

September 16, 2004

September 19, 2004 11:29 pm

September 19, 2004 11:33 pm

September 19, 2004 11:36 pm

September 16, 2004 12:04 am

September 16, 2004 12:16 am

September 16, 2004 12:32 am

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

8. REFERENCES

- AECOS, Inc. 1979. *Oahu Coral Reef Inventory*. Prepared for the U.S. Army Corps of Engineers, Pacific Ocean Division, Fort Shafter, Hawaii.
- Chu, Michael S., and Robert B. Jones for the City and County of Honolulu, Department of Land Utilization, *Coastal View Study*, 1987.
- City and County of Honolulu, Department of Planning & Permitting, Geographic Information Systems on-line database at <http://.gis.hicentral.com> 2004.
- Fletcher, Charles. 2002. *Atlas of Natural Hazards in the Hawaiian Coastal Zone*. Prepared in cooperation with the University of Hawaii, State of Hawaii Office of Planning and the National Oceanic and Atmospheric Administration.
- Sterling, Elspeth and Catherine Summers. *Sites of Oahu*. Bishop Museum Press, Honolulu, Hawaii.
- U.S. Army Corps of Engineers, Pacific Ocean Division. June 1973. *Environmental Factors of U.S. Department of Agriculture, Soil Conservation Service in cooperation with the University of Hawaii Agriculture Experiment Station. Soil Survey of Kauai, Oahu, Maui, Molokai and Lanai, State of Hawaii*. August 1972.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

APPENDIX A

APPENDIX A

Justification for a Shoreline Setback Variance under Revised Ordinances of Honolulu Section 23-1.8 (3) “Hardship Standard”

The property owner will suffer hardship if the after-the-fact shoreline setback variance for the proposed sand fill is not granted. Their application for such a variance fulfills the three criteria for hardship as set forth in ROH Sec. 23-1.8 (3) (A).

1. The applicant would be deprived of the reasonable use of the land if required to comply fully with the shoreline setback ordinance and the shoreline setback rules. The former structures on the property were demolished prior to the purchase of the property by the current owner. Two houses and a number of mature trees with significant root systems, and other landscaping elements were demolished. As a result, the original topography of the property was impacted by the creation of an irregular surface and a depression in the middle of the property that sloped towards the beach. Further because of the demolition this area of the property was lower than the adjacent properties.

At the makai property line a ridge of sand is created when city crews clear the mouth of the drainage channel, which they do on a regular basis. Between clearings, the ridge is reduced by ocean action that moves the sand, leaving the makai depression of the property exposed to the beach. When this condition occurs rainwater flows through the depression to the beach, washing dirt from the property onto the beach and eventually into the ocean.

Leveling the property with the added sand eliminated this problem. If left uncorrected the property would gradually erode, resulting in a contamination of the beach and the Kahala lagoon area. Also, if uncorrected, the erosion of the fast land would eventually reach and undermine the existing house which is close to, but mauka of the 40 foot shoreline setback area.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

Thus, if the sand fill is not permitted, the property would gradually erode into the ocean creating a hardship for the applicant and depriving him and his family of the use of a substantial portion of his property. Further, the erosion will be environmentally detrimental to the Kahala lagoon area.

2. The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of this chapter and the shoreline setback rules. The need for the sand fill was not caused by the applicant. It was the result of demolition of two houses and removal of some large trees with extended root systems. These are unusual and unique circumstances and the addition of sand fill to level the property does not draw into question the reasonableness of Chapter 23 or the shoreline setback rules.

3. The proposal is the practicable alternative which best conforms to the purpose of this chapter and the shoreline setback rules. Granting of a variance to allow the sand fill to remain is a reasonable request and is the practicable alternative. The sand fill is located entirely on private property and it does not impede access along the shoreline; it does not have any impact on beach or ocean processes and according to EKNA Services, Inc. any sand that was deposited on the Weldon's property within the 40-foot shoreline setback area is **beneficial** because the sand fill provides a supplemental source of sand for the beach fronting the Weldon's property; the sand fill is grassed over like many yards in this area and does not create a negative impact on public views to, from or along the shoreline.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

APPENDIX B

Letter Report from EKNA Associates, Inc.



EKNA Services, Inc.

CN 2493-00R#

April 8, 2005

Ms. Mary O'Leary, AICP
Land Planning Consultants, LLC
3123 East Manoa Road
Honolulu, Hawaii 96822

Subject: Fence at 4771 Kahala Avenue
TMK:(1) 3-5-6:006

Dear Ms. O'Leary,

In response to your request, I have reviewed the Draft Environmental Assessment and revised fence design for the subject property owned by Mr. Edward Weldon. The replacement fence will be a stainless steel tension-wire fence, and is proposed to be constructed about 5 feet mauka of the existing fence. The concrete footings for the fence posts will be nominally 12 inches in diameter and 5 feet high, spaced 6 feet apart. The top elevation of the footing will be at +4' MSL and the bottom elevation of the footing will be at -1' MSL (0' MLLW). The footings will be buried about 1 ½ feet below grade, and the top of the fence would be about 4 ½ feet above grade. The grade of the property is about +8.5' MSL, and it is proposed that the Weldon property be excavated to a finish grade of +5.5' MSL in order to construct the new fence mauka of the current fence alignment. Naupaka will be planted alongside the new fence.

Can the current fence and footings be considered a shoreline protection structure? The only "hard" feature of the fence are the tubular concrete footings for the fence posts. Considering that the footings are spaced 6 feet apart, they do not provide a solid structure along the shoreline, and would provide no protection from wave erosion.

What would be the potential impacts on littoral processes? The current fence is located at the boundary line, which is, for the most part, mauka of the certified shoreline. Only about 40 linear feet of shoreline at the northern end of the property, adjacent to the C&C drainage ditch, is located a few feet makai of the certified shoreline. The new fence will be located about 5 feet mauka of the existing fence, and up to about 10 feet mauka of the certified shoreline along much of the property's shoreline frontage. Therefore, the new fence and buried footings will have no impact on the existing beach processes. However, it is apparent that the property's shoreline is subject to seasonal and long-term erosion. Also, high discharge flows from the C&C drainage ditch can cause scouring and erosion of the adjacent beach. The fact that this ditch is periodically "opened", or cleared of sand blockage, means that the sand "reserve" north of the subject property is periodically depleted. Even though the sand is placed in front of the property, it apparently does not remain in place for very long. Drainage ditches and other dredged openings along a shoreline disrupts the continuity of alongshore sand movement. Therefore, waves will

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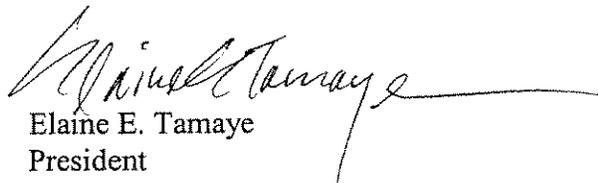
cause sand to “fill” across these openings until continuity is achieved. Unless the City’s ditch sidewall is extended beyond the adjacent dry beach zone, the subject property will continue to experience erosion damage.

Comments concerning the fence design. Moving the new fence even farther mauka of the shoreline will render it less susceptible to future erosion damage. However, because it is proposed that the property shoreline be excavated to lower the grade for the fence construction, the fence will be within the wave runup zone during the occasional storm high surf conditions. Assuming a maximum stillwater level of +4' MLLW, storm wave runup could reach elevation +7-9' MLLW (+6-8' MSL) on the shoreline. The footings are deep enough to prevent loss of structural support from storm wave scouring, and the cable design of the fence will minimize the potential for damage from wave runup/impact. However, the likely future scenario is that of continuing long-term erosion of the fronting beach. Therefore, should this result in the chronic exposure of the fence footings, then the fence may need to be relocated again farther mauka.

Comment concerning the sand fill on the subject property. Sand was deposited on the property to level the grade of the backyard. Any erosion of the property due to continuing erosion of the fronting beach will result in deposition of the sand fill on the beach. Therefore, any placement of sand within the setback area will be beneficial by providing a supplemental source of sand for the beach.

Please contact me if you have any questions concerning the above.

Very truly yours,


Elaine E. Tamaye
President

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

APPENDIX C

**Letter Robert Bruce Graham Jr., Attorney
Ashford & Wriston**

March 3, 2005

Mr. Donald Clegg
President
Analytical Planning Consultants, Inc.
928 Nuuanu Avenue, Suite 502
Honolulu, Hawaii 96817

**Re: Property of Mr. and Mrs. Edward J. Weldon
At 4773-B Kahala Avenue, Honolulu
TMK: (1) 3-5-006:006**

Dear Mr. Clegg:

We have been requested to provide you with our written opinion as to whether there is a public right of access across Mr. and Mrs. Edward J. Weldon's beachfront single-family residential property at 4773-B Kahala Avenue in Honolulu (the "Weldons' Property"). It is our opinion that there is no such public right of access.

It is important to distinguish public rights in private property from the public right to regulate the use of private property. All residential lots are subject to a variety of public controls of their use and development. This regulatory power is not the same as public ownership or public use, however. Public regulatory bodies may control the use and development of private property without the general public having any right of access whatsoever.

While the courts have recognized that private property may be subject to the exercise of various access rights, such rights do not arise spontaneously or out of public convenience. They arise, if at all, from voluntary acts of the property owner, statutes, common law, ancient custom and tradition, or eminent domain (condemnation). None of these is applicable to the Weldons' Property.

I. The several sources of access rights over private property may be summarized as follows:

- Voluntary Deed. Rights in the nature of an easement may be created by the voluntary deed of the private property owner. There is no such deed affecting the Weldons' Property.
- Kuleana Access Rights. Certain properties known as "kuleana" are entitled to access rights reserved to them by the Kuleana Act of 1850.¹ If the only reasonable access to a kuleana parcel were through the Weldons' Property, the owners of that parcel (not the general public) would be entitled to assert access rights against the Weldons' Property. There is no kuleana title within or abutting the Weldons' Property.

¹ Kuleana are defined as those parcels granted to native tenants pursuant to the law of 1850 which granted the common people of the Kingdom of Hawaii the right to acquire fee simple title to their house lots and agricultural lands

- The Highways Act of 1892. The Hawaii Legislature in 1892 declared that all roads then existing which had been dedicated or abandoned to public use were public highways. Today, Hawaii Revised Statutes (H.R.S.) Section 264-1(b) provides that:

All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-ways by the highways act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails.

An example of such a roadway is an old beach road fronting several properties at Diamond Head. The Hawaii Supreme Court concluded that a public road had existed there prior to 1892 and that the roadbed, which had been incorporated into private houselots, was public property. There is no such roadway or trail within the Weldons' Property.

- Statutory Dedication. Statutory dedication is another form of voluntary act that can create public rights. H.R.S. § 264-1(c)(1) provides for dedication of public highways and trails, as follows:

Dedication of public highways or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway or trail and naming the county as grantee in the case of a county highway or trail. The deed of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway or the board of land and natural resources in the case of a state trail. In the case of a county highway or county trail, the deed shall be delivered to and accepted by the legislative body of a county.

There has been no statutory dedication of a public highway or trail affecting the Weldons' Property.

- Implied Dedication. Dedication to use by the public will be implied from voluntary acts of the private property owner in platting roadways and then selling or leasing parcels that abut those platted roadways. This principle is not applicable to the Weldon's Property.

- Surrender. H.R.S. § 264-1(c)(2) provides for surrender of highways and trails to public use as follows:

Surrender of public highways or trails shall be deemed to have taken place if no act of ownership by the owner of the road, alley, street, bikeway, way, lane, trail, or bridge has been exercised for five years and when, in the case of a county highway, in addition thereto, the legislative body of the county has, thereafter, by a resolution, adopted the same as a county highway or trail.

There has been no surrender by the Weldons or their predecessors in title and the City Council has not passed any resolution adopting any portion of the Weldons' Property as a county highway.

- Common Law. The common law doctrines of necessity and implication, which recognize a right of way in favor of one parcel over another, are not applicable here. The doctrines address situations that arise when a subdivider fails to grant or reserve access to a portion of the subdivider's own property, effectively landlocking it. The common law then concludes that a right exists by reason of necessity and the subdivider's intention to provide access will be implied. Neither doctrine is applicable to the issue of public access along the beach fronting the Weldons' Property. There is public access to the beach and the sea within about 500 feet of the Weldons' Property and the creation of their lot did not "landlock" other property.

- Prescription. Prescriptive rights may arise when a property owner fails to prevent adverse use by others for a sufficiently long period of time. That adverse use is then said to ripen into a prescriptive right in favor of the adverse users. Prescriptive rights cannot be acquired by casual or permissive use. Prescription must entail actual, consistent and uninterrupted use of private property with notice to but not the consent of the private owner. Prescriptive rights develop, if at all, only by continuous use over a period of years not less than the statutory period for adverse possession, which in Hawaii is twenty years. There are no facts that would support a claim of prescriptive rights against the Weldons' Property. Hawaii case law is clear that the public's exercise of its existing rights on the public beach cannot form the basis for prescriptive rights against an abutting private property owner.

- PASH Rights. So-called "PASH" rights refer to the Hawaii Supreme Court's decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission. In that landmark opinion, the Court determined that private properties may be subject to rights in favor of others for the exercise of traditional and customary cultural and religious practices. In exercising their PASH rights, the holders of the rights are entitled to enter and cross private property. The Court was clear, however, that PASH rights ordinarily do not attach to developed properties and, in a subsequent opinion, noted that PASH rights do not affect residential property at all. There is no basis for the assertion of PASH rights against the Weldons' Property.

- Eminent Domain. Government is empowered to acquire public access rights by exercise of its power of eminent domain. It has not done so as against the Weldons' Property.

II. Access to the beach is not at issue here. Scholarly articles have argued that there must be a means of access to the beach in situations in which private property otherwise would prevent the public from reaching the sea. The rights of way at Portlock are given as examples. These arguments remain theoretical and are not applicable here where there is an unobstructed public right of way to the sea within about 500 feet of the Weldons' Property.

III. It is important to distinguish the Weldons' private residential property from the public property that lies *makai* (seaward) of it. The location of the Weldons' Property line has been determined by a professional surveyor and accepted by public authorities in accordance with state law. That line will not change except as provided by law.

The Weldons' Property is subject to a shoreline setback, which governs their permitted use of the lot but does not affect their title. The portion of the Weldons' Property within the shoreline setback area remains their private property, just as is land within side-yard setbacks fixed by ordinance or within street front setbacks established by a community declaration or ordinance. The public authorities have the power to regulate use of the setback area (and indeed, of the entire lot) as provided by State law and City ordinance. But they have no power to open the Weldons' Property or any portion of it to use by the general public except through proceedings in eminent domain wherein public rights are acquired and the owners are appropriately compensated.

Title to the property *makai* of the property line is vested in the State of Hawaii, which is said by the Hawaii Supreme Court to hold the property in a public trust for the use and benefit of the public. This public trust land includes the submerged land fronting the Weldons' Property and any fast land that may exist from time to time between the property line and the sea. The Court has recognized that in periods of storm and exceptionally highwater, the beach may disappear entirely, with the sea temporarily submerging everything below the property line.

Nonetheless, the property line remains the demarcation between public and private interests. Whether it is monumented by vegetation, a wall, a fence, rocks, a change in elevation or simply by corner pins, the property line is the point at which the access rights of the general public end and the rights of the private property owner begin. Paramount among the rights of the private property owner is the right to exclude the general public. Unless the private owner's rights have been encumbered by one or more of the methods discussed in Part I above, any unauthorized or uninvited entry by the general public is a trespass.

IV. When permitting construction of residential seawalls and revetments to inhibit erosion and protect private property, the public authorities have on occasion obliged private property owners to provide lateral access along the beach to the general public. This requirement arises as an incident of the permitting process where the proposed improvement creates an otherwise unsafe condition or makes pre-existing public passage impossible. Thus, if a proposed revetment or seawall (typically rising from the sea itself and up several feet to the private property being protected) can be expected to preclude safe public transit of the shoreline, government may require, as a condition of the permit, that the developer provide an alternate means of public access along the shoreline; *i.e.*, one that does not entail scrambling across the steep face of a revetment, walking along the narrow top of a wall several feet above sea level, or swimming around the footings.

The United States Supreme Court has concluded that in order to meet constitutional prohibitions against uncompensated takings, there must be a rational nexus between the requirement being imposed and the privilege being granted. The imposition must be reasonably proportionate to the benefit conferred. It is not permissible to use the permitting process as a means of acquiring rights the public does not now have merely because such new public rights would be desirable.

Mr. Donald Clegg
March 3, 2005
Page 5

Were the Weldons seeking to construct a seawall or revetment that would significantly interfere with existing public access to tidal and submerged lands and beaches, government might be entitled to impose a requirement of public access as a condition of the permit. But, where the Weldons' proposed installation entails only limited fencing consisting of posts and cables to be installed wholly within private property and will not adversely affect the existing public beach or existing public access along the public beach, no exaction of a public right of way is proper.

Nothing proposed by the Weldons creates a hazardous or unsafe condition nor renders an existing public access right impassable or unsafe. The proposed fence does not reduce the size of an existing beach area usable for public recreation; it does not impose restrictions on existing public access to tidal and submerged lands or beaches; no existing public access along the public beach is being lost or compromised. The proposed fence will do little more than serve to remind the public of the property line and preclude accidental intrusions on the Weldons' Property by the general public and public workers charged with clearing the adjacent storm drain channel (who, on occasion have dumped sand and debris on the Weldons' Property). In these circumstances, it would be unreasonable (and therefore unconstitutional) to require that the private property owner create and dedicate a new public pathway over heretofore private property.

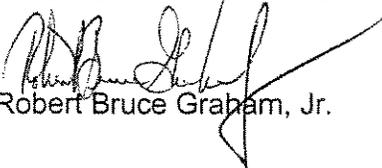
If government wishes to enhance public transit along the beach, its proper remedy is eminent domain, not a constitutionally impermissible regulatory taking. H.R.S. Section 115-5 is clear on this point:

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.

Emphasis added.

Very truly yours,

ASHFORD & WRISTON
A LIMITED LIABILITY LAW PARTNERSHIP LLP


By Robert Bruce Graham, Jr.

Mr. and Mrs. Edward J. Weldon, Jr.

FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

APPENDIX D

**T.S. Dye & Colleagues, Archaeologists, Inc.
December 4, 2003**

T. S. Dye & Colleagues, Archaeologists, Inc.

735 Bishop St., Suite 315, Honolulu, Hawai'i 96813

**Report on Burial Recovery Operations at 4773
Kāhala Avenue; State Site 50-80-14-6632**

Jeffrey L. Putzi
Thomas S. Dye, Ph.D.

December 4, 2003

Contents

1 Introduction	3
2 Project Background	4
3 Methodology	5
4 Project Area	6
5 Previous Archaeology	6
6 Historical Background	7
7 Results	7
7.1 North Face Profile	8
7.2 South Face Profile	9
7.3 East Face Profile	10
7.4 West Face Profile	12
8 Monitoring of Construction Excavations	13
9 Construction Excavations Outside the Scope of Work	14
10 Summary and Conclusions	15
Glossary	17
Bibliography	18

Illustrations

1	Plan of TMK:3-5-6:6	3
2	Location of site 50-80-14-6632	5
3	Artifacts recovered at site 50-80-14-6632	9
4	Stratigraphic profile of the north face	10
5	Stratigraphic profile of the south face	12
6	Stratigraphic profile of the east face	13
7	Stratigraphic profile of the west face	14

Tables

1	Sediment descriptions	11
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1 Introduction

Human skeletal remains were inadvertently exposed during excavations for a utility line at 4773 Kāhala Avenue, a 37,906 ft.² beachfront residential lot in the Kāhala neighborhood of Honolulu, TMK:3-5-6:6 (fig. 1). The property owner, Mr. Ned Weldon, contacted the State Historic Preservation Division, and reported the discovery. A site inspection by officials from that office was made by archaeologists Dr. Sara Collins and Ms. Muffet Jourdane, and Mr. Kai Markell of the Burial Sites Program from that same division. Following the site inspection it was determined that the remains of at least one individual had been exhumed during the utility line excavation, which removed approximately 10 m³ of sediment. Also noted at that time was a cultural deposit in calcareous sand. The state officials collected fragments of a human cranium and long bones in a paper bag and left these remains in a backdirt pile next to the main excavation pit. Mr. Weldon then agreed to hire an archaeologist to conduct recovery operations for any other remains that might have been disturbed during excavation. Mr. Weldon retained *T. S. Dye & Colleagues, Archaeologists, Inc.* to conduct recovery operations.

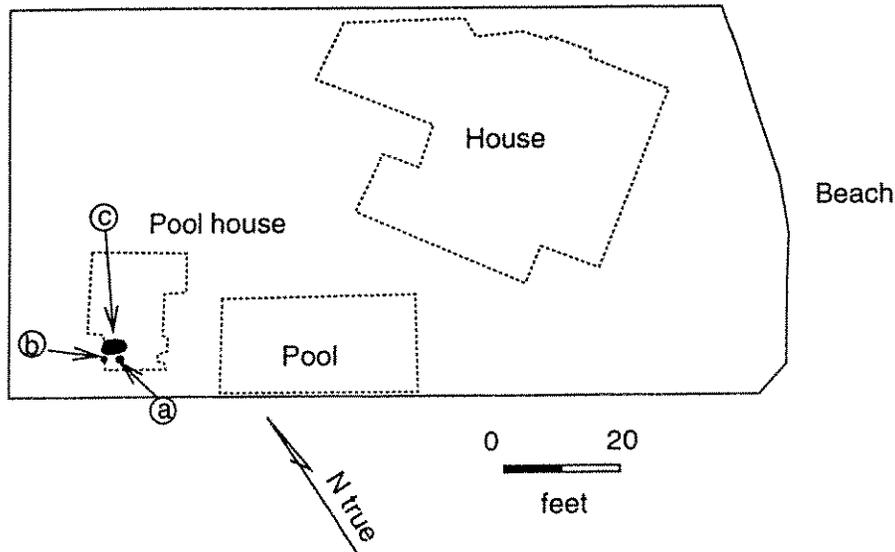


Figure 1. Plan of TMK:3-5-6:6 showing the location of major improvements and human burials: *a*, *in situ* burial; *b*, reinterment site; *c*, main excavation pit.

State officials verbally instructed the archaeologists to include the following tasks in the recovery operations:

- recover any remains still within the loose sediment inside the excavation;
- identify any *in situ* remains and/or burial feature(s);

- document with written records and drawn profiles the exposed walls and floor of the large excavation pit;
- recover the remains from the pile of redeposited sediment adjacent to the large excavation pit using 0.125 in. wire mesh screens;
- monitor excavation of the utility line to its destination, a main line located in the middle of the paved lane 5 meters west; and
- prepare an acceptable report of the recovery work.

These were the tasks that Mr. Weldon contracted *T. S. Dye & Colleagues, Archaeologists, Inc.* to perform.

The discovery of human remains and a cultural deposit was designated State site 50-80-14-6632 (fig. 2). The partial remains of four individuals were recovered from excavated sediments and one intact individual was identified *in situ* following a subsequent excavation. The remains are likely of Hawaiian ancestry, based on the presence of traditional Hawaiian artifacts and absence of historic-period materials associated with the remains. Gender was not determined on the fragmented remains, which were turned over to Mr. Weldon for reinterment.

Traditional Hawaiian artifacts recovered from the backdirt pile included a basalt abrader fragment, drilled *pipipi* marine shell beads, basalt flakes, and *kukui* nuts. One iron nail was also recovered from the backdirt pile. A distinct cultural layer was present in all except the western faces of the utility line excavation. Cultural pit features excavated through the cultural layer were identified in the same three faces, with one pit in the north wall exposed across the northwest corner and into the west face.

pipipi
kukui

2 Project Background

Mr. Weldon retained *T. S. Dye & Colleagues, Archaeologists, Inc.* on September 2, 2003 to conduct recovery operations at his Kāhala property. Jeffrey L. Putzi inspected the site on that date. Recovery operations were conducted between Wednesday, September 3 and Saturday, September 6, 2003. A post-field inspection was conducted by Mr. Putzi on Sunday, September 7, 2003.

The utility line excavation resulted in a pit measuring 3.75 m east to west, 2.0 m north to south, and a maximum depth of 1.8 m below surface at the west end. Depth at the eastern end ranged between 0.8 and 1.0 m below surface. The water table was a 1.6 m below surface. As a result of this the western end of the large excavation pit was submerged.

Excavated sediments were redeposited in two locations. Loose sediment left in the large excavation pit formed a ramp that ascended to the top of the east wall. The bulk of the excavated sediments were redeposited in a pile to the north of the pit. This backdirt pile measured 5.0 m east to west, 3.0 m north to south, and was 1.5 m high. The sediments exposed in the walls of the large excavation pit consisted of thin layers of surface silt loam topsoil, cultural layers of silty sand, and intact natural sand layers.



Figure 2. Location of site 50-80-14-6632 on a U.S.G.S. topographic map, Honolulu quadrangle.

3 Methodology

The loose sediment within the large excavation pit was put through a 0.125 in. wire mesh screen. The sieved material was used to fill in the submerged western end of the excavation and level the floor at 1.5 m below surface, within the sterile, intact, natural sand layer exposed at the base of excavation. Sediment from the backdirt pile was sieved through 0.125 in. mesh screen away from the pile so as not to mix screened and unscreened sediments. Recovered skeletal remains were placed within plain brown paper bags that were labeled with the date of recovery. Recovered artifacts were kept in a single paper bag. Stratigraphic profiles were drawn of all four walls of the large excavation pit. Written descriptions of the four walls were made in a standard "Rite

in the Rain" notebook. Field work was conducted during 10 hour work days between Wednesday, September 3 and Saturday, September 6, 2003. The field crew consisted of Putzi on September 3 and 4, who was joined by Kekapala Dye on September 5 and 6. Work conducted by Putzi on Sunday, September 7, consisted of determining the extent of an *in situ* burial that had been exposed by mechanical excavation of another utility line on Friday, September 5, 2003.

4 Project Area

State Site 50-80-14-6632 is located at 4773 Kāhala Avenue. This is a beach front house lot. It is bordered on the north by a cement-lined flood control channel, on the south by a narrow paved lane that provides access off of Kāhala Avenue, on the west by developed residential lots, and on the east by the Pacific Ocean. Wai'alaie Stream, which drains the combined flows from Wai'alaie Nui and Kapakahi gulches, enters the ocean in Wai'alaie State Park approximately three hundred meters to the north. Its course parallels the cement-lined flood control channel. Kūpikipiki'ō Point, more commonly known today as Black Point, marks the southwestern end of Kāhala.

The area formerly consisted of aeolian dunes of coralline sand but has since been leveled and landscaped with imported topsoil. Offshore of the project area are tidal flats extending to a fringing reef.

5 Previous Archaeology

Previous archaeological investigations in Kāhala and the surrounding area have been limited in nature. McMahon (1988) conducted a reconnaissance survey of 19 acres at the base of Diamond Head within the Fort Ruger Military Reservation. She found only the remains of military activity related to the reservation which had been established in 1909. Kennedy (1991) surveyed a parcel of land on the *mauka* side of Kalaniana'ole Highway, at the junction of Wai'alaie Nui and Kapakahi Streams. No evidence of traditional Hawaiian occupation was found.

The remainder of the archaeological investigations in Kāhala and coastal Wai'alaie Nui have been concerned with recovery operations for inadvertently exposed human burials. Construction excavations for the then Kāhala Hilton Hotel in 1963 exposed a burial. In 1966, during construction of condominiums between the hotel and Wai'alaie Beach Park, an unrecorded historic-era cemetery was exposed. Archaeologists from Bernice Pauahi Bishop Museum excavated twenty-four coffin burials. A mix of traditional Hawaiian and historically introduced materials were recovered from the burials: *pulu* fiber, used for pillow padding, a basalt adze, glass bottles, and metal fishhooks (Erkelens and Tomonari-Tuggle 1997:8).

Several individual burials have been found near the project area. Site 50-80-14-3725 is located at 4505 Kāhala Avenue in TMK:3-5-04:11 (Griffin 1987). This consisted of a single individual within a pit feature. This primary burial was slightly disturbed during excavation for a house site but was otherwise intact. It was identified as a traditional Hawaiian burial.

mauka

pulu

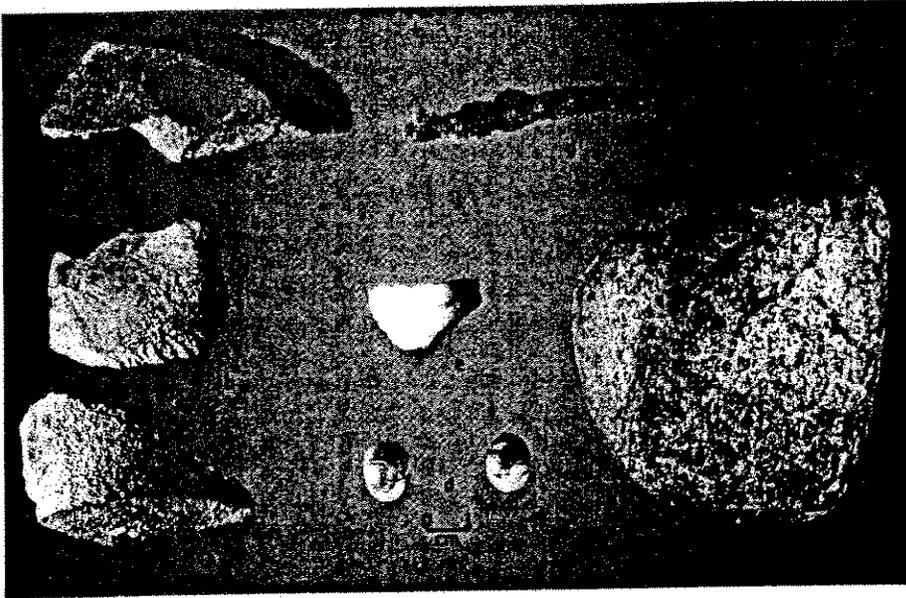


Figure 3. State site 50-80-14-6632 artifacts. *a*, basalt flake, layer IIc; *b*, basalt flake, backdirt; *c*, basalt flake, backdirt; *d*, pipipi beads, backdirt; *e*, marine shell fish-hook blank, backdirt; *f*, basalt abrader, backdirt; *g*, iron nail, backdirt.

IIIc and IIId were exposed in the southern face. They appear to be a high energy depositional sequence. The eastern edge of these layers did not appear to be truncated. The lowest of these, layer IIId was deposited on layer IIIe. Layer IIIe was a light yellowish brown sand extending into the base of excavation. Layer IIIe was exposed in the western and southern faces as well.

7.2 South Face Profile

The southern face of the utility line excavation measured 3.75 m east to west and ranged in depth from 1.8 m below surface in the west and 0.8 m below surface in the east (fig. 5). The topsoil of the south face was designated layer Ib, a brown sandy silt (table 1). Beneath it was layer Ic, a deposit of basalt gravel also exposed in the western face and mixed with layer Ib in the eastern face. The gravel was deposited on a compact layer of brown sand designated layer Id. Each of these layers was approximately 5 cm thick. An iron water pipe in the gravel of layer Ic was impacted during the excavation activities. Layer Id was also present in the eastern face of the excavation. Layer Id is deposited on cultural layer IIa.

Cultural layer IIa extends across the length of the south face. It increased in thickness from the southwestern corner where it is thin, to the southeastern corner where it extended from 16 to 75 cm below surface. Layer IIc, a pit excavated from layer IIa,

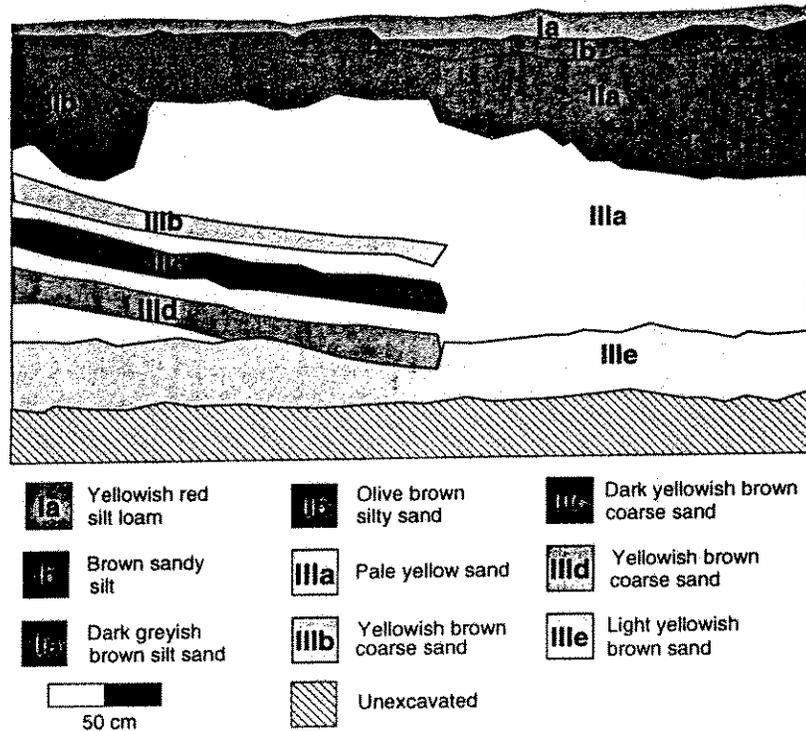


Figure 4. Stratigraphic profile of the north face.

extended into the base of excavation at 80 cm below surface. In plan view on the floor of the excavation pit, Layer IIc extends 50 cm northward from the southern face. Layer IIc was exposed in this fashion during the mechanical excavation of the pit. Layer IIc was further impacted by the excavation activities undertaken on Friday, September 5, which exposed layer IIc extending into that base of excavation at 1.0 m below surface. A basalt flake was recovered from the western edge of layer IIc at 75 cm below surface. Abundant charcoal flecking was present throughout layers IIa and IIc here in the southern face of the excavation.

7.3 East Face Profile

The eastern face of the utility line excavation measured 1.5 m north to south and ranged in depth between 1.0 m below surface for most of its length to 80 cm below surface at the southern end (fig 6). The southern end is partially made up of layer IIc extending northward out of the southern face of the excavation. The topsoil of the eastern face appeared to be a mixture of layers Ib and Ic (table 1). It was a brown sandy silt with basalt gravel that extended to a depth of 16 cm below surface. This was deposited on

Table 1. Sediment descriptions

Layer	Depth	Color	Description	Interpretation
Ia	0-5	5YR 5/8	Yellowish red silty loam; slightly sticky, non plastic; smooth, abrupt boundary	Fill topsoil, north face
Ib	0-10	10YR 4/3	Brown sandy silt; slightly sticky, non plastic; smooth, abrupt boundary	Fill material north face, topsoil south and west faces
Ic	4-12	10YR 4/3	Brown gravel; non sticky, non plastic; wavy, clear boundary	Fill material, west, south and east faces
Id	12-24	10YR 4/3	Brown sand; non sticky, non plastic; smooth, abrupt boundary	Fill material, south, west and east faces
IIa	15-65	10YR 4/2	Dark greyish brown silty sand; Slightly sticky, slightly plastic; wavy, clear boundary	Cultural deposit
IIb	15-60	2.5YR 4/4	Olive brown silty sand; slightly sticky, slightly plastic; irregular abrupt boundary	Cultural pit deposit
IIc	60-100 +	2.5YR 4/4	Olive brown silty sand; slightly sticky, slightly plastic; base of excavation in south face	Cultural pit deposit
IId	20-80 +	10YR 4/4	Yellowish brown silty sand; slightly sticky, slightly plastic; base of excavation in east face	Cultural deposit, pit for <i>in situ</i> burial
IIIa	20-125	2.5YR 7/4	Pale yellow sand; non sticky, non plastic; wavy, gradual boundary	Culturally sterile subsoil
IIIb	75-85	10YR 5/8	Yellowish brown coarse sand; non sticky, non plastic; smooth, abrupt boundary	Culturally sterile subsoil
IIIc	90-100	10YR 4/4	Dark yellowish brown coarse sand; non sticky, non plastic; smooth, abrupt boundary	Culturally sterile subsoil
IIId	110-120	10YR 5/4	Yellowish brown coarse sand; non sticky, non plastic; smooth, abrupt boundary	Culturally sterile subsoil
IIIe	100-150 +	2.5 YR 6/4	Light yellowish brown sand; non sticky, non plastic; base of excavation	Culturally sterile subsoil

layer Id, a compact brown sand that extended to 30 cm below surface. Layer Id was exposed in the southern face of the excavation but the deposit was thicker here in the eastern face.

Layer Id was deposited on layer IIa, the cultural deposit also found in the northern and southern face, and layer IId. Layer IIa was exposed in the northern two-thirds of the eastern face and layer IId was exposed in the southern third. Layer IId is a pit excavated through layer IIa and into the culturally sterile sand of layer IIIa. Despite its presence at the southeastern corner of the utility line excavation, layer IId was not present in the southern face. Layer IId extended into the base of excavation at 80 cm below surface.

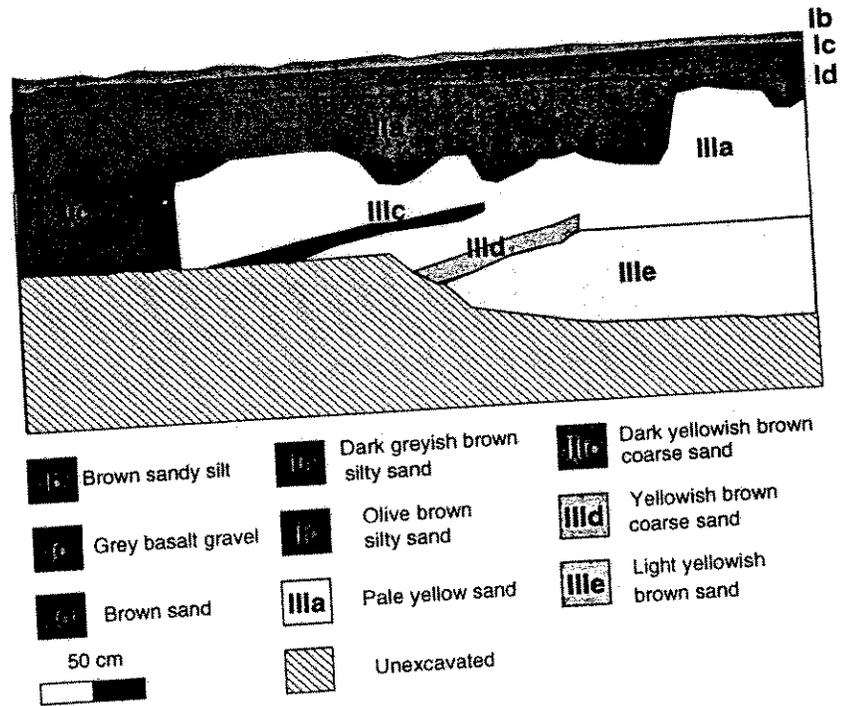


Figure 5. Stratigraphic profile of the south face.

Layer IIIa was exposed beneath layer IIa and alongside IIIb, where the latter was excavated into layer IIIa. Layer IIIa extended to 1.0 m below surface and was the base of excavation for the northern two-thirds of the eastern face. Layers IIIb, IIIc, IIIe, and IIIId were not exposed in the eastern face of the utility line excavation.

Mechanical excavations for another utility line trench were conducted on Friday, September 5th, and much of layer IIIb was removed.

7.4 West Face Profile

The western face of the utility line excavation measured 2 m north to south and was 1.8 m deep (fig 7). The topsoil exposed along the western face of the utility line excavation was a combination of the topsoils exposed along the northern and southern faces. Layer Ia, a yellowish red silty loam, extended 50 cm south from the northwest corner to layer Ia. Layer Ib, a brown sandy silt, extended from the southwest corner to layer Ia. Both layers were 5 cm thick. Layer Ia overlay a deposit of layer Ib that extended from 5 to 15 cm below surface. This in turn was deposited on Layer IIb, the pit feature detailed in the description of the northern face of the utility line excavation. Layer IIb was

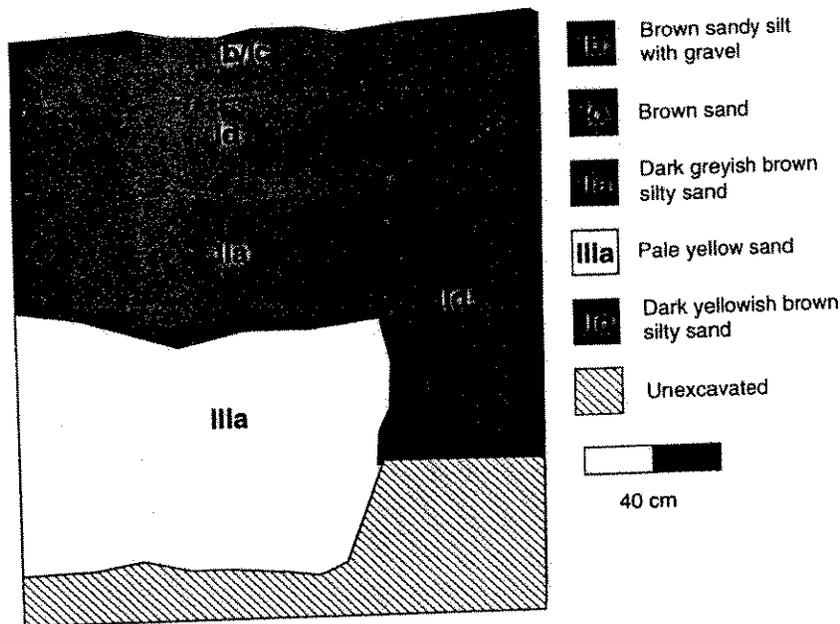


Figure 6. Stratigraphic profile of the east face.

excavated into the culturally sterile sand of layer IIIa.

Where layer Ib was the topsoil, it was deposited on the basalt gravel of layer Ic. Layer Ic extended from 5 to 15 cm below surface and was in turn deposited on the compact grey sand of layer Id. Layer Id extended 15–25 cm below surface and was in turn deposited on layer IIIa. Layer IIIa was a pale yellow sand, a culturally-sterile, intact, natural sand deposit.

Layers IIIb, IIIc, and IIId were present and clearly defined in the western face of the utility line excavation. Each layer matched up with its counterpart exposed in the northern and southern faces. Beneath the lowest of these was layer IIIe. Layer IIIe, a light yellowish brown sand extended into the base of excavation. Due to the near absence of the cultural layers, the western face most clearly showed the stratigraphy of the naturally deposited sediments.

8 Monitoring of Construction Excavations

Excavations to connect the initial utility line excavation with an existing main utility line located to the west were monitored on Thursday, September 4, 2003. This undertaking consisted of excavating with a backhoe from the southwest corner of the large excavation pit to the existing line approximately 5 meters to the west. The length of this excavation exposed sediments that had been previously disturbed, most likely by excavations for the existing main utility line and for pilings for a chain link fence that

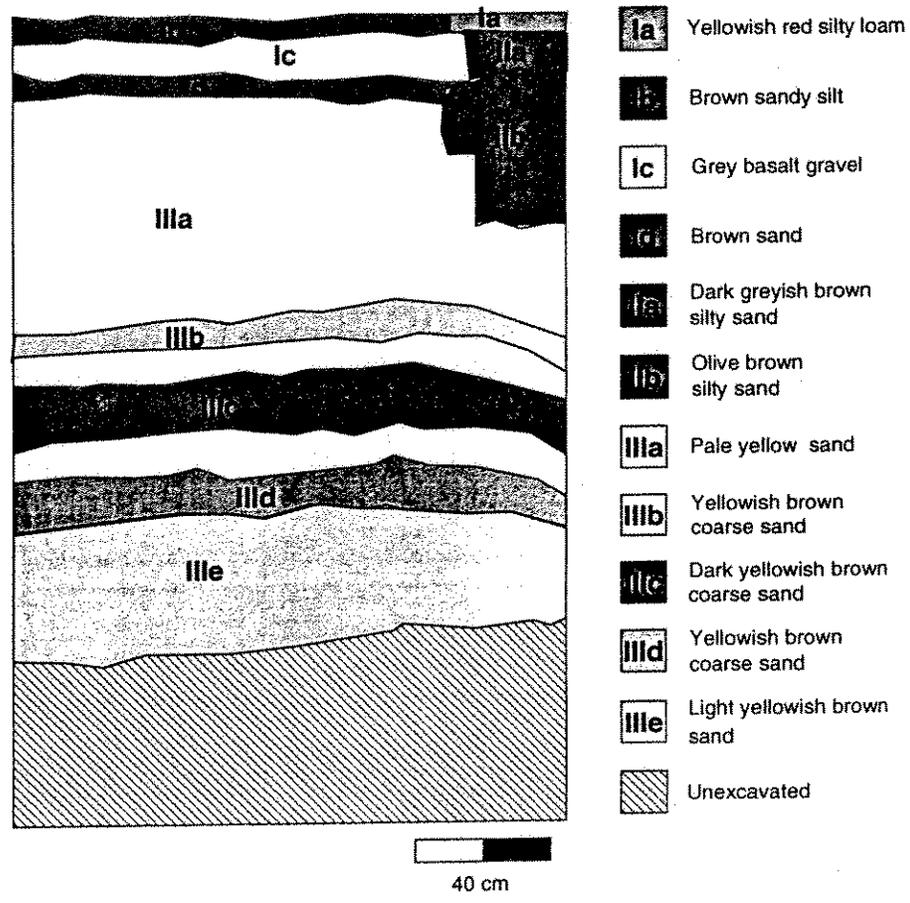


Figure 7. Stratigraphic profile of the west face.

lined the paved lane. No cultural remains or features were found in this excavation.

9 Construction Excavations Outside the Scope of Work

During the recovery operations, on Friday, September 5, a utility line was excavated with a backhoe by the plumbing contractor from the southwest corner of the house pad of the dwelling under construction to the large excavation pit. The monitoring of this trench was not one of the tasks assigned to the recovery operations. The length of the trench was approximately 50 meters east to west, and it was 50 cm wide and 85 cm deep. Excavation of this trench entered the large excavation pit through the east wall at its southeast corner. This excavation collapsed the eastern face of layer IIId in the large excavation pit, and much of layer IIId was removed by backhoe to a depth of 85 cm

below surface. The bottom of the trench was brought to grade at 90 cm below surface with a shovel. It was during these shovel excavations that an *in situ* human burial was exposed at 90 cm below surface. Human skeletal remains were exposed both in the floor and in the north face of the new trench, and in the newly exposed portion of the eastern face of the large excavation pit. A portion of the outline of the burial feature was clearly defined in plan view and it appeared that approximately half of the feature remained in the unexcavated north wall of the trench. Layer IIa was exposed in the north face of the newly excavated trench, clearly showing layer IIc as having been excavated through layer IIa. Layer IIa extended 3 meters from the eastern face of the initial utility line excavation along the northern face of the newly excavated trench. Mechanical excavation of this new trench also impacted that portion of layer IIc that extended north from the southern face of the base of excavation of the initial utility line excavation.

The discovery of *in situ* remains was reported to SHPD, and on Saturday, September 6, Mr. Kai Markell again visited the site. He instructed Putzi to determine the extent of the new burial feature and to identify the exposed remains. This was done on Sunday, September 7, with the long bones of the legs being identified in a flexed position in the trench floor, the majority of a foot being identified in the north face of the new trench, and part of a pelvis being identified in the newly exposed eastern face of the initial excavation. The majority of the burial feature remained in unexcavated sediment. Based on this, the individual was identified as an adult, traditional Hawaiian burial. The majority of the human remains were not exposed but, those that were exposed, indicated that the individual had been interred in a flexed position. The exposed remains were covered by a light layer of sand and then with *ki* leaves that had been placed in the trench by the plumbing contractor who found the burial.

Excavations to connect this new trench with the main utility line took place after the archaeological recovery operations were complete. These excavations passed south of the large excavation pit and were not monitored by an archaeologist.

10 Summary and Conclusions

Recovery operations were conducted following the discovery of human remains and a cultural deposit during the mechanical excavation of a utility line at a beach front house lot at 4773 Kāhala Avenue. The human burials and cultural deposit were designated State site 50-80-14-6632. The extent of the cultural layer was not defined by the excavations described in this report. Traditional Hawaiian artifacts were collected from the backdirt during the recovery operation, including drilled *pipipi* marine shell beads, a basalt abrader fragment, basalt flakes, and a possible marine shell fish hook blank. A single historic artifact, an iron nail, and whole *kukui* nuts were also recovered from the backdirt pile. A traditional Hawaiian artifact was recovered from one of the cultural features in the southern face of the initial utility line excavation.

Site 50-80-14-6632 is significant for the information on Hawaiian history and prehistory that it has yielded and is likely to yield, and for its traditional cultural importance to Hawaiians for the burials that it contains.

The remains of at least four individuals were collected during the recovery operations. Most of the human remains, including all of the long bones, were fragmented. There was an almost equal proportion of remains evincing marks of old breaks as there were those with marks of new breaks. While there were an abundance of fragmented long bones, there were almost no identifiable rib fragments or vertebrae. Portions of four different crania were recovered. Taking into account the paucity of rib bones and vertebrae, it is probable that these individuals were interred as secondary bundle burials. Of all the other sites in the Kāhala area, only State site 50-80-14-4126, located one block *mauka*, contained skeletal remains that were both broken and missing vertebrae.

A single individual was identified *in situ* within a burial feature that was exposed during a later utility line excavation that impacted the large excavation pit. This individual was tentatively identified as an adult in a flexed position within a traditional Hawaiian burial feature. The burial feature extended into unexcavated sediment and the extent of the feature was not determined.

Glossary

Entries for Hawaiian words are excerpted or paraphrased, where possible, from the *Hawaiian Dictionary* (Pukui and Elbert 1971), or from Lucas (1995). Geological and geographical terms are from American Geological Institute (1976) and Clark (1998). Archaeological terms are from Bray and Trump (1982) and Mignon (1993).

kahu Honored attendant, guardian, nurse, keeper of 'unihipili bones, regent, keeper, administrator.

kukui The candlenut, *Aleurites moluccana*.

mauka Inland, upland, toward the mountain.

panalā'au Colony, dependency, territory, province.

pipipi A marine shell, *Nerita picea*, common in the intertidal zone.

pulu A soft, glossy, yellow wool on the base of tree-fern leaf stalks. It was used to stuff mattresses and pillows and at one time was exported to California. Hawaiians stuffed bodies of their dead with it after removing vital organs.

kī A woody plant in the lily family, native to tropical Asia and Australia. The leaves were put to many uses by the Hawaiians, as for house thatch, food wrappers, hula skirts, and sandals.

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FINAL ENVIRONMENTAL ASSESSMENT

TMK: 3-5-6: 006, 4771 Kahala Avenue, Honolulu, Oahu, Hawaii

APPENDIX E

**Comment Letters on the Draft Environmental Assessment
and Response Letters**

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
850 SOUTH KING STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 523-4414 • FAX: (808) 527-6743 • INTERNET: www.cc.honolulu.gov



JEREMY HARRIS
MAYOR

ERIC G. CRISPIN, AIA
DIRECTOR
BARBARA KIM STANTON
DEPUTY DIRECTOR

2004/ED-20(pd)

September 22, 2004

Mr. Donald A. Clegg
Analytical Planning Consultants, Inc.
928 Nuuanu Avenue, Suite 502
Honolulu, Hawaii 96817

Dear Mr. Clegg:

Draft Environmental Assessment (DEA)
File No. 2004/ED-20
Edward J., Jr. and Kathryn Weldon Trust
4771 Kahala Avenue - Kahala
Tax Map Key 3-5-6: 6

We are forwarding copies of all comments we have thus far received related to the Draft Environmental Assessment (DEA) for the above-referenced project.

In accordance with the provisions of Chapter 343, Hawaii Revised Statutes (HRS), you must respond in writing to these and any other comments that were submitted during the 30-day comment period, which began with publication of a notice of availability of the DEA in The Environmental Notice on August 23, 2004. The Final EA must include these comments and responses, as well as revised text, where needed.

Under separate cover (letter dated September 22, 2004), we will send you the Department of Planning and Permitting comments on the DEA.

Should you have any questions, please contact Pamela Davis of our staff at 523-4807.

Sincerely yours,


ERIC G. CRISPIN, AIA
Director of Planning and Permitting

EGC:rt

Doc. No. 326448



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

2004/ED-20 (pd) 3/24

CITY & COUNTY OF HONOLULU

September 7, 2004

Mr. Eric G. Crispin, AIA
Director of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Dear Mr. Crispin:

Subject: Comments on the Draft Environmental Assessment (DEA) for Shoreline Setback Variance Application for the Construction of a Stainless Steel Post and Tension Wire Fence and Gate, Concrete/Rock/Rebar Footings and After-The-Fact (ATF) Approval for Sand Fill Located at 4771 Kahala Avenue, Kahala, Island of Oahu File Nos. 2004/ED20(pd) and 2004/SV-16 TMK: 3-5-006:006

Thank you for the opportunity to review and comment on the DEA prepared for the subject project. The following are our general comments based on the information provided in the DEA:

1. We do not condone the issuance of an ATF permit.
2. The Honolulu Engineer District (HED) of the Army Corps of Engineers (COE) should be contacted at (808) 438-9258 to identify whether a Federal license or permit (including a Department of Army permit) is required for this project. Pursuant to Section 401(a)(1) of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act"), a Section 401 Water Quality Certification is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters...."
3. The Office of Conservation and Coastal Land (OCCL) of the Department of Land and Natural Resources (DLNR) shall also be consulted for the applicable State requirements.
4. Pursuant to Hawaii Administrative Rules (HAR), Chapter 11-54 (titled Water Quality Standards), a Site-Specific Construction Best Management Practices Plan shall be developed,

CHYOMEL RUMINO, M.D.
DIRECTOR OF HEALTH

In reply, please refer to:
BAG/7086

09017CEC.04

Mr. Eric G. Crispin, AIA
September 7, 2004
Page 2

implemented, and properly maintained during the construction period to prevent/minimize the potential soil particles from entering the adjacent State waters in a form of fugitive dust (airborne) or being pushed by the construction equipment, or being carried by the storm water runoff.

5. A National Pollutant Discharge Elimination System (NPDES) permit coverage is required for the following activities:
 - a. Discharges of hydrating water, and
 - b. Discharges of construction dewatering effluent.
6. The applicant shall ensure that the proposed concrete/rock/rebar footings will not result in shoreline/beach erosion.

NPDES Application and Notice of Intent Forms, guidelines, and HAR, Chapters 11-54 and 11-55 are available at Clean Water Branch's (CWB) website:
<http://www.hawaii.gov/health/environmental/water/cleanwater/index.html>.

If you have any questions regarding the NPDES permitting requirements, please contact me or Mr. Edward Chen of the Engineering Section, CWB, at 586-4309.

Sincerely,



DENIS R. LAU, P.E., CHIEF
Clean Water Branch

EC:mp
c. Regulatory Branch, HED, COE
CZM Program, Office of Planning, DBEDT
OCCL, DINR
Mr. Edward J. Weldon, Jr.

PHONE (808) 920-536-5695
FAX: (808) 996-1833

ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 902 • HONOLULU, HI 96817



March 25, 2005
Denis R. Lau, P.E., Chief
Clean Water Branch
Department of Health
State of Hawaii
PO Box 3378
Honolulu, HI 96801-3378

Dear Mr. Lau:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

Thank you for your letter dated September 7, 2004. The following responds to the comments provided on the Draft Environmental Assessment (EA) for the subject property.

1. **Army Corps of Engineers.** There will be no discharge off of the property and thus no discharge into navigable waters. Construction activities, with the exception of workmen traffic, will be contained within the private property boundaries of the site. Best Management Practices will be implemented to prevent the migration of soil particles or surface run-off from the site. The Honolulu Engineer District (HED) of the Army District was contacted prior to completion of the Final EA. A Federal license or permit is not required because there will be no discharge off of the property. The owner and their contractors will be responsible for ensuring that the proper steps are taken.
2. **State DINR and OCCL Requirements.** The State Department of Land and Natural Resources has been consulted and has provided comments on the proposed project.
3. **Best Management Practices.** The owners and their contractors will be responsible for developing, implementing and maintaining a site specific construction Best Management Practices Plan that will prevent soil and water migration from the site due to construction activities. This plan will include the implementation of dust screens, dust control measures by wetting of soil, erosion control barriers, and cut-off swale around areas affected by grading activities.
4. **NPDES Permit.** The proposed project does not involve the activities listed in the comment letter.
5. **Proposed Footings.** The Final EA will contain a report by Ms. Elaine Tamayo, President of *EKVA Services, Inc., Engineers and Environmental Consultants*, regarding the proposed project and beach processes.

Thank you for your comments on the Draft Environmental Assessment. Please contact me if you have questions or require further information.

Sincerely,


Donald Clegg, President



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING, ROOM 555
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707



PETER T. YOUNG
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER ON WATER RESOURCE MANAGEMENT

DAVID DAVISON
DEPUTY DIRECTOR, LAND

YVONNE K. ESI
DEPUTY DIRECTOR, WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSIONER ON WATER RESOURCE MANAGEMENT

CONSERVATION AND RESTORATION
ENGINEERING
HISTORIC PRESERVATION
LAND
STATE PLANNING

September 8, 2004

Mr. Eric Crispin, Director
Department of Planning and Permitting
City & County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

LOG NO: 2004.2728
DOC NO: 0409SC06

Dear Mr. Crispin:

SUBJECT: Chapter 6E-42 Historic Preservation Review of a Draft
Environmental Assessment (DEA) Prepared in Support of a
Shoreline Setback Variance (SSV) Application by the
Weldon Trust for 4771 Kahala Avenue
Waikiki, Kona, O'ahu
THK: (1) 3-5-006; 006

Thank you for the opportunity to comment on the subject DEA. We received the materials for review on August 23, 2004 and provide the following comments. Our review is based on historic maps, aerial photographs, records, and reports maintained at the State Historic Preservation Division; no field inspection was made pursuant to the subject application.

The application states that "the subject property does not contain any known archaeological or historic sites" (p. 22). This is a false statement. According to our records, the remains of at least five human burials were found during excavations performed under Building Permit 546873 in August and September 2003. An archaeological report on the findings indicated that the remains of four individuals had been disturbed by construction activities and a fifth burial was found in situ during additional utility trenching. The five burials were associated with a rich cultural layer which represents traditional Native Hawaiian occupation in the area; the burials and cultural layer have received the State Inventory of Historic Places number 60-80-14-6632. In October 2003, on account of these findings, we advised your office that we wished to be given the opportunity to review all future permit actions for the subject parcel that included ground disturbance; a copy of the letter is attached for your information (McEldowney to Crispin, October 6, 2003).

In view of these facts, we believe that additional historic sites, such as human burials, may be present within the project area, even though it has been previously been disturbed. Consequently, the proposed installation of a new footing for the existing fence may have an adverse effect on such sites. We believe that any effect may be

LINDA LAMBLE
COMMISSIONER OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
HISTORIC PRESERVATION DIVISION
KAKUHIHEVA BUILDING, ROOM 555
601 KAAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

October 6, 2003

Mr. Eric Crispin, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Dear Mr. Crispin:

LOG NO: 2003.2000
DOC NO: 0310SC02

SUBJECT: Chapter 6E-42 Request to Review Future Permit Actions for 4771
Kahala Avenue (REF: Building Permit 546873, issued March 28, 2003)
Kahala, Kona, O`ahu
TMK: 01-3-006:096

Recently, during excavations performed under Building Permit No. 546873, human skeletal remains representing at least five individuals were found in the sand deposits underlying the property; the burials are probably of Native Hawaiian ethnicity. In addition, the burials were found to be associated with a subsurface cultural layer that probably represents traditional habitation and use of the Kahala shoreline area by Native Hawaiians.

At our office's recommendation, the landowner retained a qualified archaeologist to conduct on-site archaeological monitoring of the remainder of the excavations carried out under the subject permit. The archaeological consultant has now advised us that they have completed the fieldwork and, as instructed by the landowner, will shortly provide him a copy of the report of findings made from the monitoring work. Soon thereafter, we expect that this report will be transmitted to us for review and approval, in the usual manner.

Given these finds on the property, we believe that the potential for future burial finds is very high. Therefore, we would like to request the opportunity to review and comment on all future permit actions for the subject parcel that include ground disturbance of any kind. In this way, we can work with the landowner to ensure that additional burials are identified and treated properly, and that the subsurface cultural layer, or other historic sites, are also treated appropriately.

mitigated through a program of precautionary monitoring. Therefore, we recommend that if the subject SSV application is approved, that the following condition be appended to it:

All ground disturbances shall be monitored on-site by a qualified archaeologist in accordance with an approved archaeological monitoring plan. A report documenting the results of archaeological monitoring shall be submitted to the State Historic Preservation Division for review and approval, no later than 180 days after the conclusion of the field work.

Finally, as we noted in October 2003, we request the opportunity to review any future plans or permit actions for the subject property that include ground disturbance. Depending on the nature and extent of any planned activities, we may recommend that additional historic preservation compliance work, to include inventory survey and/or archaeological monitoring, be carried out prior to any construction.

Should you have any questions, please contact Sara Collins at 892-8026.

Aloha,

Sara Collins
P. Holly McElDowney, Administrator
State Historic Preservation Division

SC:jen

C: David Z. Arakawa, Esq., Corporation Counsel, City & County of Honolulu,
530 S. King Street, Honolulu, HI 96813 [ATTN: David Tanoue, Esq.]
A. Van Horn Diamond, Chair, O`ahu Island Burial Council
Sonia Faust, Esq., Land & Transportation Division, Dept of the Attorney General
Nathan Napoka, Branch Chief, History and Culture Branch

Mr. Eric Crispin, Director
Page Two

PHONE (BUS): (808) 538-5695
FAX: (808) 594-1553



ANALYTICAL PLANNING CONSULTANTS, INC.
928 NOUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

Finally, there have been a number of inadvertently discovered burials, with associated cultural deposits, found in the Kāhala area over the years. As noted above, these types of sites are usually associated with the presence of sandy soils, such as the Jaucas or Beach Sands deposits shown on USDA soil maps for the island of Oʻahu. Given these prior finds, we plan to provide your office with a Geographic Information System map showing the areas of high sensitivity in Kāhala. We hope that by working with your office and the affected landowners, we can identify significant historic sites, including burials, as early as possible in the development process, and ensure their proper treatment.

Should you have any questions, please feel free to contact Sara Collins at 692-8026.

Aloha,

S. Holly McEldowney

P. Holly McEldowney, Acting Administrator
State Historic Preservation Division

SC:jk

c: Mr. A. Van Horn Diamond, Chair, Oʻahu Island Burial Council
Mr. Kamanaʻo Mills, Burial Sites Program
Mr. Ned Weldon, 1152 Kealaolu Avenue, Honolulu, HI 96816

March 25, 2005

Melanie A. Chinen, Administrator
Historic Preservation Division
State of Hawaii
Department of Land & Natural Resources
Kakuhikewa Building, Room 555
601 Kamohila Boulevard
Kapolei, HI 96707

Dear Ms. Chinen:

Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter

Thank you for your letter dated September 8, 2004, addressed to Eric Crispin, Director, City and County of Honolulu, Department of Planning and Permitting providing comments on the Draft Environmental Assessment for the subject property. The following information is in response to your comments.

It is important to understand that the applicant's Agent was not involved with the property in 2003 when the archeological sites were found and then documented in an archaeological report. Unfortunately, that information was not provided to the Agent during the preparation of the Draft Environmental Assessment. Ideally, this information would have been provided to the Agent.

The public comment period for a Draft Environmental Assessment is intended to solicit such facts, information and comments. The applicant's Agent greatly appreciates this information and comments from your office.

Background

As your letter states, on September 2, 2003 Mr. Weldon retained T.S. Dye & Colleagues, Archaeologists, Inc. to conduct recovery operations and prepare an archaeological report that was then submitted to the State Historic Preservation Division. The December 4, 2003 archaeological report prepared for the owner by T.S. Dye & Colleagues, Archaeologists, Inc. has since been made available to the agent and will be included in the Final Environmental Assessment.

According to the December 2003 report, "Human skeletal remains were inadvertently exposed during excavations for a utility line..." Figure 1 of the December 2003 archaeological report shows the location as near the existing pool house. It should be noted that the 2003 utility line excavation work and the area where the archeological sites were found is more than 250 feet landward of the existing fence and the proposed fence project, and more than 150 feet landward of the sand-fill area.

No further archeological or historic sites were found over the last two (2) years (since 2003) during the construction of the new single family residence and the existing fence.

Subject Project

We acknowledge that even though the new fence footing is in an area that has been previously disturbed, your comment that the proposed installation of a new fence footing may have an adverse effect on potential archaeological and historic sites.

We acknowledge your comments regarding your office's recommendation to attach conditions to the Shoreline Setback Variance application should it be approved. Mr. Weldon wishes to review and comment on any such conditions to the Shoreline Setback Variance before those conditions are finalized by the Department of Planning and Permitting.

We acknowledge your comments that the State Historic Preservation Office may request of the Department of Planning and Permitting to provide the opportunity to review any future plans or permit actions for the subject property, and that the SHPO may recommend additional preservation work be carried out prior to construction.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,

Donald Clegg
Donald Clegg, President

Cc: Henry Eng, FAICP, Department of Planning and Permitting, City and County of Honolulu
Carré K. S. Okinaga, Esq., Corporation Counsel, City and County of Honolulu
A. Van Horn Dismore, Chair, Oahu Island Burial Council
Sonia Faust, Esq., Land & Transportation Division, Dept of the Attorney General
Nathan Napoka, Branch Chief, History and Culture Branch, SHPD
Edward J. Weldon

SEP-28-2004 WED 11:24 AM PLANNING & PERMITS DIV.

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 24, 2004

ID/NAV
Ref.: 2004-SV-7. CMT
2004 ED-20 (pd)

Suspense Date: 9/6/04

MEMORANDUM:

TO: XXX Office of Conservation and Coastal Lands
XXX Oahu District Land Office
XXX Engineering Division
XXX Morris Atta

FROM: Dierdre S. Kamaya, Administrator
Land Division

SUBJECT: Shoreline Setback Variance Application (DEA)
File No.: 2004-SV-16
Application: Shoreline setback variance
Authority: C&COH Department of Planning and Permitting
Applicant: Analytical Planning Consultants, Inc. for
Edward J. Jr. and Kathryn Weldon Trust
Shoreline: Certified February 11, 2004
Address: 4771 Kahala Avenue, Kahala, Oahu
TMK: (1) 3-5-6-006

Please review the attached document pertaining to the subject matter and submit your comments (if any) on Division letterhead signed and dated by the suspense date.

Note: One copy of the document is available for your review in the Land Division Office, Room 220.

Should you need more time to review the subject matter, please contact Nick Vaccaro at 587-0384. If this office does not receive your comments by the suspense date, we will assume there are no comments.

() We have no comments.

Comments attached.

Signed: *Eric Hirano* Date: *9/1/04*

Name: ERIC HIRANO, CHIEF ENGINEER Division: Engineering

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

2004 SEP 20 PM 3 26

LEINAY

Ref: 2004-SV-7 CMT

COMMENTS

- We confirm that the project site, according to the Flood Insurance Rate Maps (FIRM), is located in Flood Zones AO as having flood depth of 1 to 3 feet, usually sheet flow on sloping terrain.
- Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zones _____.
- Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is _____.
- Please note that the project site must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.
- Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinance, please contact the applicable County NFIP Coordinators below:
 - Mr. Robert Suenimoto at (808) 323-4254 or Mr. Mario Shi Li at (808) 523-4747 of the City and County of Honolulu, Department of Planning and Permitting.
 - Mr. Kelly Gomes at (808) 961-8327 (Hilo) or Mr. Kiran Emier at (808) 327-3530 (Kona) of the County of Hawaii, Department of Public Works.
 - Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
 - Mr. Mario Antonio at (808) 241-6620 of the County of Kauai, Department of Public Works.

- The applicant should include project water demands and infrastructure required to meet water demands. Please note that the implementation of any State-sponsored projects requiring water service from the Honolulu Board of Water Supply system must first obtain water allocation credits from the Engineering Division before it can receive a building permit and/or water meter.
- The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update.

Additional Comments: _____

Other: _____

Should you have any questions, please call Mr. Andrew Monden of the Planning Branch at 587-0229.

Signed: 
ERIC T. HIRANO, CHIEF ENGINEER

Date: 9/1/04



ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

PHONE (BUS): (808) 596-5695
FAX: (808) 594-1553

March 11, 2005

Eric T. Hirano, Chief Engineer
State of Hawaii
Department of Land & Natural Resources
Engineering Division
PO Box 621
Honolulu, HI 96809

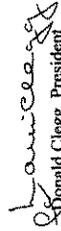
Dear Mr. Hirano:

Subject: Draft Environmental Assessment
Weldon Resident 4771 Kabala Avenue
Kabala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter

Thank you for your letter dated September 01, 2004. We acknowledge that your office confirms that the project site is located in the Flood Zone AO in accordance with the Flood Insurance Rate Map (FIRM). On February 28, 2005, Ms. Carol Tyau-Beam, State Coordinator of the National Flood Insurance Program (NFIP) was contacted, as you suggested, regarding the proposed fence and after-the-fact and fill. The owner will comply with the rules and regulations of the NFIP. Ms. Beam explained that the owner's improvements would be reviewed by the City and County of Honolulu, which would apply the City's Flood Ordinance, at the Building Permit stage for compliance with the rules and regulations of the National Flood Insurance Program.

Thank you for providing your comments on the Draft Environmental Assessment. Please contact me if you have questions or require further information.

Sincerely,


Donald Clegg, President

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HONOLULU, HAWAII 96809

August 24, 2004

Suspense Date: 9/6/04

ID/NAV
Ref.: 2004-SV-7.CMT
2004 ED-20 (pdf)

MEMORANDUM:

TO: XXX Office of Conservation and Coastal Lands
XXX Oahu District Land Office
XXX Engineering Division
XXX Morris Atta

FROM: Dierdra S. Mamuya, Administrator
Land Division

SUBJECT: Shoreline Setback Variance Application (DEA)
File No.: 2004-SV-16
Application: Shoreline setback variance
Authority: C&COH Department of Planning and Permitting
Applicant: Analytical Planning Consultants, Inc. for
Edward J. Jr. and Kathryn Weldon Trust
Shoreline: Certified February 11, 2004
Address: 4771 Kahala Avenue, Kahala, Oahu
TMK: (1) 3-5-6-006

Please review the attached document pertaining to the subject matter and submit your comments (if any) on Division letterhead signed and dated by the suspense date.

Note: One copy of the document is available for your review in the Land Division Office, Room 220.

Should you need more time to review the subject matter, please contact Nick Vaccaro at 587-0384. If this office does not receive your comments by the suspense date, we will assume there are no comments.

() We have no comments.
Signed: *[Signature]* Date: Sept. 16, 2004
Name: Robert M Ing Division: Land

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HONOLULU, HAWAII 96809

September 16, 2004

MEMORANDUM

TO: Dierdra S. Mamuya, Administrator
Land Division

FROM: Robert M. Ing, Land Agent
Oahu District Land Office (ODLO)

SUBJECT: Shoreline Setback Variance Application (DEA)
File No.: 2004-SV-16
Application: Shoreline Setback Variance
Authority: C&COH Department of Planning and Permitting
Applicant: Analytical Planning Consultants, Inc. for
Edward J. Jr. and Kathryn Weldon Trust
Shoreline: Certified February 11, 2004
Address: 4771 Kahala Avenue, Kahala, Oahu
TMK: (1) 3-5-006-006-0000

COMMENTS:

The Applicant's non fence was constructed under a permit issued by the City and County based on a shoreline certification dated September 26, 2001. The current certified shoreline, dated February 11, 2004, places the vegetation line partially within a portion of the existing fence line near the City's drainage canal abutting the property. Because the fence was constructed prior to the shoreline's movement, no land disposition is required for the addition of subsurface footings to preserve the fence. However, the Applicant should ensure the footings for that section of fence near the canal do not extend seaward of the current fence alignment to avoid the need for a land disposition.

PHONE (808) 536-5605
FAX (808) 598-1553

apc
ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

March 11, 2005

Dierdre Mamiya, Administrator
State of Hawaii
Department of Land & Natural Resources
Land Division
P.O. Box 621
Honolulu, HI 96809

Dear Dierdre Mamiya:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

Thank you for your comment dated August 24, 2004. The owner will ensure that the proposed new fence footing will be designed and constructed to ensure that the footings of the new fence structure near the canal do not extend seaward of the current fence alignment (which, as you letter states, was based on a shoreline certification dated September 26, 2001), in order to avoid the potential need for a land disposition.

Sincerely,

Donald Clegg
Donald Clegg, President

LINDA LINGLE
GOVERNOR OF HAWAII



2005 SEP 17 PM 3 44



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96869

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
DAH DAVIDSON
DEPUTY DIRECTOR - LAND
YVONNE Y. DU
DEPUTY DIRECTOR - WATER
COMMISSION ON WATER RESOURCE MANAGEMENT
AGRICULTURE RESOURCES
BUREAU OF CONSERVATION
CONSERVATION ENFORCEMENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
MARQUAITE ISLAND
LAND
STATE PARKS
WATER RESOURCE MANAGEMENT

Ref: OCCL: DE

Corr.: OA-05-52

September 15, 2004

Mr. Eric Crispin, Director
City and County of Honolulu
Department of Planning and Permitting
650 South King St
Honolulu, HI 96813

Subject: Review and comments on Draft EA for Shoreline setback variance application for TMK (1)-3-5-06:06 (Weldon), 4771 Kahala Ave, Hawaii.

Dear Mr. Crispin:

The State of Hawaii Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) has reviewed the August 2004 Draft Environmental Assessment (DEA) for Shoreline setback variance application for 4771 Kahala Ave, Hawaii. The owner is seeking approval of a shoreline setback variance for a shoreline structure (fence with CRM footings) and After the Fact approval for 93.6 tons of sand fill within the SMA. The Department has reviewed the project information provided and has the following comments:

GENERAL COMMENTS:

The OCCL has serious concerns regarding the draft EA and does not support the granting of an ATF permit for the proposed fence. The OCCL believes granting a variance for the subject fence would be contrary to Chapter 23 Shoreline Setbacks of the Revised Ordinances of Honolulu. ROH, Chapter 23 states in part:

"Sec.23-1.2 Purpose.

(a) It is a primary policy of the city to protect and preserve the natural shoreline, especially sandy beaches; to protect and preserve public pedestrian access laterally along the shoreline and to the sea; and to protect and preserve open space along the shoreline. It is also a secondary policy of the city to reduce hazards to property from coastal floods.

(b) To carry out these policies and to comply with the mandate stated in HRS Chapter 205A, it is the specific purpose of this chapter to establish standards and to authorize the department of land utilization to adopt rules pursuant to HRS Chapter 91, which generally prohibit within the shoreline area any construction or activity which may adversely affect beach processes, public access along the shoreline, or shoreline open space."

Some general points of concern:

1. The State of Hawaii, DLNR is reopening a Conservation District violation case for the unauthorized placement of rocks and sand within the Conservation District. Previous investigations into the sand and rocks were inconclusive but new evidence suggests the material was placed seaward of the shoreline and within the Conservation District.
2. In the summer of 2003 the owner placed approximately 93.6 tons (72 cubic yards) of sand within shoreline area. This action was done without any state or county authorization. The Department is concerned that no evaluation of the sand quality has been carried out and the source of the sand is unknown. In addition, a previous violation case was opened regarding the removal of sand from the shoreline area into the property and no evidence has been supplied that the sand was restored to the shoreline.
3. The owner has now requested an after the fact variance with the county to allow the sand to remain and to build a reinforced fence within the 40' setback area. The Department feel the footings for the fence are inappropriate considering the erosion potential and the fact there is strong evidence the structure will likely negatively impact the coastal processes in the area.
5. The OCCL believes the structure does not serve to protect the residence from imminent erosion (the house is over 55 feet from the shoreline) and thus has no hardship justification.
6. The OCCL believes the proposed structure may have a significant impact on the littoral processes of the area and could restrict lateral access along shore during periods of erosion. The OCCL maintains that the position of the proposed structure will inhibit the natural flow of sand laterally alongshore and may accelerate erosion during periods of high surf and tides.

7. The proposed structure does not serve to protect and existing dwelling from an erosion threat. As such, the applicant does not adequately justify the variance based on hardship.

8. The proposed structure could pose a significant safety hazard to the surrounding community and recreational users. Since the proposed structure is not engineered as a seawall (as stated by the applicant) it is not designed to withstand wave impact and could fail due to scour and flanking.

SPECIFIC COMMENTS:

Section 2.2. SSV Request- Page 7

The applicant states that the "existing lateral public access along the shoreline is not and will not be impacted by the existing and proposed actions." This is incorrect as the existing fence has been recognized as restricting access laterally during higher tides and periods of erosion. This would only be exacerbated if the proposed footing were to be placed.

Section 2.3. Background- Page 7-9

The applicant states that the fence footings have already been subject to "severe damage due to runoff from the city's drainage channel eroding the sand under the fence." This implies the fence has been exposed to runoff and/or wave action and therefore the proposed structure would affect the same. Paragraph 2 of page 9 also states "there is noticeable loss and erosion of sand at the base of the fence", again suggesting the structure is within an erosion hazard zone.

The applicant also mentions that a certified shoreline was completed on February 11, 2004. This office recognizes that this shoreline is already certified but feels that it may have been certified in error and is more accurately located just mauka of the existing fence at the base of the sand berm as illustrated in the applicant's photos in Figure 5.

Section 2.3. Fence Footings- Page 15

The proposed fence footings are inadequately described in Figure 9. A plan view of the proposed structure should be provided as it is unclear whether this is a continuous structure or if there are gaps open to the shoreline. Also no engineering analysis is provided with the proposed footings.

Purpose and Need for Project

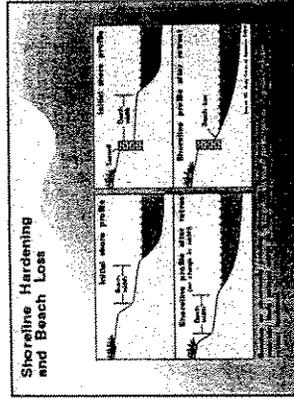
The applicant does not state the need for the project. The OCCL fails to find the applicant meets any of the hardship criteria identified in Chapter 23. In fact, the proposed activity seems to contradict Chapter 23-1.8.3 (C):

"If the activity or structure may artificially fix the shoreline, a variance may be granted only if hardship is likely to be caused by shoreline erosion, provided that conditions are imposed prohibiting any such structure seaward of the existing shoreline unless it is clearly in the public interest."

Section 4. Summary of Impacts and Mitigative Measures- Page 23

The applicant has failed to adequately address the potential impact of the proposed structure on the littoral processes, specifically longshore and cross-shore transport of sediment. The applicant states the proposed structure will have no impact on shoreline processes because the footings will be buried and no portion of the structure will be exposed. The Department disagrees with this statement and suggests that the structure will be regularly exposed as Figure 7 of the DEA illustrates.

It has been well documented that seawalls on eroding shorelines can lead to beach loss or narrowing by restricting the natural movement of the shoreline landward¹. With a hard structure in place the beach may not maintain the original width as it retreats landward and instead narrows. The Department attempts to mitigate negative impacts to the coastal system from shore protection structures by encouraging alternative erosion control measures in place of constructing seawalls and revetments. The Department feels the DEA fails in accurately describing the negative impacts of the wall as well as the reason why other alternatives have been dismissed.



There is a well-documented history of beach accretion in this vicinity as stated by the applicant.

¹ *Beach Loss Along Armored Shorelines on Oahu, Hawaiian Islands*. 1997. Fletcher, H. Charles., et. al. Journal of Coastal Research. Vol. 13, No. 1. pg. 209-215.

Summary of Impacts and Mitigative Measures

The Department recognizes the complexities in dealing with shoreline structures and the potential impact to the shoreline. A position on shoreline structures and variances is clearly identified in the County ordinances, Chapter 23.1.5.b.1 of the Revised Ordinances of Honolulu (ROH) states: **"Structures and activities are prohibited within the shoreline area, with the following exceptions:**

- (1) **"Minor structures and activities permitted under rules adopted by the department which do not affect beach processes or artificially fix the shoreline and do not interfere with public access, public views or open space along the shoreline. If, due to beach erosion or other cause, the director determines that a minor structure permitted under this section may affect beach processes or public access or has become located seaward of the shoreline, the director or other governmental agency having jurisdiction may order its removal."**

Section. 23-1.9 Conditions on Variances states:

"No variance shall be granted unless appropriate conditions are imposed:

- (a) **To maintain safe access to and along the shoreline or adequately compensate for its loss;**
- (b) **To minimize risk of adverse impacts on beach processes;**
- (c) **To minimize risk of existing legal or proposed structures failing and becoming loose rocks or rubble on public property; and**
- (d) **To minimize adverse impacts on public views to, from and along the shoreline. (Added by Ord. 92-34)"**

The Department questions the DEA finding that the structure will have minimal long-term effect on the shoreline processes at the project site. The purpose and function of the structure is to secure the fence footings in a location known to be subject to wave and runoff. This structure will likely influence the sediment dynamics of the shoreline in both alongshore and cross-shore directions, especially during high tides and/or high rainfall events.

Section 5. Alternatives Considered- Page 24

The applicant has failed to consider removal of the fence, relocating the fence outside the setback area, and using other materials such as vegetative hedges and trees.

Section 6. Findings and Reasons supporting Anticipated Determination

The Department questions some of the findings supporting the anticipated determination. The DEA makes arguable assumptions that the presence of the structure has little or no impact to the coastal resources. The findings are stated without mention of the (observed and potential) negative impacts that result from the presence of the structure. This DEA is deficient in addressing the justification and need for the subject structure as well as identifying and addressing the basic possible impacts the structure may pose to the natural resource.

Summary:

It is incumbent upon all government agencies to consider the effect of their actions on our beaches and to consider long-term measures to protect coastal development and beaches simultaneously. The cost of remedial shore protection is a significant problem for shore owners and government in of itself, but the loss of beaches is an even greater concern.

When evaluating erosion control alternatives, it is important to identify the priorities and purpose of the structures. From a coastal management standpoint, it seems logical and appropriate to protect and preserve the beach system by moving and/or minimizing the impact of structures sometimes compromising a portion of the private property. It should be realized that for many homeowners, the loss of the sandy beach puts the property owner at increased risk to coastal hazards. Beach loss also causes a significant devaluation of property values (not just oceanfront) as well as a material loss of the primary attraction and original intent of living on the coast.

Based on the lack of adequate justification and the significant negative impact the structure has on coastal processes, beach access, and public safety, the OCCL believes a FONSI for the EA is not justified. It is the OCCL position that the owner should remove the unauthorized rocks and consider relocating the proposed fence mauka, outside the shoreline setback area.

Thank you for the opportunity to comment on this DEA. If you should have any questions, please contact Dolan Eversole, Sea Grant Extension Agent at the Office of Conservation and Coastal Lands at 587-0321.

Thank You,



Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc:

Oahu Board Member
Land Division
Chairperson's Office
DOCARE- Oahu
Analytical Planning Consultants 928 Nuuanu Ave # 502 Hon, HI 96817
Wai'alea/Kahala Neighborhood Board- Lester Fukuda (Chair)
5207 Kilauea Avenue Honolulu, HI 96816



ANALYTICAL PLANNING CONSULTANTS, INC.

928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

PHONE (808) 536-5695
FAX (808) 599-1553

Letter to Sam Lemmo, State Office of Conservation and Coastal Lands
April 18, 2005
Page 2 of 4

April 18, 2005

Sam Lemmo, Administrator
State of Hawaii
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
PO Box 621
Honolulu, HI 96809

Dear Mr. Lemmo:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

Thank you for your comment letter, dated September 15, 2004, addressed to Eric Crispin, Director, City and County of Honolulu, Department of Planning and Permitting, providing comments on the Draft Environmental Assessment for the subject project. The following information is in response to your comments.

General Responses

Re-designed Fence and Fence Footings. The fence proposal in the Draft EA had a cemented rock footing that was buried and extended across the makai frontage of the lot, essentially parallel to the certified shoreline. The top of the footing wall was to be below the surface level and hence not visible. The tension wire fence posts were to be placed on top of the footing wall.

As a result of community comments, the design was changed and the buried footing wall was eliminated. The tension wire fence described in the Final EA has fence posts that are encased in buried individual cement footings. The diameter of the footings will not exceed one foot. As such, any comments that refer to the original fence as described in the Draft EA are no longer an issue, and are therefore not addressed. The owner/applicant will apply for a Minor Shoreline Structure Permit from the City and County of Honolulu for the re-designed fence and fence footings.

Improvements on Private Property. The existing fence and the proposed new fence and footings are located within the boundaries of the owner's private property. Sand-fill was added within the boundaries of the owner's private property. The proposed fence and footings would be located landward of the certified shoreline; in some areas more than 20 feet landward of the 2004 certified shoreline. As illustrated in the Draft EA, the 2004 certified shoreline is located between 0 feet to over 15 feet seaward (makai) of the private property line. The Draft EA contained a complete survey which illustrates the location of the private property line, the 2001 certified shoreline and the 2004 certified shoreline. The same survey in the Final EA will have color coded lines to further distinguish the lines from each other.

The Final EA will contain the revised plans for the fence and fence footings. Earlier shoreline surveys certified in 1987 and 1991 by the Board of Land and Natural Resources and on file at the Department of Accounting and General Services Land Survey office, consistently show the shoreline as significantly seaward of the Weldon's private property line.

Public Access Maintained. The owner's proposed and after-the-fact improvements do not impede public access. The improvements are located on private property landward of the certified shoreline. Public access is maintained as provided by law. It must be noted that many of the comments by the reviewer are nothing more than unsubstantiated opinion, which have no credible scientific or observable basis in fact.

OCCL General Comments.

#2, page 2 of OCCL letter.

It is important to distinguish between the sand-fill that was purchased by Mr. Weldon and placed within the boundaries of Mr. Weldon's private property, and the actions of the City's Department of Facility Maintenance when it clears debris and sand from the City's drainage channel.

Mr. Weldon purchased the sand-fill from Grace Pacific. The Final EA contains an illustration depicting where the purchased sand-fill was placed within Mr. Weldon's private property, which is landward of the shoreline certified by the Board of Land and Natural Resources (February 11, 2004). That illustration shows that only a portion of the purchased sand-fill is located within the 40-foot shoreline setback area, the remaining portion of the purchased sand-fill is landward of (outside of) the 40-foot setback area.

The City's Department of Facilities Maintenance routinely clears debris and sand from the City's concrete-lined drainage ditches all over Oahu, one of which is adjacent to Mr. Weldon's property. We respectfully request the Office of Conservation and Coastal Lands to contact the responsible party -- the City and County of Honolulu's Department of Facilities Maintenance -- regarding your statement that sand was removed from the shoreline area and placed into the Weldon property. The City has a backhoe that removes the sand from the City's drainage ditch. The employee who is operating the backhoe then places the sand removed from the drainage ditch wherever he/she chooses to place it on the beach shoreline area. This type of City activity has been on-going for decades at the numerous City drainage canal locations all over the Island.

#3 & #6, page 2 of OCCL letter. The design for the fence and fence footings has been revised in response to comments received by the Neighborhood Board, the community, public agencies and private organizations. The Final EA contains a letter report from Ms. Elaine Tamayo, President of EKMA Services, Inc., Engineers and Environmental Consultants, which states that the redesigned fence "will have no impact on the existing beach processes". The owner's proposed and after-the-fact improvements do not impede public access. The improvements are located on private property landward of the certified shoreline. Public access is maintained as provided by law.

#5 & #7, page 2/3 of OCCL letter. The justification for the Variance is included in the Final EA.

#8, page 3 of OCCL letter. The fence and fence footings have been revised since the Draft EA, upon which your comments are based. The Final EA will contain new drawings and details regarding the revised fence and fence footing designs, as well as a letter report from Ms. Elaine Tamayo, President of EKMA Services, Inc., Engineers and Environmental Consultants, that addresses issues such as beach processes vis-a-vis the revised design.

OCCCL Specific Comments:

"Section 2.2, page 7". The owner's proposed and after-the fact improvements do not impede public access. Public access is maintained as provided by law. According to the landowner's attorney, if government wishes to enhance public transit along the beach, its proper remedy is eminent domain, not a constitutionally impermissible regulatory taking; please see Hawaii Revised Statutes Section 11-5.5.

"Section 2.3, pages 7-9". The revised fence and fence-footing design has buried footings to avoid impacts from the City's drainage channel.

Your comments do not mention that page 9, paragraph 3, of the Draft EA states that "...the constructed fence has been subjected to erosion from the City's drainage outlet, and an unidentified man who regularly walks the beach has repeatedly vandalized the fence." The damage done to the fence, either near the City's drainage ditch, or over an even larger area impacted by the unidentified man, does not mean that all of the existing or proposed fence is "within an erosion hazard zone", as your letter states.

As previously stated, the proposed fence and footings would be located landward of the certified shoreline; in some areas more than 20 feet landward of the 2004 certified shoreline. Earlier shoreline surveys certified in 1987 (18 years ago) and 1991 (14 years ago) by the Board of Land and Natural Resources and on file at the Department of Accounting and General Services Land Survey office consistently show the shoreline as significantly seaward of the Weldon's private property line.

All certified shoreline surveys on file at DAGS Land Survey office show the shoreline to be well seaward of the Weldon's private property line. There is no certified shoreline survey on file that shows the shoreline landward of the location of the existing fence, although you "feel that it may have been certified in error...". There are no certified surveys on file that support your statement. Prior certified shoreline surveys actually show just the opposite; that the certified shoreline has been located well seaward of the Weldon's private property line over the past 18 years. Therefore, we believe the February 11, 2004 shoreline survey to be correct and accurate, as it is consistent with prior shoreline surveys certified by the Board of Land and Natural Resources over the past 18 years.

The existing fence footings have been subject to non-natural destructive erosive forces caused by the proximity of the City's drainage canal. The fence that was destroyed was within a "man made" erosion hazard zone, and the owner is seeking relief.

"Section 2.3, page 15". The Final EA contains a description and plan drawings of the revised fence and fence footings. As previously noted, the Final EA contains a letter report on the proposed improvements prepared by Ms. Elaine Tamaye, a 26-year veteran with a masters degree in ocean engineering and President of *EKN4 Services, Inc., Engineers and Environmental Consultants*.

"Purpose and Need for the Project". The Final EA contains the criteria for the Variance and justification.

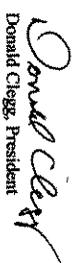
"Section 4, Summary of Impacts and Mitigative Measures page 22". The Final EA addresses potential impact on the littoral processes given the revised design fence and fence footings. Ms. Tamaye's letter report states that, "...the new fence will have no impact on the existing beach (littoral) processes." The revised design is not a seawall, but rather individual buried fence footings. Again, the proposed improvements are located landward of the certified shoreline.

"Section 5, Alternatives Considered, page 24." The Final EA contains a discussion of alternatives in light of the revised design of the fence and fence footings.

"Section 6, Findings and Reasons Support Anticipated Determination." We acknowledge your comments. The Final EA contains the variance criteria and related justification.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,


Donald Clegg, President



STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

225 SOUTH BERETANIA STREET
SUITE 702
HONOLULU, HAWAII 96813
TELEPHONE (808) 596-4185
FAX (808) 596-4186
E-mail: oeqc@health.state.hi.us

GENEVEVE SALMONSON
DIRECTOR

September 23, 2004

Mr. Eric Crispin, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Dear Mr. Crispin:

Subject: Draft Environmental Assessment for the Weldon Shoreline Setback
Variance, 4771 Kahala Avenue, O'ahu

Thank you for the opportunity to review and comment on the subject project. We have the following comments.

1. For assistance in completing the assessment, please review the "Shoreline Hardening Policy and Environmental Assessment Guidelines" available at <http://www.state.hi.us/health/oeqc/guidance/shoreline.htm>
2. Please consult with the adjacent neighbors and the City Department of Facility Maintenance.
3. Please describe the characteristics of the white sand that was added to the property. How does it compare with the "native" sand?
4. Please show the new dwelling on the site plan.
5. How will this project affect lateral beach access?

If you have any questions, please contact Ieyan Thirugnanam at 586-4185.

Sincerely,

Genevieve Salmonson
Genevieve Salmonson
Director

c: APC
Mr. Weldon

PHONE (808) 534-5605
FAX (808) 596-4533

apc
ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 902 • HONOLULU, HI 96817

April 15, 2005

Genevieve Salmonson, Director
State of Hawaii
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, HI 96813

Dear Ms. Salmonson:

Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter

Thank you for your comment letter, dated September 23, 2004, addressed to Eric Crispin, Director, City and County of Honolulu, Department of Planning and Permitting providing comments on the Draft Environmental Assessment (EA) for the subject project. The following information is in response to your comments.

1. Guidelines. The document "Shoreline Hardening Policy and Environmental Assessment Guidelines" has been consulted.
2. Contacts. The City Department of Facilities Maintenance has been contacted by the property owner, Mr. Edward J. Weldon. The project was presented at the Waihee/Kahala Neighborhood Board's September 16, 2004 meeting. A copy of the agenda and minutes will be included in the Final EA.
3. Sand Fill. According to Grace Pacific, from whom the sand was purchased, the sand is comparable to beach sand in terms of both color and size. The material was manufactured to meet concrete industry standards. Grace Pacific manufactured the sand from dredged material from Barber's Point Harbor. The crushed material was screened (1/8-inch and smaller pieces) and thoroughly washed.
4. New Drawings and Plans. New plans and drawings are included in the Final EA, which depict the location of the single family residence.
5. Lateral Beach Access. The proposed project does not impede lateral beach access. Lateral beach access will be provided as required by law.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,

Donald Clegg

Donald Clegg, President



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPOLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD041577

September 26, 2004

Eric G. Crispin, AIA
Director, Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, HI 96813

RE: Request for Comments on an Draft Environmental Assessment for a Shoreline
Setback Variance for Construction of a stainless steel post and tension wire fence and gate,
and after-the-fact approval for sand fill (93.6 tons) within the shoreline setback area, 4771
Kahala Avenue, Kahala, O'ahu, TMK: 3-5-006:006

Dear Eric G. Crispin,

The Office of Hawaiian Affairs is in receipt of your August 17, 2004, request for comments on the above project, which would allow for a stainless steel post and tension wire fence and gate along the makai property line, with 4 x 3-foot concrete/rock/rebar footings, and after-the-fact approval for 93.6 tons of sand fill within the shoreline setback area of the above-mentioned address. OHA apologizes for the delayed response, and offers the following comments.

Any kind of interruption of the natural coastal processes of the ocean seasonally taking and returning sand can cause erosion, as the applicants have experienced due to their proximity to the city's concrete drainage channel. Any time property owners attempt to move control of the beach makai, the coast is shrunk, even by adding sand to level their property and planting that property with coastal vegetation, which hinders the natural processes of the beach. Thus, OHA registers its concern with this after-the-fact application for a variance, and for the creation of such large concrete stanchions for the fence. While we understand the property owners' perceived need for these actions, there is a reason that they are not allowed. We cannot condone the continued use of variances for property owners' regular flouting of coastal conservation laws, which were at least partly put in place to protect the safety of property owners themselves.

Kahala is an active beach that is regularly used for public access and gathering rights. Any loss of that beach due to an artificially altered shoreline would be regarded as a regulatory taking, for which the State would owe compensation.

Thank you for the opportunity to comment. If you have further questions, please contact Heidi Guth at 594-1962 or e-mail her at heidg@oha.org.

Sincerely,

Heidi Guth
Clyde W. Nānu 'o
Administrator

CC: State Office of Environmental Quality Control
235 S. Beretania Street
Suite 702
Honolulu, HI 96813

✓ Analytical Planning Consultants, Inc.
928 Nuuanu Avenue, Suite 502
Honolulu, HI 96817
Land Planning Consultants LLC
3123 East Manoa Road
Honolulu, HI 96822



ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

Letter to Office of Hawaiian Affairs
March 22, 2005
Page 2 of 2

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

March 22, 2005

Clyde W. Namuo
Administrator
State of Hawaii
Office of Hawaiian Affairs
711 Kapiolani Boulevard, Suite 500
Honolulu, HI 96813

Sincerely,

Donald Clegg
Donald Clegg, President

Dear Mr. Namuo:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

Thank you for your comment letter, dated September 26, 2004, providing comments on the Draft Environmental Assessment (EA) for the subject project. The following information is in response to your comments.

- Improvements are on Private Property.** Sand-fill was added within the boundaries of the owner's private property. The 2004 certified shoreline is located between 0 feet to over 15 feet makai or seaward of the private property line. The Final Environmental Assessment will contain a site plan that illustrates where the sand-fill was placed.
- Fence Re-Designed.** The design for the fence and fence footing has been revised in response to comments received by the Neighborhood Board, the community and public agencies. The fence footings are now small individual concrete footings that are 12-inches in diameter, placed 6 feet apart. A full description and detailed drawings will be provided in the Final Environmental Assessment (EA).
- Public Access Maintained.** The owner's proposed and after-the fact improvements do not impact public access or gathering rights. Public access will be maintained as provided by law.
- Shoreline.** Enclosed for your reference is a comment letter from the State Department of Land and Natural Resources, Land Division, which concludes that a land disposition is not required. The owner understands that the proposed fence footings for that section of fence near the canal must not extend seaward of the current fence alignment to avoid the need for a land disposition.

location and species of landscape materials which have been planted in the filled area.

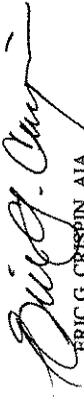
- b. A revised site plan which shows the setback of the proposed fence (and gate) from the certified shoreline. In addition, the site plan should show the footprint of the single-family dwelling, and the dwelling setback from the 40-foot shoreline setback line.
- c. A scaled, dimensioned section/elevation drawing of the fence and footings, along the length of the rear property line. The elevation drawings should show the width of each footing.
4. On page 22, Section 3.8, the DEA states that, "shoreline access is not impacted" by the proposal. However, neighbors/residents have submitted letters and telephoned to say that, during high tide, they are unable to traverse the beach in front of the fence without walking into the ocean. Please address this concern.
5. In Section 5, please address the alternative of placing the fence farther mauka of the certified shoreline, and using smaller footings (such as those approved under Minor Shoreline Structure Permit No. 2002/MSS-16.)
6. On page 15 of the DEA, it states that the "top of the footing would be at the same height (5 feet above mean sea level) as the existing fence posts, which is level with the top of the rear yard." Please clarify. From the photos (Figures 5 - 8), it appears that the existing fence posts are located below the "top of the rear yard."
7. On page 21, Section 3.6, the DEA states that the City "owns a narrow easement four parcels to the west of the subject property." Please identify the type and/or use of this easement, i.e., is it for public beach access?
8. The adjacent lot along the ewa side of the site (Parcel 25) appears to provide access to the beach. Please provide information on this lot, i.e., is it a private right-of-way lot, and who may use it?
9. The DEA states that the sand fill "area had been previously disturbed by improvements previously on the property." Please identify these improvements.
10. Please clarify if the sand fill was placed on the site prior to construction of the fence.

Please note that it would be useful to have additional, detailed drawings/plans to clarify the proposal. These would include a section of the footing, fully dimensioned and drawn to scale, showing the concrete rocks, and rebar in the footing (similar to building permit plans.) The site plan should indicate where the section was taken, and show the property line (at that location) on the section drawing. If the footings are to be anchored to rock, the drawing should indicate the depth of the rock. In addition, a scaled, dimensioned section/elevation drawing of the fence and footings, along the length of the rear property line, showing the width of each footing would be useful. If it is not possible to provide these plans now, please be advised that they will be required for processing of the shoreline setback variance.

Also, note that Chapter 17, Section 17-2(6), Rules Relating to Shoreline Setbacks and the Special Management Area, specifies that an application for a "shoreline protective structure" requires an evaluation of the design of the structure by a registered professional structural engineer. Although a section/elevation of the fence and footings has not been submitted, it appears that the spacing of the footings as described may result in a "de facto" shoreline protective structure. Please address this concern.

Should you have any questions, please contact Pamela Davis of our staff at 523-4807.

Sincerely yours,


ERIC G. CRISPIN, AIA
Director of Planning and Permitting

EGC:nt

Doc. No. 322334


ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

April 15, 2005

Mr. Henry Eng, FAICP, Director
Department of Planning & Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, HI 96813

Dear Mr. Eng:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

Thank you for your comment letter, dated September 22, 2004, providing comments on the Draft Environmental Assessment (EA) for the subject project. The following information is in response to your comments.

OVERVIEW:

Re-Designed Fence and Fence Footings. The design for the fence and fence footing has been revised in response to comments received by the Neighborhood Board, the community, public agencies and private organizations. The solid concrete fence footing parallel to the shoreline has been replaced with individual fence footing posts. A detailed revised project description and drawings are provided in the Final EA.

In a March 1, 2005 meeting with the Director and staff of the Department of Planning and Permitting, a preliminary determination was made that a Minor Shoreline Structure Permit should be obtained for the revised fence design. The Shoreline Seeback Variance is required for the sand-fill.

Improvements are on Private Property. The existing fence and the proposed new fence and footings are located within the boundaries of the owner's private property. Sand-fill was added within the boundaries of the owner's private property. The proposed fence would be located landward of the certified shoreline, in some areas more than 20 feet landward of the 2004 certified shoreline. As illustrated in the Draft EA, the 2004 certified shoreline is located between 0 feet to over 15 feet makai or seaward of the private property line. The Draft EA contained a complete survey which illustrates the location of the private property line, the 2001 certified shoreline and the 2004 certified shoreline. The same survey in the Final EA will have color coded lines to further distinguish the lines from each other. The Final EA will contain the revised plans for the fence and fence footings.

Lateral Public Access Maintained. The owner's proposed and after-the fact improvements do not impede public access. The improvements are located on private property landward of the certified

Letter to Department of Planning & Permitting
RE: TMK 3-5-6: 006, Owner: Ned Weldon
April 15, 2005
Page 2 of 3

shoreline. Public access is maintained as provided by law. There is no public access to the beach from Kahala Avenue adjacent to the Weldon property.

RESPONSE TO COMMENTS:

1. **Avoid erosion and runoff.** Short-term temporary impacts due to construction of the proposed fence will be mitigated. Grading activities will be conducted in accordance with City and County of Honolulu grading permit provisions and, as applicable, the State Department of Health regulations. Those requirements will be identified at the grading and building permit phase.

The owners and their contractors will be responsible for developing, implementing and maintaining a site specific construction Best Management Practices Plan that will prevent soil and water migration from the site due to construction activities. This plan will include the implementation of dust screens, dust control measures by wetting of soil, erosion control barriers, and cut-off swale around areas affected by grading activities.
2. **Shoreline processes.** The Final EA contains a letter report from Ms. Elaine Tamaye, President of *EKN4 Services, Inc., Engineers and Environmental Consultants*, which states that the new revised fence will have no impact on the existing beach processes. For a full discussion, please refer to Ms. Tamaye's report on the proposed project in the Final EA.
3. **Plans.** Revised plans are provided with the Final EA.
4. **Shoreline Access – Lateral Public Access Maintained.** The owner's proposed and after-the fact improvements do not limit public access. The improvements are located on private property. The Final EA contains a letter regarding this issue from Mr. Robert Bruce Graham, Jr. of Ashford & Watson, Mr. Edward J. Weldon's attorney. There are areas in front of a number of properties in the vicinity that restrict lateral access, unless the person walks in the water. In fact, at many times the beach in front of the Weldon property is passable without walking in the water, while areas in front of other nearby properties are not passable.
5. **Alternatives.** The design for the fence and fence footing has been revised in response to comments received by the Neighborhood Board, the community, public agencies and private organizations. The revised fence is located further makai of the certified shoreline, and smaller footings (12 inches in diameter) are proposed.
6. **Fence Design.** The forthcoming Final EA contains a complete description and set of drawings for the revised fence and fence footings. The revised fence design elevation drawings show that the top of the concrete footings will be at +4 feet above mean sea level and the bottom elevation of the footing will be at -1 foot mean sea level (or below mean sea level). The footings will be buried about 1 ½ feet below grade. The top of the fence would be about 4 ½ feet above grade. The grade of the property is about +8.5 feet above mean sea level. It is proposed that the owner's property near the makai property boundary be excavated to a finish grade of +5.5 feet above mean sea level.

Civil Engineering Branch

Assigned To	Scheduled		Actual	
	Start	Completed	Start	Completed
MTAKAKURA				Sep 01, 2004 15:27:52

Details

Agency:

Civil Engineering Branch

Reviewed by:
Don Fuji, Scott Nakamatsu

- Page 3: A grading permit will be required. There is a pending Request for Investigation regarding the illegal loading (ref. 2002/RFI-11-0088). Please contact Mr. Gary Fujii at x4881 to inquire the status of the RFI.
- Page 9, fourth paragraph: The application states "The applicant has previously requested that the City and County address this problem by lengthening the culvert wall by 15 to 20 feet in order to discharge drainage runoff further makai of the applicant's property." However, it neglects to mention who he contacted, when and what the outcome of his request was. Did he receive a written response from the City?
- Figure 9: Clearly show the property line and the distance the bottom edge of the footing is to the property line.

Comments: No drainage comment.Len

Letter to Department of Planning & Permitting
RE: TMK 3-5-6: 006, Owner: Ned Weldon
April 15, 2005
Page 3 of 3

7. **City Easement.** The City has a number (6 are listed below) of Public Beach Access Rights-of Way in the vicinity of the Weldon property. According to an April 2005 telephone conversation with Mr. Terry Hildebrand, Planner, City Department of Design and Construction, Planning Branch, Facilities Division, the following are City Public Beach Access Rights-of-Way:

Location	TMK
Kahala Avenue at Koloa Street	3-5-6: 32
Kahala Avenue at Koloa Street	3-5-5: 73
Kahala Avenue at Koloa Street	3-5-5: 76
Kahala Avenue at Hunakai	3-5-4: 54
Kahala Avenue at Elepaio	3-5-3: 39 s
Kahala Avenue at Kahala Place	3-5-3: 41

8. **Private Driveway.** TMK 3-5-6: 25 is private property. It is a 6,986 square foot rectangular-shaped lot that is used as an access lane off of Kahala Avenue to access multiple makai properties. It is owned by five property owners that are contiguous to TMK 3-5-6: 25. According to Mr. Terry Hildebrand, Planner, City Department of Design and Construction, Planning Branch, Facilities Division, there is no City beach access easement and there is no City right-of-way over TMK 3-5-6: 25.

9. **Previous Improvements on the Lot.** There were two single family dwellings on the lot, which were demolished.

10. **Sand Fill.** According to the owner, the sand fill was placed on the site after construction of the fence. According to City records, the Minor Shoreline Structure Permit for the makai fence was approved in December 2002. The owner had the fence installed in February 2003. Later that summer in 2003, the sand fill was placed in the yard, after the existing makai fence was built.

11. Additional Comments on Page 3 of DPP's Comment Letter.

- Detailed drawings, plans, sections, and elevations have been prepared and submitted with the Final Environmental Assessment.
- The attached letter from EKNA, Inc. concludes that the revised fence design does not constitute a shoreline protection structure, and would provide no protection from wave erosion.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,

Donald Clegg
Donald Clegg, President

PHONE (808) (808) 534-5695
FAX: (808) 599-1253

ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817



March 28, 2005

Mr. Henry Eng, FAICP
Director
Department of Planning & Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, HI 96813

Response to Comments from DPP CIVIL ENGINEERING BRANCH

Dear Mr. Eng:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006**

Thank you for your comments completed September 1, 2004 on the subject project. The following information is in response to your comments.

1. **Grading Permit.** The owner will apply for the required permits from the Department of Planning and Permitting, including *shar-the-fact* permits.
2. **City Drainage Ditch Culvert Wall.** Mr. Weldon in 2004 wrote Eric Crispin, then Director of the Department of Planning and Permitting, and in 2005 Jeff Coelho, Acting City Managing Director. No written response has been received by Mr. Weldon from the City, although both Mr. Crispin and Mr. Coelho each telephoned Mr. Weldon and said they would look into the matter.
3. **Drawings.** The revised drawings in the Final Environmental Assessment clearly show the location of the property line, and the surveyed shoreline, in relationship to the bottom edge of the fence footing.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,

Donald Clegg
Donald Clegg, President

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERTANHA STREET
HONOLULU, HAWAII 96813 - AREA CODE (808) 529-3111
2004 SEP 17 PM 10:55
http://www.honolulu.gov www.honolulu.gov



JEREMY HARRIS
MAYOR

OUR REFERENCE CS-KP

September 15, 2004

BOISSE P. CORREA
CHIEF
GLEN E. KAIYAMA
PAUL R. PUTZIG
DEPUTY CHIEFS

TO: ERIC G. CRISPIN, AIA, DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

FROM: BOISSE P. CORREA, CHIEF OF POLICE
HONOLULU POLICE DEPARTMENT

SUBJECT: DRAFT ENVIRONMENTAL ASSESSMENT, SHORELINE SETBACK VARIANCE
FOR IMPROVEMENTS AT 4771 KAHALA AVENUE. TMK: 3-5-6: 6

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

Based on the information provided, we have determined that this proposal should have no significant impact on the services or facilities of the Honolulu Police Department. If there are any questions, please call Major Bart Huber of District 7 at 529-3362 or Ms. Carol Sodevani of the Support Services Bureau at 529-3658.

BOISSE P. CORREA
Chief of Police

By *Boisse P. Correa*
KARL GODSEY
Assistant Chief of Police
Support Services Bureau



**SIERRA CLUB
HAWAII CHAPTER**
P.O. Box 2577, Honolulu, HI 96803
tel: 808.538.6616 fax: 808.537.9019

March 11, 2005

22 September 2004

Mr. Boisse P. Correa, Chief of Police
Police Department
City and County of Honolulu
801 South Beretania Street
Honolulu, HI 96813

Analytical Planning Consultants, Inc.

Attn: Donald Clegg
928 Nu'uuanu Ave.
Honolulu, HI 96817

RE: Draft Environmental Assessment for Weldon Shoreline Setback Variance

Dear Chief Correa:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

The Sierra Club, O'ahu Group, is concerned with the proposed construction of a fence and sand fill within the shoreline setback at Kahala, O'ahu. We believe that such a development in the setback will reduce public recreation opportunities on the beach.

Shoreline Setback Variances must be consistent with the objectives and policies of HRS 205A-2, 205A-4(b) These objectives and policies include:

- providing recreational opportunities accessible to the public;
- protecting the quality of coastal scenic and open space resources;
- protecting beaches for public use and recreation;
- providing and managing adequate public access to and along shorelines with recreational values; and
- prohibiting 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.

We ask that the following issues be better discussed in the final EA:

No variance may be granted unless safe lateral access to and along the shoreline is provided. 205A-46(c)(1). Will safe lateral access be provided if the proposed fence and fill is built? What alternatives would provide such access?

No variance may be granted unless conditions are imposed to minimize adverse impacts to beach processes. 205A-46(c)(2). How will the fence and sand fill affect the movement of sand?

No variance may be granted unless conditions are imposed to minimize adverse impacts on public views. 205A-46(c)(4). The fence detracts from the scenic beauty of the shoreline. This proposal reduces the scenic value of an open, natural shoreline—and therefore is inconsistent with the objectives and policies of HRS Chapter 205A.

The applicant has not proven hardship. In general, a variance should be viewed as an extraordinary exception which should be granted sparingly. The reasons to justify approval must be substantial, serious and compelling. R.R. Powell on Real Property 79c.16(1) (1995). The applicant has the

Thank you for your letter dated September 15, 2004. We acknowledge your comment that the proposed project will have no significant impact on the services or facilities of the Honolulu Police Department

Thank you for providing your comments on the Draft Environmental Assessment. Please contact me if you have questions or require further information.

Sincerely,

Donald Clegg
Donald Clegg, President

burden of proof. Hawaii property law does not give private property owners the right to damage public property (i.e., cause beach erosion). The beach is a public trust resource (Application of Sanborn, 57 Haw. 585) and the government, as a trustee, can restrain those activities that damage the resource (Orion Corp. v. State 747 P.2d 1062). Coastal property is encumbered with the risk that erosion will take away property. Because this principle is inherent in the property law (County of Hawaii v. Soromura 55 Haw. 176; SA Powell on Real Property 66.01), there is no "hardship" caused by erosion. It is a natural phenomenon.

The Sierra Club, O'ahu Group, believes that the proposed fence and sand fill is an inappropriate structure within the shoreline setback.

We appreciate the opportunity to offer these comments and look forward to your response.

Sincerely,



Jeffrey Mikulina
Director, Sierra Club, Hawai'i Chapter

cc: City and County of Honolulu, DPP
Office of Environmental Quality Control
Mr. Edward Weldon

PHONE (808) (808) 556-5695
FAX (808) 599-1553



ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

March 25, 2005

Jeff Mikulina, Director
Sierra Club
Hawaii Chapter
PO Box 2577
Honolulu, HI 96803

Dear Mr. Mikulina:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

Thank you for your comment letter, dated September 22, 2004, providing comments on the Draft Environmental Assessment (EA) for the subject project. The following information is in response to your comments.

Improvements are on Private Property. The existing fence and the proposed new fence and footings are located within the boundaries of the owner's private property. Sand-fill was added within the boundaries of the owner's private property. The proposed fence and footings would be located landward of the certified shoreline; in some areas more than 20 feet landward of the 2004 certified shoreline. As illustrated in the Draft EA, the 2004 certified shoreline is located between 0 feet to over 15 feet seaward of the private property line. The Draft EA contained a complete survey which illustrates the location of the private property line, the 2001 certified shoreline and the 2004 certified shoreline. The same survey in the Final EA will have color coded lines to further distinguish the lines from each other. The Final EA will contain the revised plans for the fence and fence footings.

1. **Public Access Maintained.** The owner's proposed and after-the fact improvements do not impede public access. The improvements are located on private property landward of the certified shoreline. Public access is maintained as provided by law.

2. **Beach Processes.** The Final EA contains a letter report from Ms. Elaine Tamaye, President of *EKMA Services Inc., Engineers and Environmental Consultants*, which states that the proposed project will have no impact on the existing beach processes.

3. **Public Views.** The design for the fence and fence footings has been revised in response to comments received by the Neighborhood Board, the community, public agencies and private organizations, such as the Sierra Club. The revised fence design, a high-tension wire fence, is designed to present a minimalist appearance while maintaining structural integrity.

John and Lucinda Pyles
4721 Kahala Ave.
Honolulu, HI 96816
808-732-6262
kahalabob@aol.com

4. **Shoreline Setback Variance.** The Final EA contains the variance criteria and the applicant's justification.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,


Donald Clegg, President

September 16th

Mr. Eric Crispin
Director of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, HI 97813

Re: Comments on Draft Environmental Assessment (DEA)
Edward and Kathryn Weldon
4771 Kahala Ave.
TMK 3-5-006-006
Requesting Shoreline Setback Variance (SV)

It is our opinion that this Draft Environment Assessment of the proposed steel post and tension wire fence, along the makai side of the property, with a 4 x 3 foot concrete/rock/rebar footing (seawall); and, after the fact approval for sand fill within the shoreline setback, is inaccurate, misrepresentative and untrue. We request that this DEA be rejected and that the application for the shoreline setback variance required for this project be denied.

It is our belief that the acceptance of this DEA and subsequent granting of a setback variance will have a grave impact on Kahala Beach and will set a precedent that could potentially destroy this shoreline.

COMMENTS:

Page 4, Paragraph 5: "Almost all the lots along the shoreline have constructed houses as near the shore as legally possible, or inside what *perhaps* would be shoreline setback zone today."

THIS IS NOT A STATEMENT OF FACT. THERE IS NO SUPPORTING EVIDENCE.
See photos.

Page 7, Sec 2.2, last paragraph, Page 23 Paragraph 3: Refers here and numerous other places in the DEA to owners makai property line as though this is a fixed boundary. **THERE IS NO SUCH THING AS A MAKAI PROPERTY LINE WHEN THE BOUNDARY IS A SHORELINE. THAT WHICH IS DEEMED USABLE BY THE PROPERTY OWNER DEPENDS ON WHERE THE SHORELINE IS AT GIVEN**

POINTS IN TIME UNLIKE THE OTHER THREE PROPERTY LINES WHICH ARE FIXED.

Page 7, Sec 2.3, Paragraph 1: In referring to the existing fence, DEA says, "fencing was constructed to provide security for the oceanfront property." THIS IS NOT A CREDIBLE JUSTIFICATION FOR A SETBACK VARIANCE. THE EXISTING 4.5 ft FENCE COULD BE EASILY SCALED, EVEN BY A CHILD. MANY OTHER OCEAN FRONT PROPERTIES IN THE AREA HAVE NO FENCING, PLANT BARRIERS OR FENCING WELL LANDWARD OF THE HIGH WATER OR DEBRIS LINE. See photos, PERHAPS THE REAL REASON FOR THE PLACEMENT OF THIS FENCE IN THIS LOCATION IS THAT WHILE THE PUBLIC HAS TO VIEW IT THE WELDON'S DO NOT (see DEA figure 11 and Page 15, Paragraph 3, "The top of the footing would be at the same height (5 feet above sea level) as the existing fence footing posts, which is level with the top of the rear yard.") AND IT IS TO HOLD THEIR FILL AND UNNATURAL VEGETATION.

Page 9, Paragraph 1: Referring to the periodic relocation of sand that accumulates at the mouth of the drainage canal, the DEA says, "While this raises the height of the beach in front of the owner's property, it also kills off the natural vegetation that is trying to establish itself." ELSEWHERE IN THE DEA THE ARGUMENT IS MADE FOR THE FILLING WITH 93.6 TONS OF SAND BECAUSE OF SAND EROSION YET HERE THE COMPLAINT IS TOO MUCH SAND. See page 18, Sec 2.4 and compare 1983 and 1996 aerial photos with DEA figure 11 after sand fill and landscaping.

IN ADDITION, ELSEWHERE IN SEVERAL PLACES THE DEA MAKES REFERENCE TO CONCERN FOR PLANTING NEW LANDSCAPING (GRASS AND NADPAKA) WHICH HARDLY CAN BE CONSIDERED NATURAL VEGETATION. See page 18, sec 2.4 and page 27, #12.

THESE PROPERTY OWNERS HAVE MOVED THE VEGETATION, FROM THE PREVIOUSLY ESTABLISHED LINE THAT EXISTED FOR DECADES, SEAWARD BY 20-30 FEET SINCE 2002 COVERING UP THE BEACH SAND. See photos of sand and vegetation in 1981, 1983 and 1996 and current photo of unimpacted with vacant lot on the other side of the drainage canal.

Page 9, Paragraph 3-5: Owner suggests elongation and flaring of drainage ditch walls. IT IS OUR UNDERSTANDING THAT STRUCTURES TAMPERING WITH COASTLINES HAS BECOME A REAL ENVIRONMENTAL NO NO; THAT ALL SORTS OF UNDETERMINABLE AND UNDESIRABLE RESULTS CAN AND HAVE HAPPENED DOING THIS TYPE OF THING. AS 30 YEAR RESIDENTS OF KAHALA BEACH, WE ARE NOT WILLING TO TAKE THAT CHANCE. THIS PROPERTY IS AS IT WAS WHEN THE WELDON'S PURCHASED IT AND AS IT HAS BEEN FOR DECADES. THE SHORELINE IN FRONT OF THEIR PROPERTY IS NOT EXPERIENCING ANYTHING THAT IS NOT PART OF THE USUAL CYCLE OF SEASONS AND TIDES.

Page 9, Paragraph 3: Here and elsewhere the DEA attributes the erosion of the base of the existing fence to the drainage ditch runoff. THIS IS AT BEST ONLY PARTIALLY ACCURATE BECAUSE THE HIGH WATER OR DEBRIS LINE IS LANDWARD OF THE LOCATION OF THIS FENCE CURRENTLY AT A 2.1 FOOT TIDE. THIS YEAR THERE HAVE BEEN SIX MONTHS IN WHICH 50% OF THE DAYS THE HIGH TIDE HAS BEEN AT 2.2 TO 2.8 FEET. See photos of September 2004 tides at 2.1-2.2 ft.

STORMS IN THE PERIOD CITED HAD AN EXTREMELY UNUSUAL VOLUME OF RAINFALL. PHOTOS IN FIGURES 5-8 ONLY SHOW EROSION BECAUSE OF THE ROCKS AND FENCE. OTHERWISE THIS WOULD NOT LOOK UNLIKE THE BEACH HAS FOR YEARS, AT TIMES A BIT STEEPER, A BIT FURTHER INLAND BUT NOTHING THAT DOESN'T ADJUST ITSELF. IT IS ONLY THE INTERFERENCE OF THIS MAN MADE STRUCTURE THAT IS THE PROBLEM FOR THEM AND THE PUBLIC!

Page 15, Paragraph 3: "The top of the footing would be at the same height (5 feet above sea level) as the existing fence footing posts, which is level with the top of the rear yard. The entire footing structure would be buried, it would not be visible, and would be located along the existing fence." THE VARIOUS SHORELINE CERTIFICATIONS ON RECORD SINCE 1941 SHOW THERE IS CONSIDERABLE VARIATION OVER TIME AS TO WHERE THE CERTIFIED SHORELINE HAS BEEN AND IS. THIS IS MOST LIKELY DUE TO THE CHANGING SLOPE OF THE BEACH AND THE CYCLE OF SEASONS AND TIDES. IT HAS ALREADY BEEN NOTED THAT AS OF THIS WRITING THE HIGH WATER OR DEBRIS LINE DURING A MODERATELY HIGH TIDE (2.1 FT) IS LANDWARD OF THE FENCE BASE AT THE EAST END AND WITHIN A COUPLE OF FEET ALONG THE ENTIRE FENCE LINE. THEREFORE IT IS UNLIKELY THAT THIS FOOTING WILL NOT BE DISTURBED AND EXPOSED VERY SHORTLY JUST AS THE CURRENT ROCK BASE HAS BEEN. (See photos)

THIS GIVES RISE TO THE QUESTION OF THE FEB 2004 SHORELINE CERTIFICATION THAT WE BELIEVE TO BE FLAWED. IT IS OUR UNDERSTANDING THAT PROMINENT COASTAL GEOLOGISTS AGREE THAT THIS CERTIFICATION WAS WRONG. COMPLAINTS WERE LODGED WITH THE C&C AND DLNR OVER THIS FENCE'S LOCATION. EVEN THE DEA REFERS TO AN INDIVIDUALS RAGE REGARDING THE PLACEMENT OF THIS FENCE. IT WAS BROUGHT BEFORE THE KAHALA COMMUNITY ASSOCIATION AND THE WALALAE-KAHALA NEIGHBORHOOD BOARD AND BOTH BOARDS, AS WELL AS COMMUNITY MEMBERS, DEMANDED AN INVESTIGATION. OUR STATE SENATOR AND REPRESENTATIVE, AS WELL AS CITY COUNCILMEMBER WERE ALL CONTACTED. THIS FENCE HAS NOT HAD A PASSIVE IMPACT ON THIS COMMUNITY!

Page 20, Sec 3.2, Paragraph 1: "The Beach Sand area lies seaward of the property's certified shoreline."

UNTIL THE WELDON'S MONIFIED THE BEACH SAND AREA IN 2003 THE BEACH SAND LAY 20-30 FEET LANDWARD OF THE 2004 CERTIFIED SHORELINE. See 1981, 1983, 1996 photos.

Page 21, Paragraph 2: "The threat of high waves that annually reach this coast in spring and summer is ranked moderately high. Erosion is high along the entire coast except at the steep Waipi'e and Black Point headlands."
THERE ARE NO WAVES AT ALL, ANY TIME OF THE YEAR THAT REACH THIS BEACH. IN THE PAST 30 YEARS THE ONLY WAVES WE HAVE EVER SEEN ON KAHALA BEACH WAS DURING HURRICANE INIKI.

THERE HAS BEEN LITTLE TO NO EROSION OF THIS BEACH IN THE 30 YEARS WE HAVE LIVED ON THIS BEACH. THE ONLY THING SHRINKING KAHALA BEACH IS THE UNNATURAL VEGETATION ENCROACHMENT.

Page 21, Sec 3.6

"Coastal use in the vicinity of the subject property is related to use of Kahala Beach, some swimming and fishing. Some portions of this coastline do not have a sandy beach frontage. The C&C of Honolulu owns a narrow easement four parcels to the west of the subject property."

IN ADDITION TO SWIMMING AND FISHING, THERE IS KAYAKING, WINDSURFING, WAVE SKING, SNORKLING, DIVING AND MOST FREQUENTLY WALKING THE BEACH. RESIDENTS OF KAHALA AND OTHER COMMUNITIES COME TO WALK THIS BEACH REGULARLY FOR ITS BEAUTY AND TRANQUILL NATURE. VISITORS FROM THE KAHALA MANDARIN HOTEL OFTEN WALK THE BEACH. (See photos)

THE COASTLINE HAS A SANDY BEACH FROM THE KAHALA MANDARIN HOTEL TO SEVERAL PROPERTIES PAST THE HUNAKAI PUBLIC ACCESS, MORE THAN HALF A MILE OF SANDY SHORELINE. THE WELDON'S FENCE IS THE ONLY STRUCTURE TO INTRUDE INTO THIS OTHERWISE OPEN AND BEAUTIFUL BEACH CORRIDOR. See photos of other properties beach frontage.

THERE ARE THREE PRIVATE LANES SERVING RESIDENCES WEST OF WELSON'S PROPERTY. THE C&C DEPT. OF PARKS HAS A PEDESTRIAN EASEMENT ON ALL THREE. THESE LANES PROVIDE OPEN ACCESS TO THE BEACH AS DO SEVERAL OTHER ACCESS' FURTHER WEST. THE WELDON'S HAVE TRIED TO DISCOURAGE AND PREVENT PUBLIC ACCESS TO THE BEACH FROM THE PEDESTRIAN ACCESS ADJACENT TO THEIR PROPERTY.

Compare photos of Weldon's access to the three just west of their property.

Page 22, Sec 3.8, Paragraph 2: "The proposed action will have no effect on traditional cultural practices. Shoreline access is not impacted."

THIS IS SIMPLY NOT TRUE. DEPENDING ON THE TIDE, THOSE WALKING THE BEACH ARE FORCED TO WALK IN WATER AND THERE IS NO RETREAT FROM A HIGH TIDE UNLIKE THE REST OF THE SURROUNDING BEACH AREA. See photos of walkers in water, beach chair in wash at 2.1 ft tide.

"The fence footing will have no impact on shoreline processes at the project location because the footing will be completely buried and not portion of the structure will be exposed."
THIS STATEMENT CANNOT BE MADE. SEE COMMENTS FOR PAGE 15, PARAGRAPH 3 GIVEN ABOVE.

"Due to the project's location along the interior of Maunaloa Bay, the site is primarily impacted by the change in tide and buffered from high wave energy due to the extensive reef located 1,000 feet offshore."
WHAT WAVES??"

Page 23, Paragraph 4: "The fence footing will have a long-term positive impact in that it will stabilize the applicant's City approved and permitted fence, which provides security for the property and owner."
IN OUR OPINION THE C&C SHOULD NOT HAVE APPROVED THE FENCE IN THIS LOCATION WITHIN THE SHORELINE SETBACK. THERE IS NO OTHER PROPERTY FROM THE WALALAE BEACH PARK TO WELL PAST THE HUNAKAI ACCESS THAT HAS A FENCE ANYWHERE NEAR THIS CLOSE TO THE HIGH WATER LINE. IF THE WELDON'S FEEL THEY MUST HAVE A 4 FOOT FENCE TO FEEL SECURE THEN THEY CAN PLACE THE FENCE 40 FEET LANDWARD AND HAVE THEIR SECURITY AS OTHERS HAVE DONE WHO FELT THE NEED FOR A FENCE, THOUGH MANY HAVE NO FENCE.

COMMENTS on statements provided in the DEA regarding the relationship of the proposed project to the thirteen significant criteria.

Page 25,

1. Statements all or in part NOT TRUE. See previous comments.
2. Statements all or in part NOT TRUE. See previous comments.
3. Statements all or in part NOT TRUE. See previous comments.
4. Statements all or in part NOT TRUE. See comments.
5. Statements all or in part NOT TRUE. (If you consider the beach walker so enraged by this fence or myself who am working like crazy on this at 4:00 a.m. so I can finish it before my 8:00 a.m. flight to be with my mother who I received a call earlier this

evening informing me she is in intensive care and not expected to survive possibly until I can get there.)

6. N/A

7. Statements all or in part NOT TRUE. See previous comments.

8. Statements all or in part NOT TRUE. See previous comments.

9. N/A

10. N/A

11. Statements all or in part NOT TRUE. See previous comments

12. Statements all or in part NOT TRUE. See previous comments

6.2 Statements all or in part NOT TRUE. See previous comments

In conclusion, we feel that the Weldon's cannot justify the placement of the fence for security reasons or for stabilization. We believe that in fact this will have significant impact and set a very dangerous precedent. They have created a situation that is unstable because they have interfered with the natural cycle of the beach process. They have claimed considerable ground from the beach since purchasing the property in 1998. Now they want to further their interference by attempting to build and even more fortified structure to combat nature. Building structures that tamper with the beach is a risky business and one that will potentially impact many others for years to come. We only have to look a coastlines like Lanikai to see the potential of this kind of thing.

They have the public, who have enjoyed this stretch of beautiful beach, up in arms so it would be hard to say they are not impacting the use and enjoyment of the beach by the public. Though in the DEA they claim to be improving the property's aesthetics, we would certainly disagree with that.

They are degrading what is a God given treasure in Hawaii and that is our beautiful shoreline, which is everyone's treasure not just theirs.

Please reject this DEA and deny the shoreline setback variance necessary for this project.

Sincerely,

John and Lucinda Pyles

Shoreline Certification flawed. Variation.



ANALYTICAL PLANNING CONSULTANTS, INC.

928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

Letter to John and Lucinda Pyles
April 7, 2005
Page 2 of 4

April 7, 2005

John and Lucinda Pyles
4721 Kahala Avenue
Honolulu, HI 96816

Dear John and Lucinda Pyles:

Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter

Thank you for your comment letter, dated September 16, 2004, addressed to Eric Crispin, Director, City and County of Honolulu, Department of Planning and Permitting, providing comments on the Draft Environmental Assessment for the subject project.

The fence proposal in the Draft EA had a cemented rock footing that was buried and extended across the makai fringe of the lot, essentially parallel to the certified shoreline. The top of the footing wall was to be below the surface level and hence not visible. The tension wire fence posts were to be placed on top of the footing wall.

As a result of community comments, the design was changed and the buried footing wall was eliminated. The tension wire fence described in the Final EA has fence posts that are encased in buried individual cement footings. The diameter of the footings will not exceed one foot. As such, any comments that refer to the original fence as described in the Draft EA are no longer an issue, and are therefore not addressed.

The following information is in response to your comments.

1. **Page 4, paragraph 5.** The statement in the Draft EA is correct. Each of the existing houses along Kahala Avenue is located either beyond the shoreline setback area or within the shoreline setback area; the shoreline setback distance being relative to the depth of any particular lot. Therefore, an individual house would be constructed "as near the shore as legally possible" if the house is beyond the shoreline setback area. Alternatively, a house may have been built many decades ago "inside of" today's definition of the shoreline setback area, but prior to the existing Shoreline Setback Regulations, which would mean that such a house would be an existing non-conforming structure.

2. **Page 7, Sec 2.2 last paragraph, Page 23 paragraph 3.** Mrs. Pyles seems to believe that the makai property line moves with the shoreline. This is incorrect. The statements in the Draft EA are accurate. All of the existing and proposed improvements are located landward of the certified

shoreline and/or landward of the property owner's makai property line. Page 7 of the Draft EA refers to Figure 3 on page 8, which depicts the location of the property line, the 2004 certified shoreline, and the 2001 certified shoreline. The Final EA contains a color-coded graphic to further clarify these facts.

3. **Page 7, Sec 2.3 paragraph 1.** The statements in the Draft EA are accurate. The fence was constructed to provide security. However, the purpose of the fence is not necessarily to provide a physical barrier, but to establish where private property begins and where someone crossing that line would be trespassing on private property.

4. **Page 9, paragraph 1.** We recognize your comments about sand. The sand fill and the sand accumulation from the drainage ditch are two unrelated issues.

5. **Page 18, Sec. 2.4 and Page 27, #12.** Landscaping is permitted in the shoreline setback area. Landscaping materials -- grass and naupaka -- have been planted on private property. It was not intended that "natural vegetation" should be misinterpreted as wild vegetation. As explained in the Draft EA, the United States Department of Agriculture (1972) officially classifies the soil along this coastline as "Jaucas Sand" series and "Beach Sand". The Final EA contains an illustration from the U.S. Department of Agriculture, Soil Conservation Service's publication (in cooperation with the University of Hawaii Agriculture Experiment Station): *Soil Survey of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii, August 1972*. Therefore, according to the U.S. Department of Agriculture, SCS, all of the lots along this portion of Kahala Avenue have landscaping materials planted in "sandy" soil.

5b. **Vegetation Line Movement.** The 1987 certified shoreline survey shows the "vegetation line" as further seaward than the 2004 certified shoreline. A copy of the 1987 certified shoreline survey is included in the Final EA.

6. **Page 9, paragraph 3-5.** The certified shoreline is makai of the fence. The damage to the fence next to the drainage ditch occurred during a storm and was caused by the rush of water from the ditch, not the result of the normal tides, which are relatively benign. The existing concrete drainage ditch was constructed by the City and County of Honolulu. The shoreline in front of the subject property is affected by the presence of the City's drainage ditch, not just the "usual cycle of seasons and tides". The Final EA contains a letter report from Ms. Elaine Tamaye, President of *EKMA Services, Inc., Engineers and Environmental Consultants*, which states that, "Drainage ditches and other dredged openings along a shoreline disrupts the continuity of alongshore sand movement."

Flaring of the drainage ditch wall is not a part of this shoreline setback variance.

In addition to the location of the private property line, the basis for review of the subject application by the City's Department of Planning and Permitting includes the 2004 shoreline survey and the 2001 shoreline survey, which were both accepted and certified by the Board of Land and Natural Resources.

7. **Reference to Figures 5-8.** We recognize your comments. The figures illustrate erosion adjacent to the City's drainage channel.

8. **Page 15, paragraph 3.** The applicant is not a party to the location of the certified shoreline. The subject property, TMK 3-5-6: 006, has a number of certified shoreline surveys performed and on file at the State Department of Accounting and General Services, Survey Division office.
9. **Page 20, Section 3.2, paragraph 1.** As explained in the Draft EA, the United States Department of Agriculture (1972) officially designates the soil along this coastline as "Jaucas Sand" soil series and "Beach Sand" soil series. The Final EA contains a figure which illustrates the location of the "Beach Sand" from the U.S. Department of Agriculture, Soil Conservation Service in cooperation with the University of Hawaii Agriculture Experiment Station. Soil Survey of Kaula, Oahu, Maui, Molokai and Lanai, State of Hawaii, August 1972.
10. **Page 21, paragraph 2.** We recognize your opinion that, "There are no waves at all, any time of the year that reach this beach. In the past 30 years the only waves we have ever seen on Kahaala Beach was during Hurricane (sp) Iniki. There has been little to no erosion of this beach in the 30 years we have lived on this beach...."

Your comments are appreciated and your statements support the position of the Final EA that the proposed fence footings should not be subject to significant wave impact. Therefore, potential erosion of the fence footings is not likely.

 11. **Page 21, Sec 3.6.**
 - a. We recognize your comments regarding additional recreational activities along the coastline.
 - b. The existing fence, sand-fill and the proposed fence and fence footings are located within private property.
 - c. There is a public access point from Kahaala Avenue to the beach three properties Ewa of the Weldon property. The driveway bordering the Ewa side of the Weldon property is not a public right of way. TMK 3-5-6: 25 is private property - it is not a public pedestrian access. It is a 6,986 square foot long rectangular-shaped lot that is used as an access lane off of Kahaala Avenue to access multiple makai properties. It is privately owned by five property owners that are contiguous to TMK 3-5-6: 25. According to Mr. Terry Hildebrand, Planner, City Department of Design and Construction, Planning Branch, Facilities Division, there is no City beach access assessment and there is no City right-of-way over TMK 3-5-6: 25.
 12. **Page 22, Sec 3.8 paragraph 2.** Apparently Mrs. Pyles has not walked the beach at high tide. Anyone who does will find that there are areas in front of a number of properties that restrict lateral access, unless the person walks in the water. In fact, at many times the beach in front of the Weldon property is passable without walking in the water, while areas in front of other nearby properties are not passable.

The statements in the Draft EA are accurate. The owner's proposed and after-the fact improvements do not impact public access or traditional cultural practices. The improvements are located on private property.

With regard to lateral access along the beach, the Weldon's have no obligation to provide for a public walk way on their property. It is unreasonable and unconstitutional to require the Weldon's to permit the public and their dogs to use forty feet of the Weldon's beach front property. The liability issue alone makes it unreasonable. The proposed fence will serve to remind the public of the property line, and to preclude accidental intrusions on the Weldon's property by the general public.

13. **Fence footing.** The comments are no longer an issue. The Final EA contains a letter report for the revised design from Ms. Elaine Tamaye, President of *EKKA Services, Inc., Engineers and Environmental Consultants*, which states that, "The new fence and buried fence footings will have no impact on the existing beach processes."
14. **"What waves?"** We recognize your comments. The statements in the Draft EA are accurate and were based on research in the publications by AECOS, Inc. and Fletcher, as cited in the Draft EA Section 8, References.
15. **Page 23, paragraph 4.** We recognize your comments.
16. **Page 25.** We recognize your comments. However, we respectfully disagree with your opinion that the statements in the Draft EA are "not true", as you state in your letter: "Your comment letter makes multiple broad claims - "Statements all or in part not true. See previous comments" regarding the Significance Criteria, without providing any further facts to substantiate your claim."
17. **Conclusion.**
 - a. As noted previously, it is the finding of a 26-year veteran ocean engineer (bachelor's degree in engineering and a masters degree in ocean engineering) - Ms. Elaine Tamaye, President of *EKKA Services, Inc., Engineers and Environmental Consultants*, that the proposed fence will have "no impact on the existing beach processes."
 - b. The Weldon's have not "claimed considerable ground from the beach". Rather, the general public has not been familiar with the location of the Weldon's private property lines.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,


Donald Clegg, President

Cc: Mr. Henry Eng, Director, City Department of Planning and Permitting

September 17, 2004

Mr. Eric G. Chapin, AIA, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813
FAX: 327-6743

Subject: Comments on Draft Environmental Assessment
For Improvements at 4771 Kahala Avenue
Prepared by: Land Planning Consultants LLC dated August 2004
TMK: 3-5-6: 006, Mr. Edward J. Weldon

Due to the lack of time to respond with formal action from Neighborhood Board No. 3 -
Waihee/Kahala, I submit my personal comments to this application request. The general feeling
of our Kahala neighborhood is that they are against any type of encroachment into the shoreline
setback areas. Due to the fluctuations in the actual shoreline location over the years, it is our
general feeling that any encroachments could be a problem in later years. There are many
instances along our Kahala coast that attest to this problem.

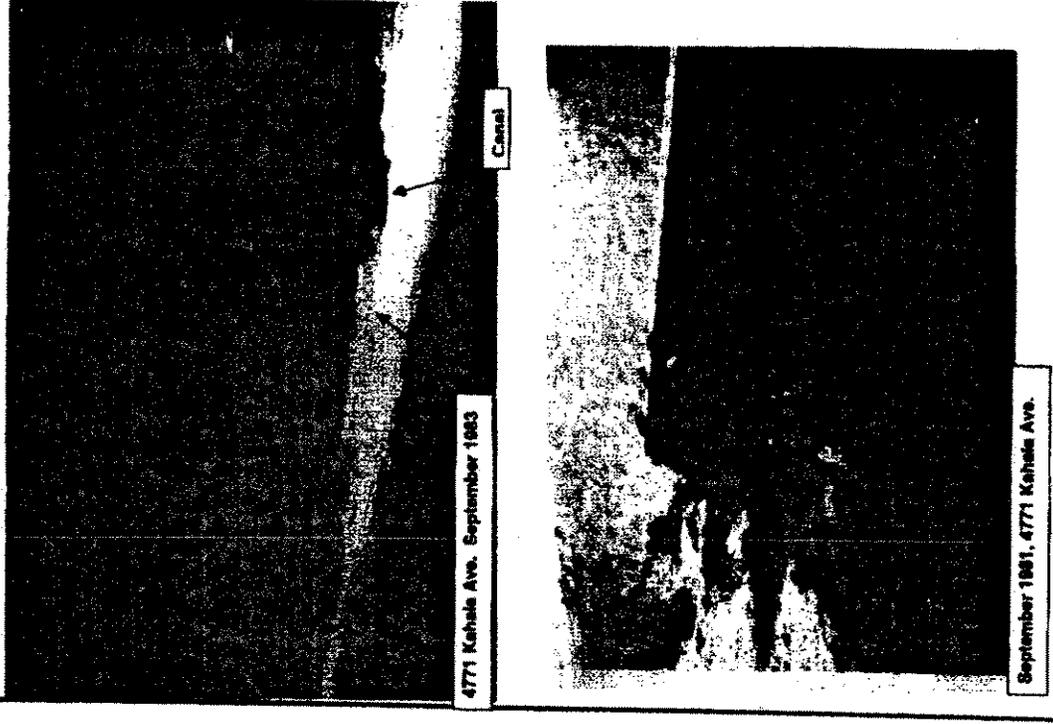
The proposed new fence has a continuous concrete footing that will be constructed only 5 feet
away from the top of the existing sand fill areas. This could be a potential seawall that has
created numerous problems with beach erosion along the Kahala coastline. Suggest that the
proposed fence continuous footings and potential seawall be denied. Simple fence posts with
normal 12 inch diameter footings and spaced at 10 feet apart should be more than adequate for
their proposed wire fencing. In addition, the coast line has been much closer to the property in
the past as shown on the attached photographs. Recommend that the fence line be moved back
further to account for the potential fluctuation in the shoreline.

Mahalo for your consideration of our concerns.

Sincerely,



Lester H. Fukuda, P.E., PACEC
Chair, NHB #3



ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817



March 22, 2005

Lester H. Fukuda, P.E., FACBC
Chair, Neighborhood Board #3
5207 Kilauea Avenue
Honolulu, HI 96816

Dear Mr. Fukuda:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

Thank you for your comment letter, dated September 17, 2004, addressed to Eric Crispin, Director, City and County of Honolulu, Department of Planning and Permitting providing comments on the subject project. The following information is in response to your comments.

1. **Proposed Fence.** The design for the fence and fence footing has been revised in response to comments received by the Neighborhood Board, the community and public agencies. The project does not have a buried "concrete wall across the beach", rather individual fencepost footings, similar to what you suggest in your letter. Also, as you suggest, the revised fence and footings have been moved further back (or landward). A full description and detailed drawings will be provided in the Final Environmental Assessment (EA). A copy of the Final EA will be mailed to the Waialea-Kahala Neighborhood Board No. 3 upon its completion.

Additional Clarification:

Improvements are on Private Property. The existing fence and the proposed new fence and footings are located within the boundaries of the owner's private property. Sand-fill was added within the boundaries of the owner's private property. The 2004 certified shoreline is located between 0 feet to over 15 feet makai or seaward of the private property line. The Draft EA contained a complete survey which illustrates the location of the private property line, the 2001 certified shoreline and the 2004 certified shoreline. The same survey in the Final EA will have color coded lines to further distinguish the lines from each other.

Public Access Maintained. The owner's proposed and after-the fact improvements do not impede public access or gathering rights. Public access is maintained as provided by law. According to the landowner's attorney, if government wishes to enhance public transit along the beach, its proper remedy is eminent domain; please see Hawaii Revised Statutes Section 115-5.

Letter to Lester Fukuda, Chair
Waialea-Kahala Neighborhood Board No. 3
March 22, 2005
Page 2 of 2

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,

Donald Clegg, President



March 22, 2005

Kelley C. Roberson
Member, Sub-District #1
Neighborhood Board #3 - Waiālae-Kahala
c/o Neighborhood Commission Office
530 South King Street, Room 408
Honolulu, HI 96813

Dear Kelley Roberson:

**Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6: 006
Response to Comment Letter**

Thank you for your comment letter, dated September 20, 2004, addressed to Eric Crispin, Director, City and County of Honolulu, Department of Planning and Permitting providing comments on the subject project. The following information is in response to your comments.

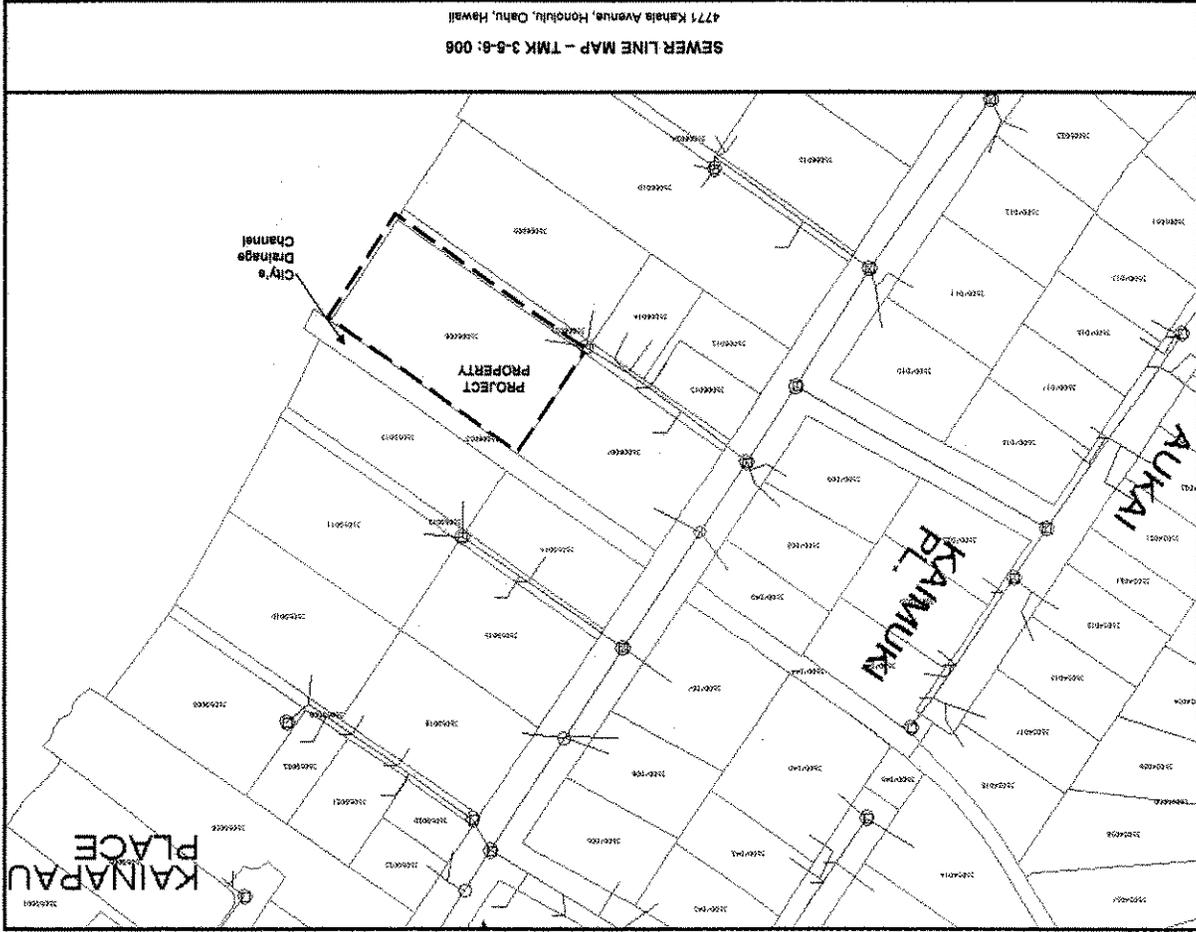
- Proposed Fence.** The design for the fence and fence footing has been revised in response to comments received by the Neighborhood Board, the community and public agencies. The project does not have a buried "concrete wall across the beach", rather individual fencepost footings. A full description and detailed drawings will be provided in the Final Environmental Assessment (EA). A copy of the Final EA will be mailed to the Waiālae-Kahala Neighborhood Board No. 3 upon its completion.
- No City Sewer Main Along the Beach Near Subject Property.** Based on a March 21, 2005 telephone conversation with Mr. Dennis Nishimura, Wastewater Branch Chief, City Department of Planning and Permitting, the only sewer main in the vicinity of the subject property is located in Kahala Avenue. According to Mr. Nishimura, there are no existing or abandoned sewer lines "along the shoreline" in that area. Attached is a map, based on City information, of existing sewer mains and laterals in the area of the subject property.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,

Donald Clegg
Donald Clegg, President

Cc: Mr. Lester Fukuda, Chair, Waiālae-Kahala Neighborhood Board No. 3



SEWER LINE MAP - TMK 3-5-6: 006
4771 Kahala Avenue, Honolulu, Oahu, Hawaii

SEP 20 2004 PM 1 08

007 00000000000000000000

September 20, 2004

Mr. Eric G. Crispin, AIA, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813
FAX: 527-6743

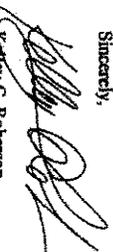
Subject: Shoreline Setback Variance Application, File No. 2004/SV.67/p
5019 Kalamannole Highway, TMK: 3-5-22-03- 3-5-6-6

The Neighborhood Board No. 3 - Waiiale/Kahala considered the subject variance application at our regularly scheduled meeting on Thursday, September 16, 2004. While the Neighborhood Board No. 3 did not take action to establish a board position on this variance application, I desire to express my personal opinion and recommendation on this application. After listening to testimony on September 16th it is my opinion that the variance proposal as submitted is not acceptable, in that it would introduce a concrete wall across the beach, buried beneath the current height of the sand to allow for the installation of a fence that would offer the homeowners heightened privacy and security. The general feeling of our neighborhood board is that the members are against any type of encroachment into the shoreline setback areas. Due to the fluctuations in the actual shoreline location over the years it is our general feeling that any encroachments could be a problem in later years.

The city may have a large sewer main along the shoreline in that area and access is critical and must be maintained. In general, it is my opinion that any encroachment into the shoreline setback areas in the Kahala beach area could be detrimental to the coastal and shoreline environment.

Thank you for considering my concerns.

Sincerely,


Kelly C. Roberson
Member, Sub-District #1, NHB #3

PHONE (808) 498-5666
FAX (808) 596-1585



ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

March 22, 2005

Kelley C. Roberson
Member, Sub-District #1
Neighborhood Board #3 - Waiiale-Kahala
c/o Neighborhood Commission Office
530 South King Street, Room 400
Honolulu, HI 96813

Dear Kelley Roberson:

Subject: Draft Environmental Assessment
Weldon Resident 4771 Kahala Avenue
Kahala, Honolulu, Hawaii
TMK: (1) 3-5-6-006
Response to Comment Letter

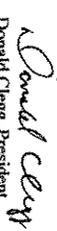
Thank you for your comment letter, dated September 20, 2004, addressed to Eric Crispin, Director, City and County of Honolulu, Department of Planning and Permitting providing comments on the subject project. The following information is in response to your comments:

1. Proposed Fence. The design for the fence and fence footing has been revised in response to comments received by the Neighborhood Board, the community and public agencies. The project does not have a buried "concrete wall across the beach", rather individual fencepost footings. A full description and detailed drawings will be provided in the Final Environmental Assessment (EA). A copy of the Final EA will be mailed to the Waiiale-Kahala Neighborhood Board No. 3 upon its completion.

2. No City Sewer Main Along the Beach Near Subject Property. Based on a March 21, 2005 telephone conversation with Mr. Dennis Nishimura, Wastewater Branch Chief, City Department of Planning and Permitting, the only sewer main in the vicinity of the subject property is located in Kahala Avenue. According to Mr. Nishimura, there are no existing or abandoned sewer lines "along the shoreline" in that area. Attached is a map, based on City information, of existing sewer mains and laterals in the area of the subject property.

Thank you for your comments on the proposed project. A copy of your comment letter and this response letter will be included in the Final Environmental Assessment.

Sincerely,


Donald Clegg, President

Cc: Mr. Lester Fukuda, Chair, Waiiale-Kahala Neighborhood Board No. 3

Davis, Pamela N.

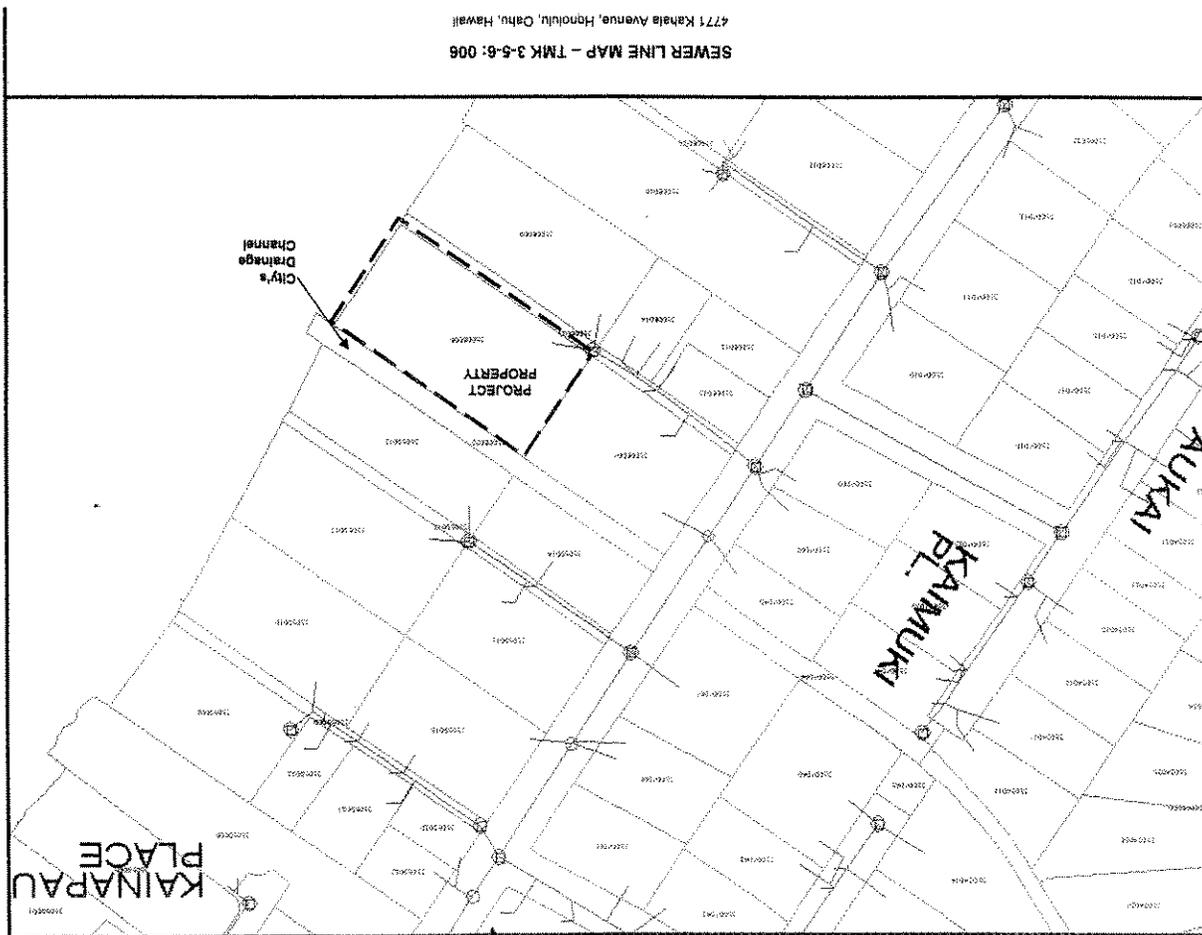
From: Kahalabob
Sent: Monday, September 13, 2004 7:20 PM
To: Kahalabob
Cc: MJStorfer; Dralexroth@cs.com; Helena; Merle; Ulrich; Anita; Kibikias@msn.com; HZmom; foster004@hawaii.rr.com; Missjanny; jerrath@hawaii.edu; barb1@aloha.net; recker@hawaii.rr.com; ShaunaghR; WILL IN HI; Rturbon3; bspan@juno.com
Subject: Kahala Beach is threatened. Help

This Thursday evening the Neighborhood Board, under old business, is going to address the Draft Environment Assessment which the Weidons had done as a prerequisite to their request for a shoreline variance to build what amounts to a sea wall (4 ft high and 3 ft wide) in the location of the fence they have there now with a steel fence on top. (Location 4771 Kahala Ave., west side of drainage canal.) They claim the concrete will be buried and not show but it is seaward of the high tide or debris line so it will definitely erode the sand. It impacts the beach's visual appearance and accessibility particularly at high tide. There is nothing like this in the entire stretch from the Beach Park to the other side of the Hunakai beach access.

Those of you who walk this beach (or any beach) really need to let the C&C and DLNP know that this does impact the environment and the public's ability to enjoy the beach. Please attend the NHB meeting and round up anyone else you think cares. This would set a terrible precedent, I wish I could be there, but I will have to depend on you to make a good showing. I just received a call that my mother is in intensive care after a fall this afternoon. They are inserting a breathing tub, but it does not look good. I am off to L.A. on the first flight in the morning. I will email you a more formal statement if I can get it done tonight. Please review the pictures. They are worth a thousand words. These were taken over the weekend. This tide was a moderately high tide. More than 50% of the high tides in six months of this year are or will be higher than the tide pictured here.

Thanks,
Lucinda

9/20/2004



SEWER LINE MAP - TMK 3-5-6: 006
4771 Kahala Avenue, Honolulu, Oahu, Hawaii

Davis, Pamela N.

From: Kahalabob@aol.com
Sent: Tuesday, September 14, 2004 4:13 AM
To: Kahalabob@aol.com
Cc: Mjstoffer@aol.com; Drateyroth@cs.com; Helena; Merle; Ulrich; Anita; RICH TURBIN@aol.com; Rurling@aol.com; Wingard; Lori G. Hecker@hawaii.com; stog@honomuluaadvertiser.com; rpleong@capitol.hawaii.gov; Missjanyp@aol.com; bart1@aloha.net; Kidwell@aloha.net; Siddiqui; Jamal A.; Djou, Charles; Cripin, Eric G.; H2morr@aol.com; Kbhkss@msn.com; WILLINH@aol.com
Subject: Comments on Draft DEA for Weldon fence

Please review if you wish to be informed on the Kahala Beach/Weldon fence situation. It is John and my response to the Draft Environmental Assessment that Weldon had a consultant prepare and hopes the city will accept. If it is accepted it sets the stage for the shoreline variance application they would have to get to build the footings/wall and fence they proposing.

My comments were more hastily written than I had intended as I received a call that my mother may not live through this night so I am on the first plane to LA in about three hours. I had hoped to work on it between today and the Neighborhood Board meeting on Thursday.

Some of the pictures I refer to I have sent to some of you separately. They are not complete but will have to wait for my return next week to get it all organized together, though I must say a picture is truly worth a thousand words.

Please write your own comments to this Environmental Assessment Draft and proposed shoreline variance, especially those of you who have walked or jogged or swam this beach over the years and if you can attend the NHB meeting this Thursday evening, 7:30 PM, Wesley Methodist Church on Hanalei Street nearuka of Zippy's.

Thanks,
Lucinda
PS Please pass this on to anyone you think cares.

9/20/2004

Davis, Pamela N.

From: Kahalabob@aol.com
Sent: Thursday, September 16, 2004 9:20 PM
To: Cripin, Eric G.; Davis, Pamela N.; peter.l.young@hawaii.gov; patll.edwards@hawaii.gov; dolan.eversole@hawaii.gov
Cc: kahalabob@aol.com
Subject: Weldon, Kahala Bch Draft Environmental Assessmt Comments



Comments on Draft

Environment... I apologize if you have already received these comments. I had to leave unexpectedly for the mainland Tuesday morning due to an illness in the family so I hastily tried to get comments off.

The comments refer frequently to photos. I am attempting from the mainland to forward to you some of the photos which support the comments. I will send them subsequently as three follow up emails.

One set of photos taken just last week will demonstrate that the location of the proposed sea wall/fence is well within the high water or debris line, etc. Another set of photos will show what the rest of Kahala's shoreline in the surrounding area looks like.

The last set will show shots taken in 1981 and 1983 showing the location of the beach twenty plus years ago. I also have an aerial photo of the Kahala Shoreline taken for the Kahala Mandarin Hotel in 1995 for use in their 1996 calendar. This show the shoreline (beach) as very similar to the 1983 aerial photo.

It looks like I will not be returning to Honolulu until after the Sept 22 comment deadline has passed, if you need to catch me please email or phone 372-9323.
Lucinda Pyle

Davis, Pamela N.

From: Kahalabob@aol.com
Sent: Sunday, September 19, 2004 11:29 PM
To: Dolan.Eversole@hawaii.gov
Cc: Davis, Pamela N.
Subject: Re: Weldon, Kahala Bch DEA photos



a0160.jpg



a0179.jpg



a0208.jpg



a0210.jpg



a0211.jpg

I am sorry I did not finish what I started last week in terms of the Weldon DEA comments with photos. Unfortunately this has been a very difficult time. My mother passed away peacefully last Thursday evening.

Hopefully the following emails with photo attachments are successful. This issue is very important to me and to Kahala. I have divided the photos into several groups. They will be sent separately as follows:

*September 2004 high tides (dated photos) w/Weldon Fence showing highwater/debris line landward of fence.(9 photos in 2 emails)

1996 Aerial photo of Kahala Beach showing Weldon property.

1981 and 1983 photos showing Weldon property.

Jan 2003 photos showing Weldon property

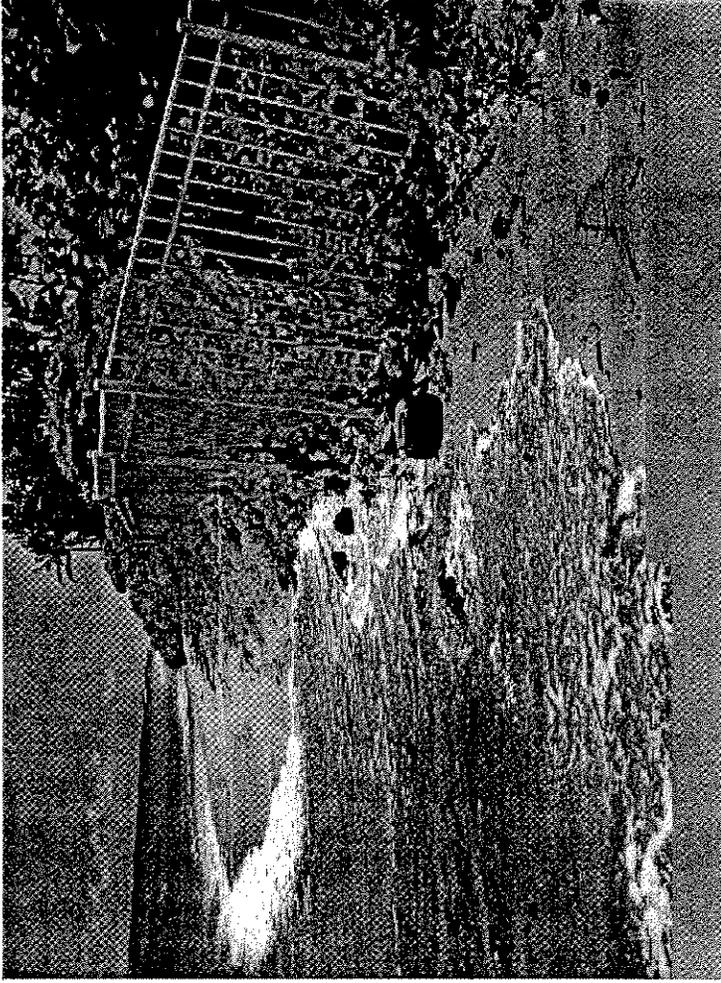
Aug 2003 photos showing Weldon property

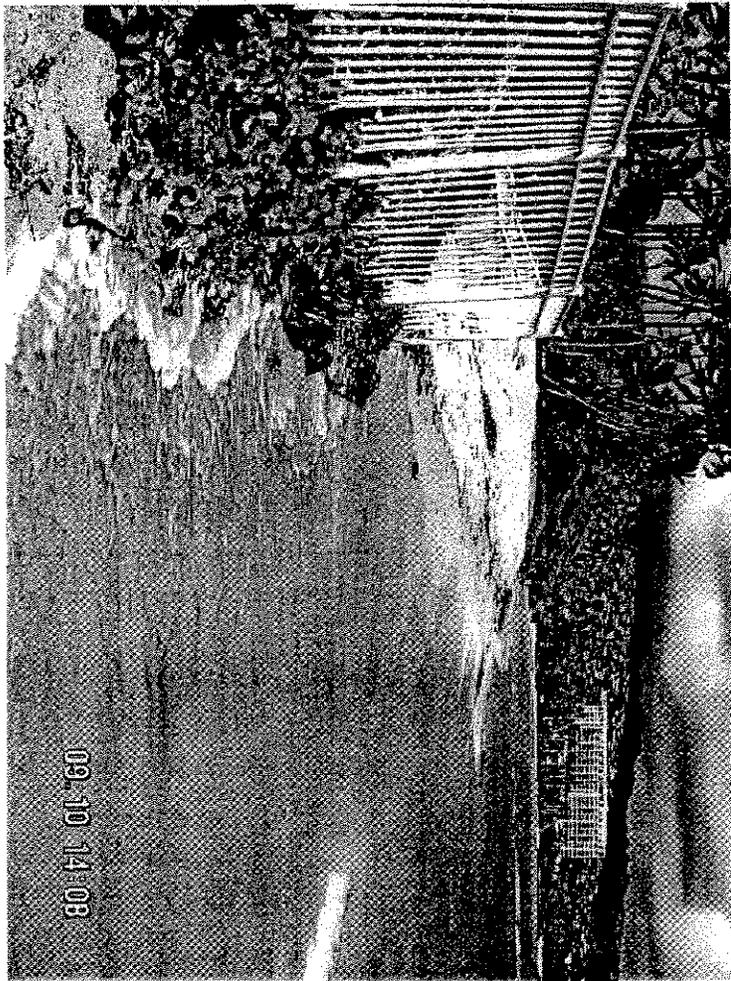
(I believe you have Feb. 2004 photos showing Weldon Property.)

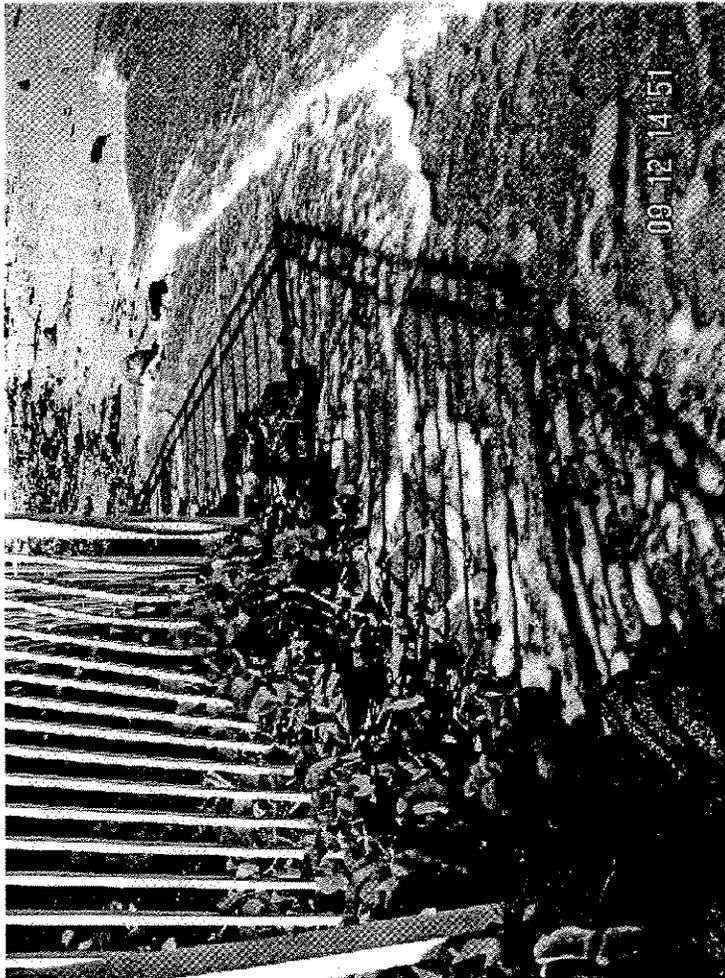
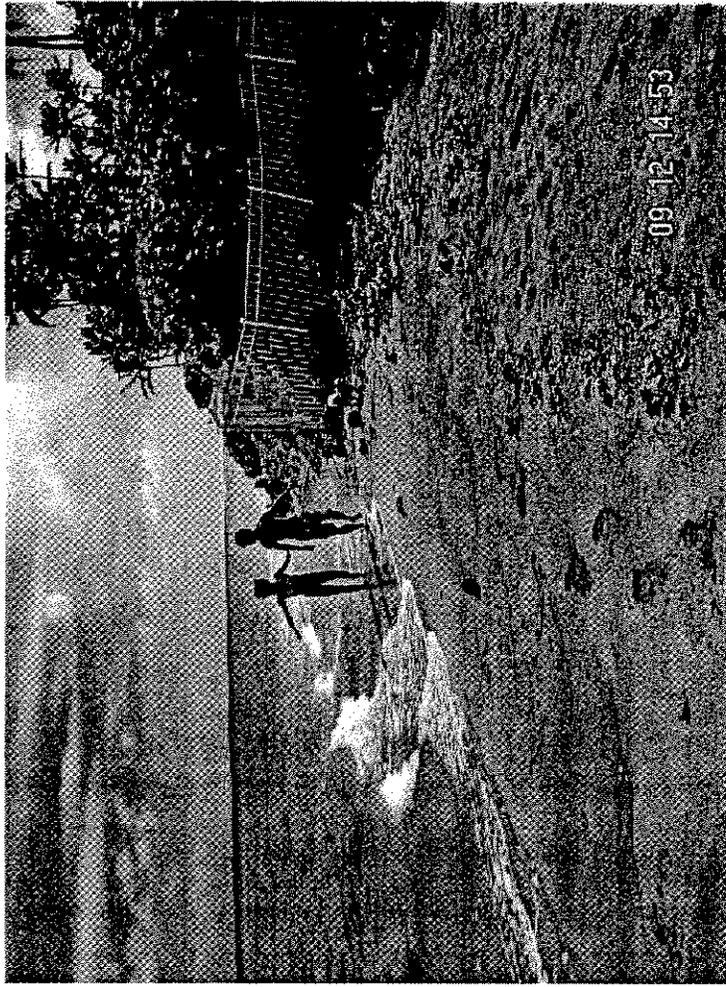
September 2004 photos of beachfront properties on either side of Weldon property to demonstrate the unique, unprecedented impact of this fence on Kahala Beach and the public who enjoy it.

Please confirm if you successfully receive these photos. I hope to return to Hawaii by the end of the week.

Lucinda Pyles
4721 Kahala Ave.
Honolulu, Hawaii 96816
808 732-6262







Davis, Pamela N.

From: Kahalabob@aol.com
Sent: Sunday, September 19, 2004 11:33 PM
To: Dolan,Eversole@hawaii.gov
Cc: Davis, Pamela N.
Subject: Re: Weldon, Kahala Bch DEA photos Group 1, Second email



a0221.jpg



a0243.jpg



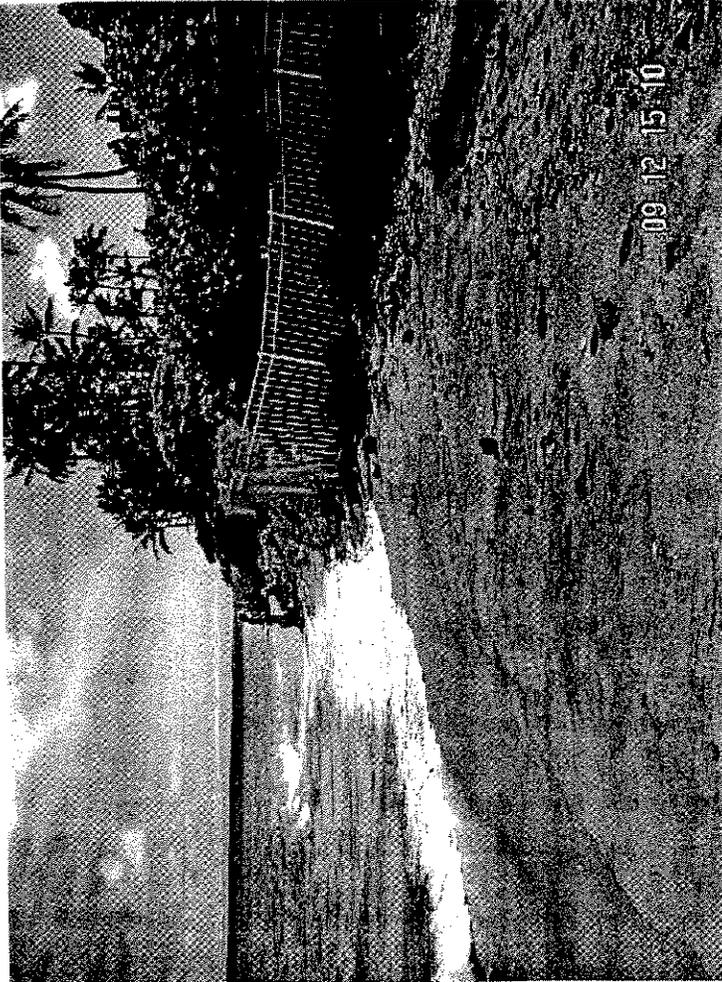
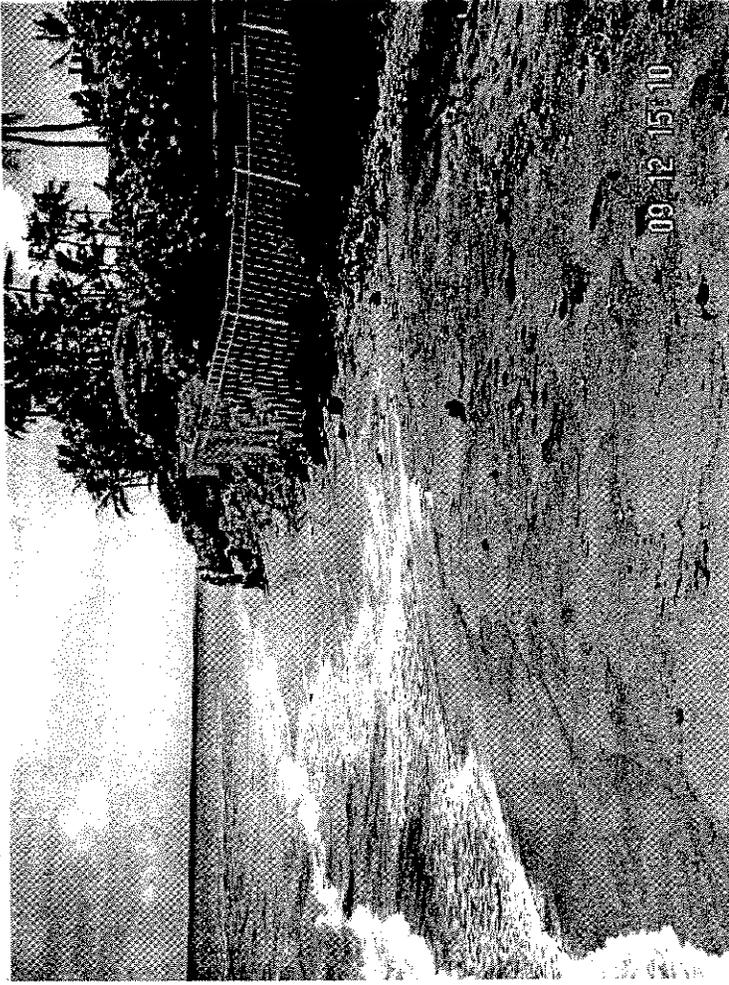
a0244.jpg



a0253.jpg

Second set of September 2004 high tides
showing Weldon fence.





Davis, Pamela N.

From: Kahalabob@aol.com
Sent: Sunday, September 19, 2004 11:36 PM
To: Dolan Eversole@hawaii.gov
Cc: Davis, Pamela N.
Subject: Re: Weidon, Kahala Bch DEA photos 1996 aerial



Aerial 1996, Kahala
Mandarin C...
Aerial photo taken for 1996 Kahala Mandarin Calendar showing Kahala shoreline.
Weidon beachfront is visible. Shows what property would have looked near the time of
their purchase and can be compared with 1983 aerial photo.
LP

Davis, Pamela N.

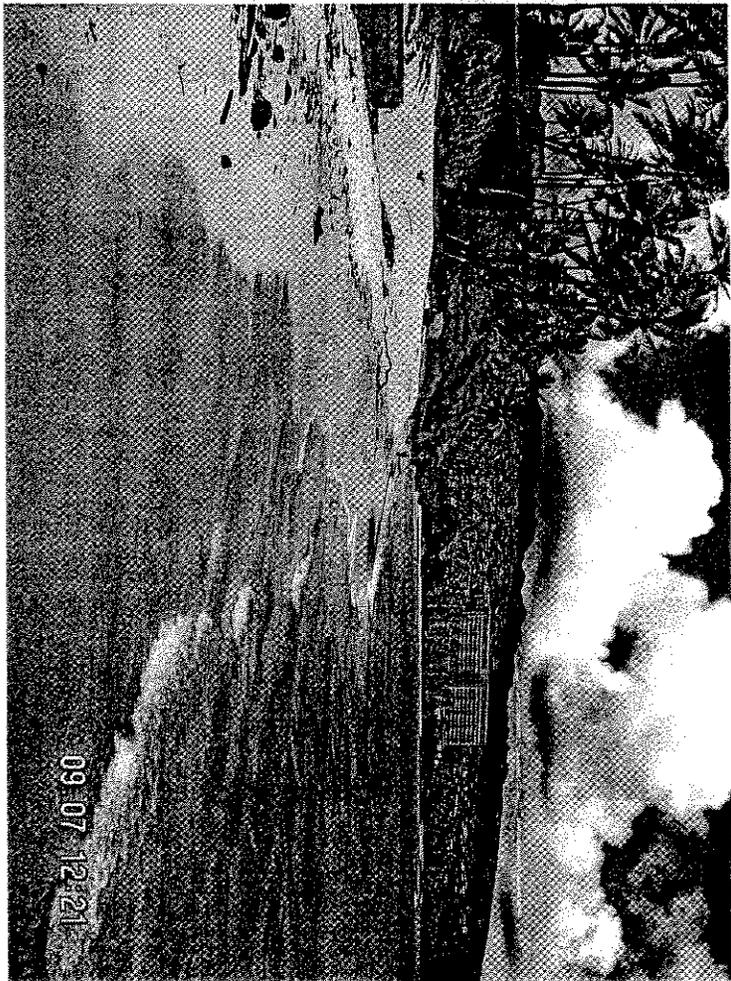
From: Kahalabob@aol.com
Sent: Monday, September 20, 2004 12:04 AM
To: Dolan.Evensole@hawaii.gov
Cc: Davis, Pamela N.; Kahalabob@aol.com
Subject: Re: Weldon, Kahala DEA photos Neighboring Properties 1

East1E-a0122.jpg East1N-a0189.jpg East1W-a0192.jpg East2E-a0190.jpg East2N-a0193.jpg East3E-a0194.jpg

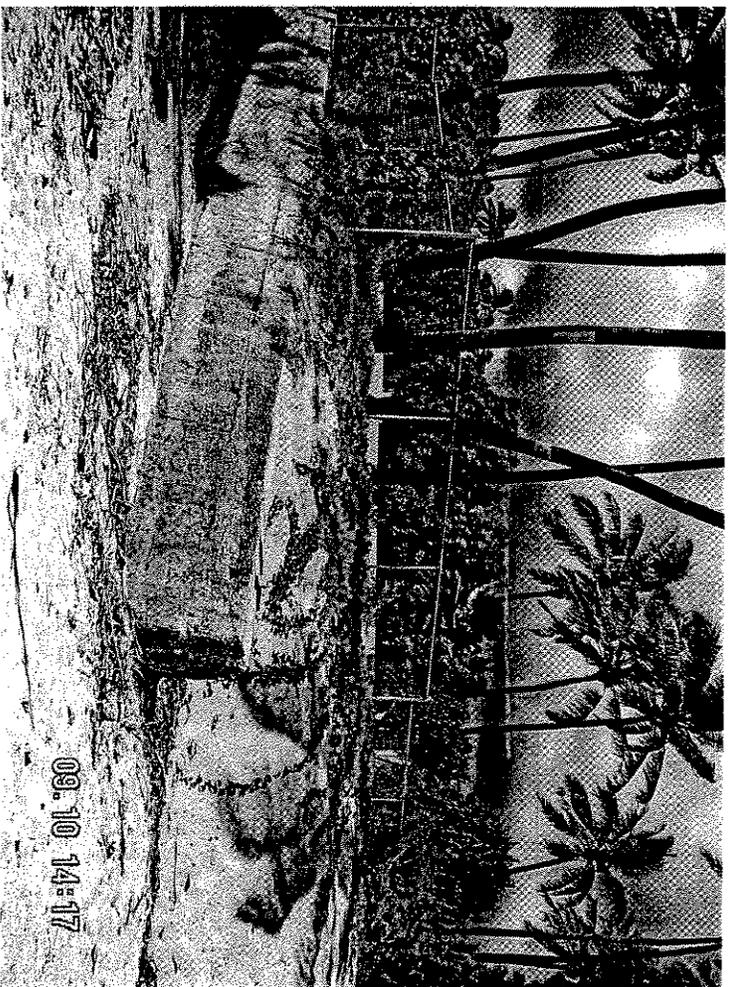
The purpose of this and the next several groups of photos is to show that what the Weldon's are doing with this fence is completely out of character with the rest of their neighboring properties. It is not necessary for security or privacy unless they know something as new comers that their neighbors don't. Many properties have no fence at all. No property with a fence has it anywhere near this close to the high water line as photos will show. This group shows the Kahala Beachfront just to the east of the Weldon's property.



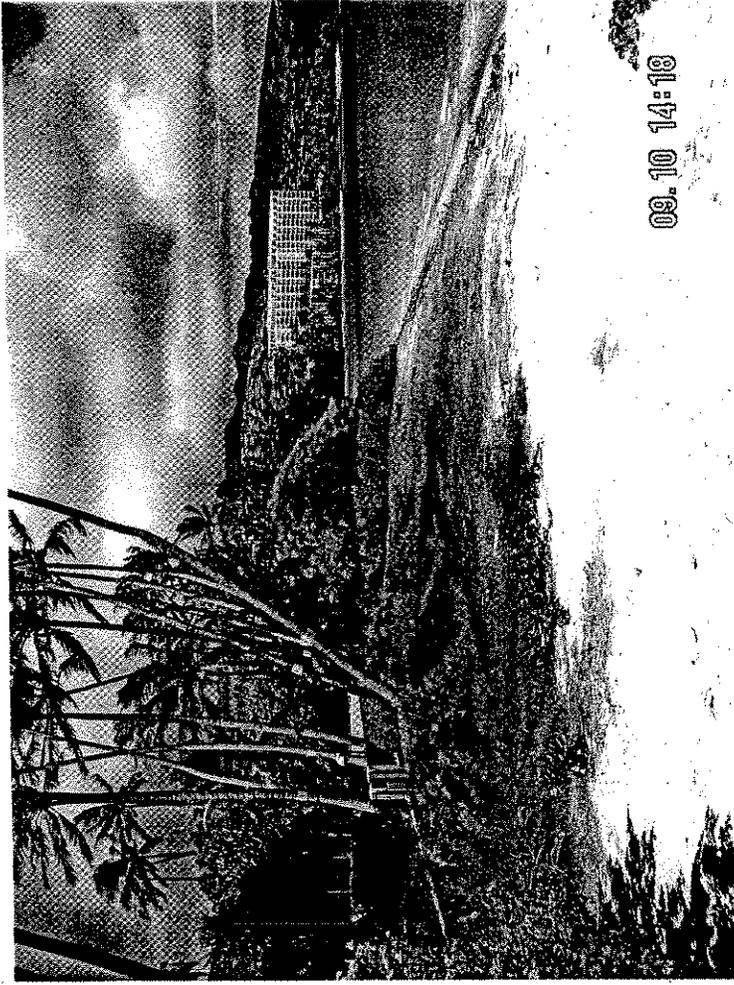
1996 Kahala Beach (Kahala Mandarin Hotel Calendar Aerial Photo)

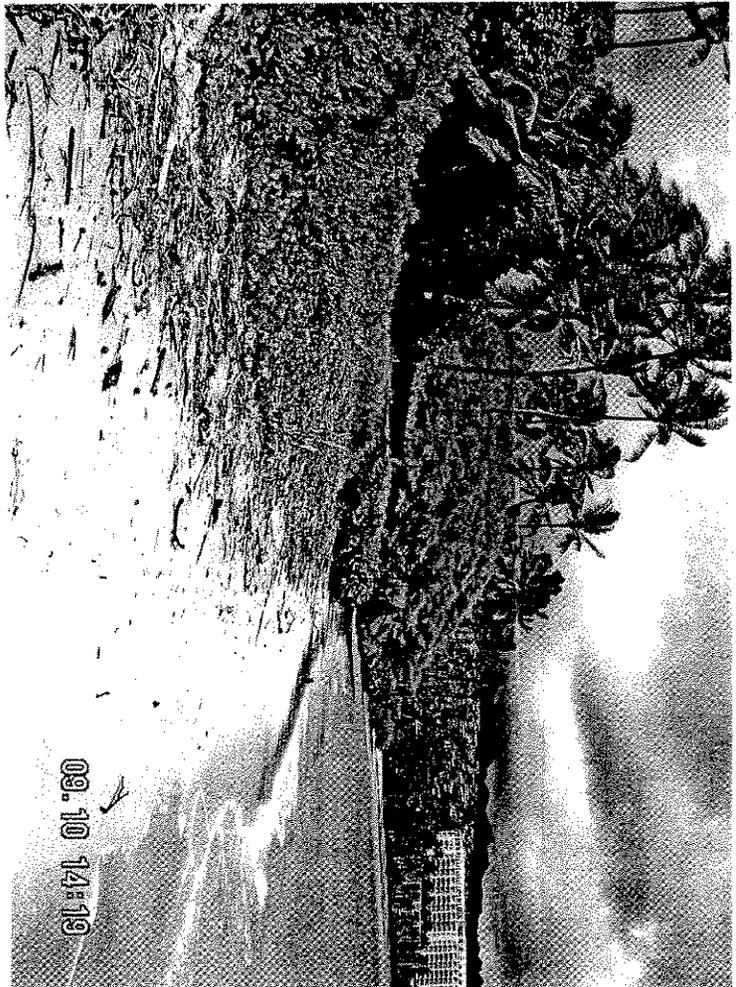
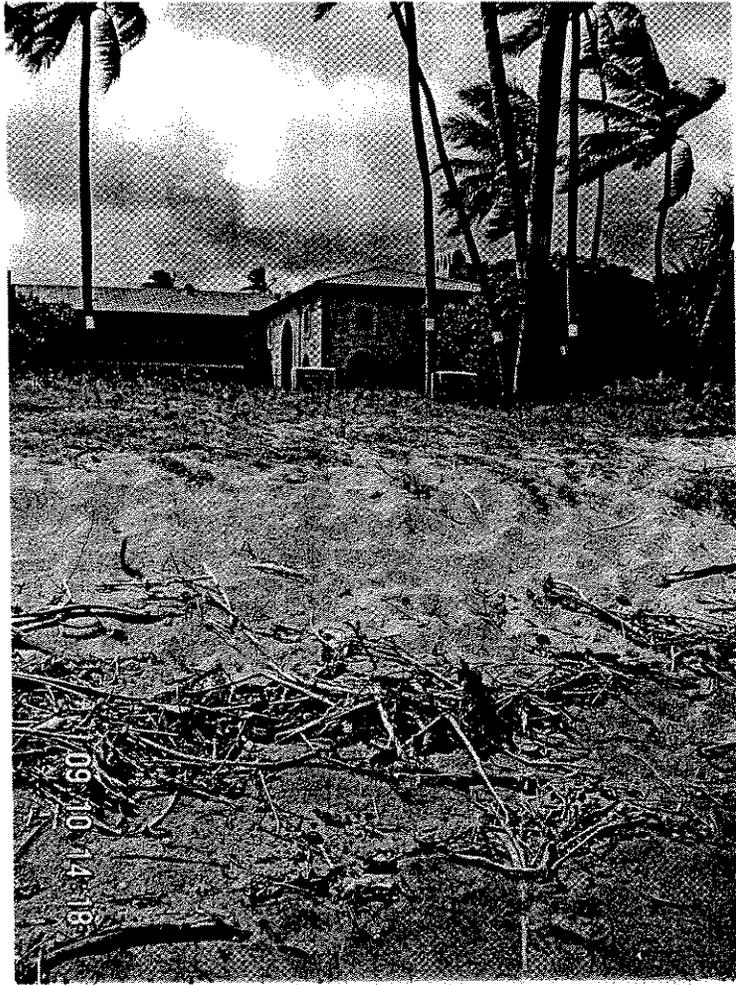


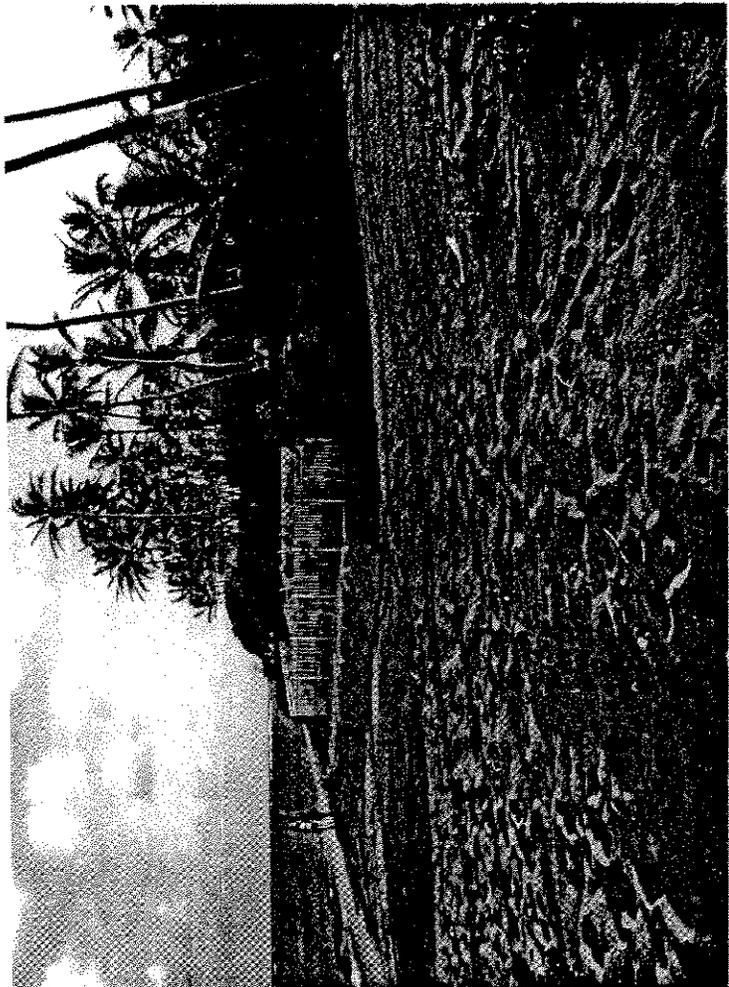
09.07 12:21



09.10 14:17







Davis, Pamela N.

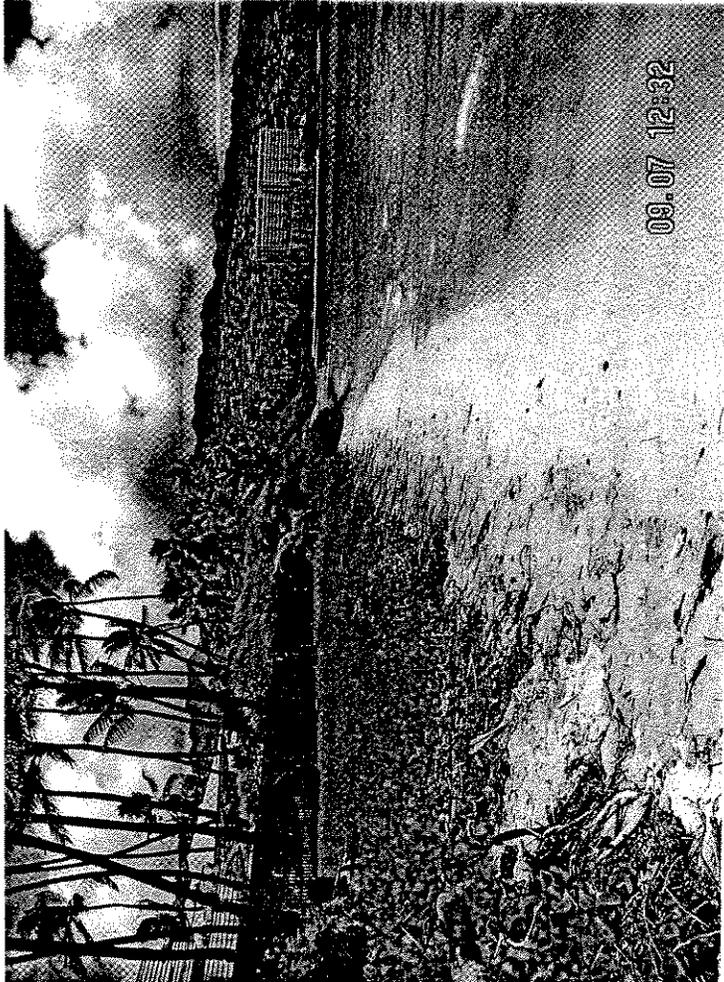
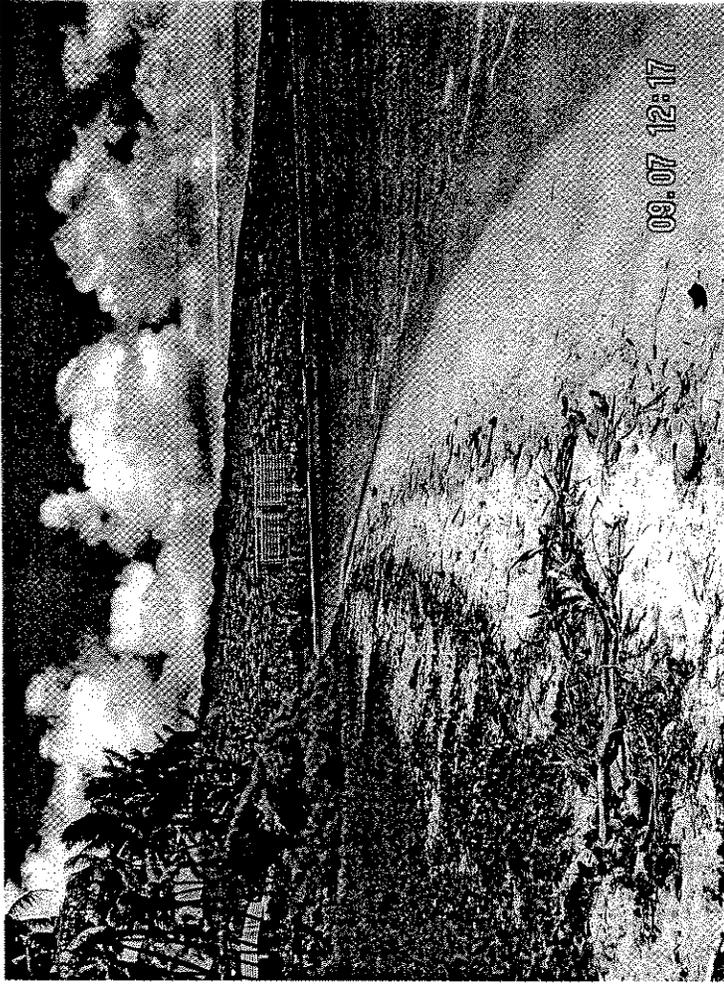
From: Kahaiaobb@aol.com
Sent: Monday, September 20, 2004 12:16 AM
To: Dolan,Evensole@hawaii.gov
Cc: Davis, Pamela N.; Kahaiaobb@aol.com
Subject: Re: Weldon, Kahaia DEA photos Neighboring Properties 2

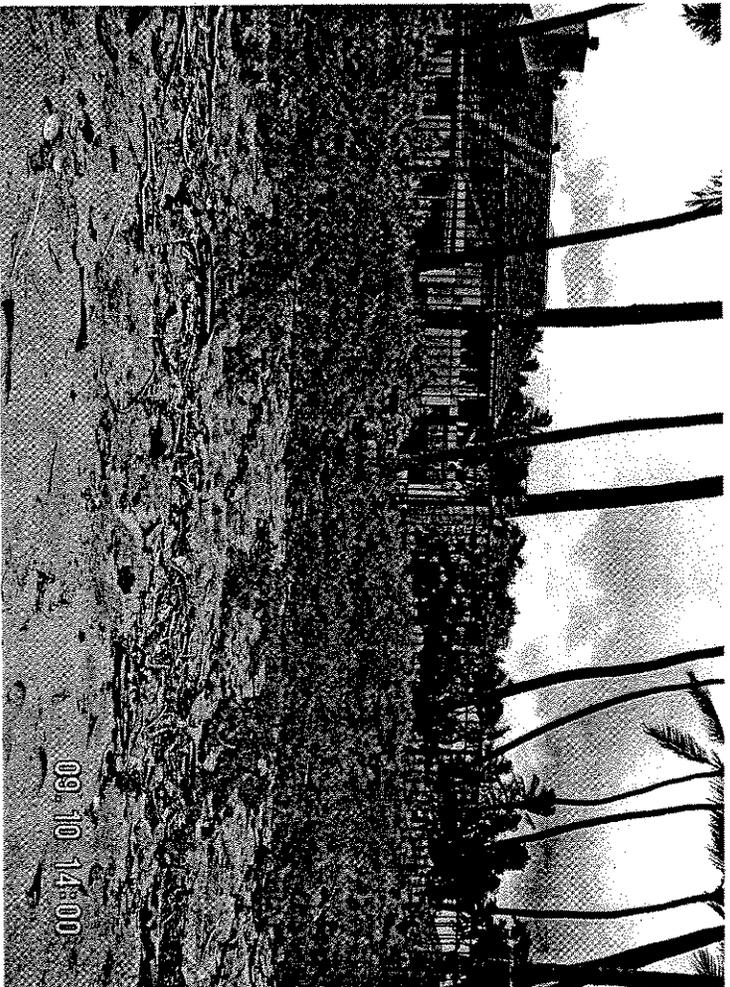
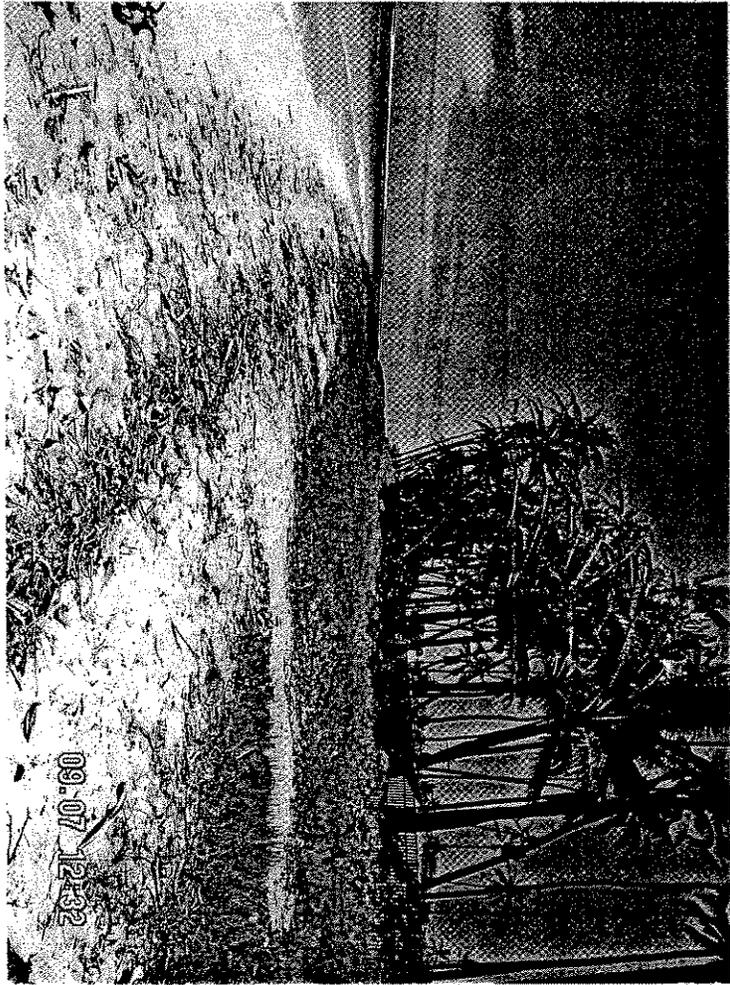
4731E-00107.jpg 4731N-00106.jpg 4731W-00135.jpg 4741E-00118.jpg 4747E-00137.jpg 4747N-00171.jpg

of neighboring properties just west of the Weldons. 4731-4761
There is a pedestrian access easement on the west boundary of 4731.
Lucinda Pyles

These photos are

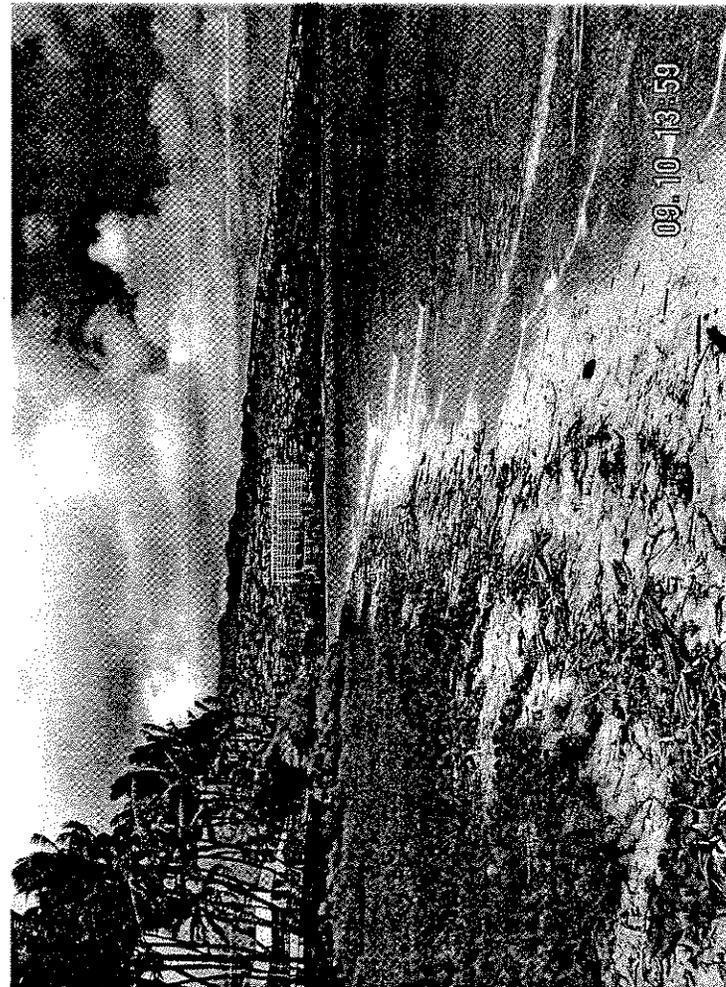






Davis, Pamela N.

From: Kahalabob@aol.com
Sent: Monday, September 20, 2004 12:32 AM
To: Dolan.Eversole@hawaii.gov
Cc: Davis, Pamela N.; Kahalabob@aol.com
Subject: Re: Weldon, Kahala DEA photos Neighboring Properties 3 (1 of 2)



4709E-80139.jpg 4709N-80142.jpg 4709W-80140.jpg 4711E-80261.jpg 4711N-80141.jpg

neighboring beachfront properties to the west of the Weldon's. These are important to note because, although they all have pedestrian beach access easements bordering their properties, three in all, beginning with 4727 and going west toward Black Point, all but one have no fences.

Lucinda



