

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the House Committee on  
WATER, LAND, AND OCEAN RESOURCES**

**Monday, February 02, 2009  
9:00 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 570  
RELATING TO COASTAL ZONE MANAGEMENT**

House Bill (HB) 570 proposes to: 1) Require certain agencies to account for sea-level rise and minimize risk from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis, 2) Preserve public shoreline access, and 3) Extend shoreline setback to no less than 40 ft. from shoreline and authorizes counties to account for annual erosion rates. The Department of Land and Natural Resources supports the need to update Chapter 205A, Hawaii Revised Statutes (HRS), with comments.

The initial drafting of Chapter 205A, HRS, was prior to a more comprehensive, science based understanding of sea level rise and its inclement impacts over the lifetime of coastal developments. Proper revision can enable the statute to accommodate dynamic coastlines, which migrate following a long-term trend, through utilization of state-of-the-science data and tools, as well as modern adaptation and hazard mitigation strategies. The amendments proposed in HB570 make promising strides in this direction, and we support their proposed changes with the following amendments:

- Recommend amending **§171-58.5, HRS** and **§205A-44, HRS**, to redefine the acceptable sand placement area for stream, drainage, and canal cleaning, and maintenance work. This will allow the cleared sand to be placed within the shared sand system, rather than forcing it to be placed adjacent to the area cleaned.
- Recommend adding a new section in **§205A-2(c) 6, HRS**, to prevent the grading of dunes. As dunes are one of the most significant natural coastal hazard buffers, the Counties and State should be empowered to adequately protect them.

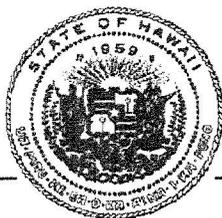
LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

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

- Recommend amending **§205A-43(a), HRS**, to allow for the use of erosion rate data, where appropriate. As there are significant sections of coastline in Hawaii where erosion rate data is not relevant, it would allow the counties discretion in determining the appropriate methodology for establishing setbacks. We recommend the following language:
  - "The shoreline setback line shall be established using a method including but not limited to an average annual erosion rate and, where appropriate, accretion rates and shall not be less than forty feet inland from the shoreline. The department shall adopt rules pursuant to chapter 91, prescribing procedures for determining the shoreline setback line, and shall enforce the shoreline setback rules pertaining thereto. "
- Recommend amending the existing language for **§205A-43.5, HRS**. This section identifies Shoreline Setback Variance Applications that will not require a public hearing. Because of the potential impact of coastal activities, those variances not requiring public hearings should be limited to emergencies that require immediate response, thus we recommend removing sections **(2)** and **(3)**.
- Recommend leaving the original language in **§205A-45(a), HRS**. The original language allows the counties to create larger setbacks, as needed.
- Recommend amending the proposed **§205A-45(c), HRS**, to accommodate using erosion data, to read as:
  - "The several counties, through rules adopted pursuant to chapter 91, or ordinance, or under existing authority, shall use the shoreline setback as a tool to minimize the damage from coastal hazards including but not limited to, tsunamis, hurricanes, wind, storm waves, flooding, erosion, sea-level rise, subsidence, and pollution. The setback shall consider shoreline erosion data for setback purposes as appropriate. Measures such as early planning, variances for innovative design, and minimum buildable areas shall be considered;"
- Recommend removing section **(8)** from the existing language for **§205A-46(a), HRS**.



## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

LINDA LINGLE  
GOVERNOR  
THEODORE E. LIU  
DIRECTOR  
MARK K. ANDERSON  
DEPUTY DIRECTOR  
ABBEY SETH MAYER  
DIRECTOR  
OFFICE OF PLANNING

### OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
Fax: (808) 587-2824

Statement of  
**ABBEY SETH MAYER**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES**  
Monday, February 2, 2009  
9:00 AM  
State Capitol, Conference Room 325

in consideration of  
**HB 570**  
**RELATING TO COASTAL ZONE MANAGEMENT.**

Chair Ito, Vice Chair Har, and Members of the House Committee on Water, Land and Ocean Resources.

We do not support HB 570 Relating to Coastal Zone Management. We prefer HB 1049, which is an Administration bill.

The Office of Planning administers Chapter 205A, HRS, the Coastal Zone Management (CZM) law. HB 570 proposes various amendments to Chapter 205A, HRS. We have the following concerns with these amendments.

Pages 3, 10, 20 and 24 of HB 570 make various amendments pertaining to coastal hazards. We recommend use of a simplified coastal hazards objective as provided in HB 1049. This bill also provided an amended definition of "coastal hazards" that ensures that the term is used consistently, and avoids the redundant use of a list of coastal hazards throughout Chapter 205A.

Page 10 adds the phrase "and planning for present and future coastal zone development". It is neither the role nor function of the CZM program to plan for

development. The program does plan for the management of coastal resources and this is already implicit in other parts of the statute. Therefore, we oppose this amendment.

In addition, we have the following comments on the bill:

1. Page 4, lines 5-7 amend Sec. 205A-2(b)(9) by adding "coastal dunes" and "natural barriers to the coastal hazards" to the objective of beach protection. Protecting dunes for public use and recreation, rather than as sensitive and vital coastal ecosystems, is an inappropriate objective. Coastal dunes are already protected under the objective Sec. 205A-2(b)(4), HRS, "Coastal ecosystems."

Furthermore, Sec. 171-151, HRS, defines "beach lands" to be inclusive of "Dune systems." We recommend deleting the proposed amendments and revising the policy listed in Sec. 205A-2(c)(9), HRS, to read "Protection of beach lands," using the term "beach lands" for consistency among the statutes.

2. Page 4, line 18: it is redundant to add "for the general public" to §205A-2(c)(1)(B). The existing objective on recreational resources clearly provides recreational opportunities to the public.
3. Page 5, line 1: We do not support the inclusion of the term "repair" in §205A-2(c)(1)(B). We prefer the language in HB 1049 emphasizing "restoration" rather than "repair" to provide a reasonable option to protect and preserve recreational resources. The connotation of "restoration" in dealing with resources is more meaningful and appropriate.
4. Page 5, line 4: We do not object to the addition of "coral reefs" as an example of coastal resources, although the existing objective and policy on coastal ecosystems already include "reefs" as a factor in preserving coastal ecosystems.

5. Page 7, lines 17-18: The amendments pertaining to public access to scenic resources are not necessary. Sec. 205A-2(c)(1)(3)(iii), HRS, already contains a policy on public access which more comprehensively and effectively encompasses public access.
6. Page 9, line 22: The amendment deletes the term "economy" and substitutes the terms "infrastructure and utilities" thus making the language more limiting. This change will inhibit the program's ability to balance between the economy and environment, and disregards major economic sectors, such as tourism in determining policies.
7. Page 10, lines 13-15: We agree with housekeeping change.
8. Page 14, lines 13-15: We do not object to this amendment.
9. Page 17, lines 11-12: We do not object to this amendment.
10. Page 19, lines 2 and 10: The term "substantial" is replaced with "significant." We note that "significant effect" is defined in Chapter 343, HRS. We are concerned that there may be ramifications and unknown consequences in making this change, and we are uncertain of whether or not the intent of the change was meant to reference the Chapter 343 definition.
11. Page 20, lines 1-6: The proposals are redundant. The concerns are addressed in §205A-26(2)(B) -- "That the development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature."

12. Page 21, lines 12-17: The definition of "Authority" is established in §205A-22, hence it is unnecessary. The proposed definition of "Department" conflicts with the definition in §205A-22, which is the appropriate one. "Department" is already defined as: the planning department in the counties of Kauai, Maui, Hawaii and Honolulu, rather than "department of land and natural resources."
13. Page 21, lines 20-22; page 22, lines 1-9: We encourage the use of annual shoreline change rates in determining the shoreline setbacks. This approach should better protect beach process and reduce the threat from coastal hazards such as erosion. We prefer the language in HB 1049 because it provides the flexibility to the Counties in setting appropriate standards for setbacks. On Oahu, for example, there are numerous shoreline lots which are too narrow to support development applying a 40-foot shoreline setback.
14. Page 23, line 9: We do not object to an increase in the minimum valuation of protection of a legal structure from \$20,000 to \$50,000. We acknowledge that costs have steadily risen while regulatory cost thresholds have not kept pace.
15. Page 24, lines 5-21, page 25 lines 1-9; there are several amendments pertaining to shoreline setbacks. We prefer the language in HB 1049 which is an Administration bill.

Thank you for the opportunity to provide testimony on this bill. If there are any questions, I will be happy to respond.



OFFICE OF HAWAIIAN AFFAIRS  
Legislative Testimony

**HB 570, RELATING TO COASTAL ZONE MANAGEMENT**

Senate Committee on Water, Land, & Ocean Resources

February 2, 2009

9:00 a.m.

Room: 325

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The Office of Hawaiian Affairs (OHA) SUPPORTS, with amendments, HB 570, which requires affected agencies to account for sea level rise and minimize risks from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis. This bill also proposes to preserve public access including shoreline access, extends the shoreline setback to not less than forty feet from the shoreline and requires counties to account for annual erosion rates.

OHA recognizes that Hawai'i must prepare for the varied adverse effects of a changing climate. This bill is one step toward helping Hawai'i do just that. As an island state, we have the unpleasant duty of bearing the brunt of these global effects. We need to be forward-looking to ensure that we minimize these effects for future generations.

OHA supports this bill because it not only clarifies our current laws that will be used to deal with these coastal issues, but also adds such things as sea-level rise into our current body of regulations. This is an easy and necessary step.

We suggest the following amendments to further clarify this bill and strengthen its impact:

205 A-43 Section 6 (a) 4 should be limited to a 90-day period to limit and define the temporary nature of this emergency variance waiver from a public hearing.

We also suggest that section 10 (a) (8) not be changed and the language "which will neither adversely affect beach processes nor artificially fix the shoreline" remain. It is important that our shorelines not be hardened or fixed to avoid impacts to our natural beach processes.

Therefore, OHA urges the Committee to PASS HB570 with amendments. Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

MUFI HANNEMANN  
MAYOR



DAVID K. TANOUE  
ACTING DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

February 2, 2009

The Honorable Ken Ito, Chair  
and Members of the Committee on Water,  
Land and Ocean Resources  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

**Subject: HOUSE BILL 570  
Relating to Coastal Zone Management**

The Department of Planning and Permitting (DPP) **opposes** House Bill 570, which would require the counties to adopt rules establishing setback distances of not less than the average annual erosion rate based on a fifty-year projection, in addition to a minimum 40-foot distance.

In as much as the island of Oahu has development over 75% of its shoreline, we are opposed to any measure which would expand shoreline setbacks where the vast majority of existing building structures on coastal properties would be immediately nonconforming (see attachments). In addition, to make matters worse, many properties along Oahu's coastlines are simply too shallow to accommodate an increase to our existing setback provisions. Currently, our shoreline setback requirement is 60 feet. However, shoreline lots created before 1994 have a 40-foot shoreline setback requirement, which may be adjusted to not less than 20 feet where an existing subdivision lot has a very narrow lot width. Further, there are no current erosion standards with which to apply to Oahu's coastline. There is a Coastal Erosion Study for Oahu's sandy beaches currently being conducted by the University of Hawaii; however, it is premature to legislate amendments to setback requirements until the erosion study is complete.

Drastic changes in the shoreline setback provisions will create regulatory chaos and spawn a flood of variance requests. Presently, shoreline setback variances usually take up to one year to process, with a cost of several thousand dollars to the applicant; and, with no guarantee of a favorable outcome at the end of the review process. In short, the overwhelming numbers of variance requests that have to be processed before the DPP would be able to issue building permits to ocean front properties could bring the construction and development of these properties to a complete halt.

Evaluating the need to amend shoreline setbacks is a dynamic and ongoing process. For example, on June 22, 1970, the City and County of Honolulu adopted Shoreline Rules and

The Honorable Ken Ito, Chair  
and Members of the Committee on Land,  
Water and Ocean Resources  
Re: House Bill 570  
February 2, 2009  
Page 2

Regulations. The standard setbacks at that time were 20 feet and 40 feet. In 1991, the City Council heard a proposed bill introduced by the Department of Land Utilization (DLU) to expand the shoreline setback to 100 feet. After listening to countless hours of testimony from hundreds of angry property owners throughout Oahu, the Council filed the bill. Subsequently, in 1992, the City adopted a more palatable ordinance, established as Chapter 23, Revised Ordinances of Honolulu, which forms the basis for Oahu's current shoreline setbacks. It is thus important to note that the basic 40-foot setback standard for Oahu has been utilized and relied upon by City government, shoreline property owners and the construction industry for 38 years.

While DPP recognizes the inherent dangers of building too close to the ocean, this bill is being introduced 60-years too late for the proper planning of Oahu's coastline. We must deal with the existing patterns of development; and, Oahu's shoreline setback requirements must realistically address these issues. For instance, the location of Oahu's coastal roadway infrastructure, as well as past subdivision approvals of legal lots of record along the shoreline, and subsequent build-out of the lots, complicates the process of considering changes to the shoreline setback requirements.

It is far better to clearly authorize shoreline setbacks based on coastal erosion rates, in addition to standards established on existing policies where appropriate, rather than forcing dramatic change in methodology and standard.

We prefer the proposed revisions to the shoreline setback provisions included in House Bill 1049.

We strongly recommend that House Bill 570 be filed. Thank you for this opportunity to comment.

Very truly yours,

*to, [Signature]*  
David K. Tanoue, Acting Director  
Department of Planning and Permitting

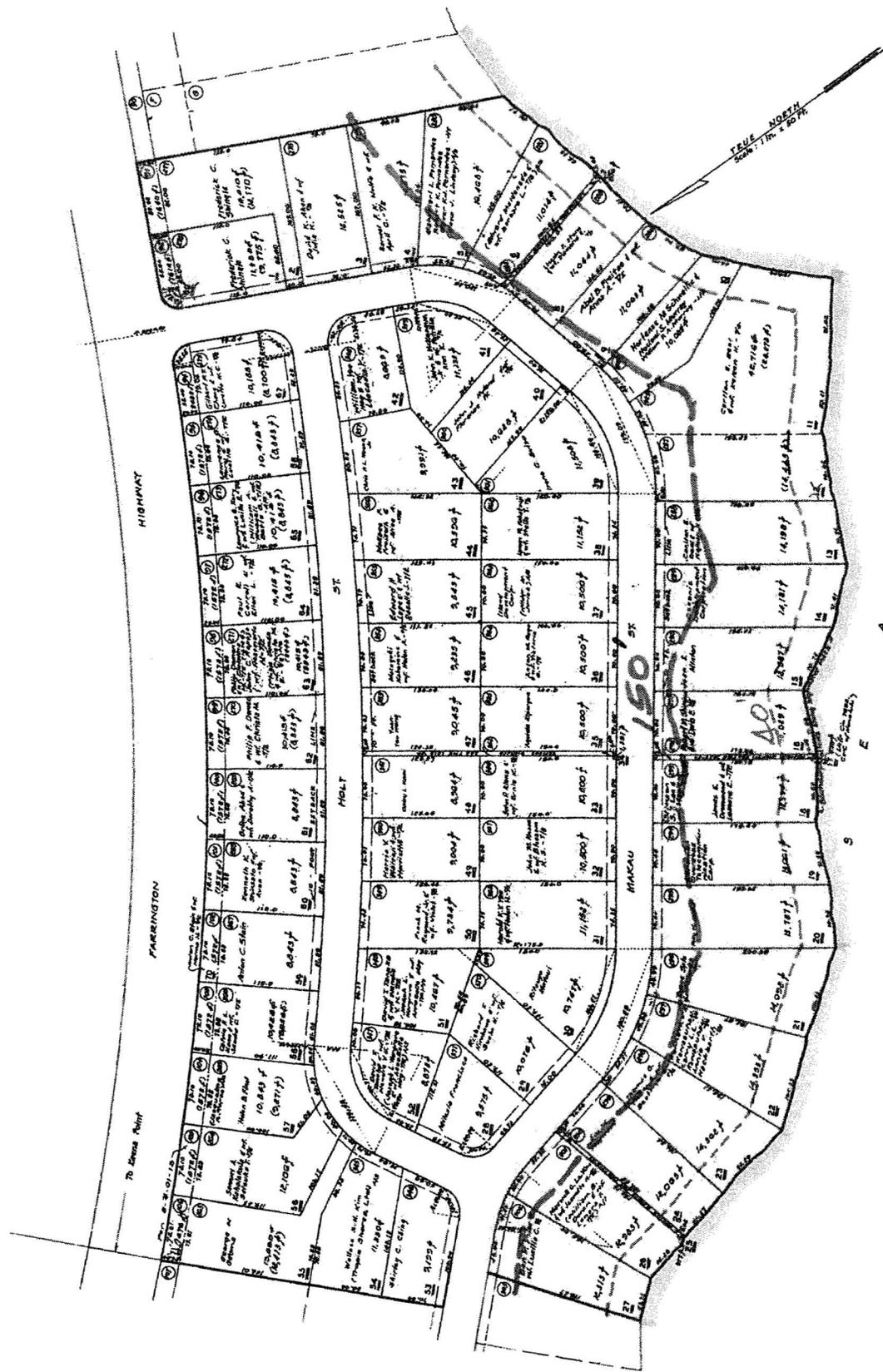
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Attachment: Shoreline Tax Map Properties





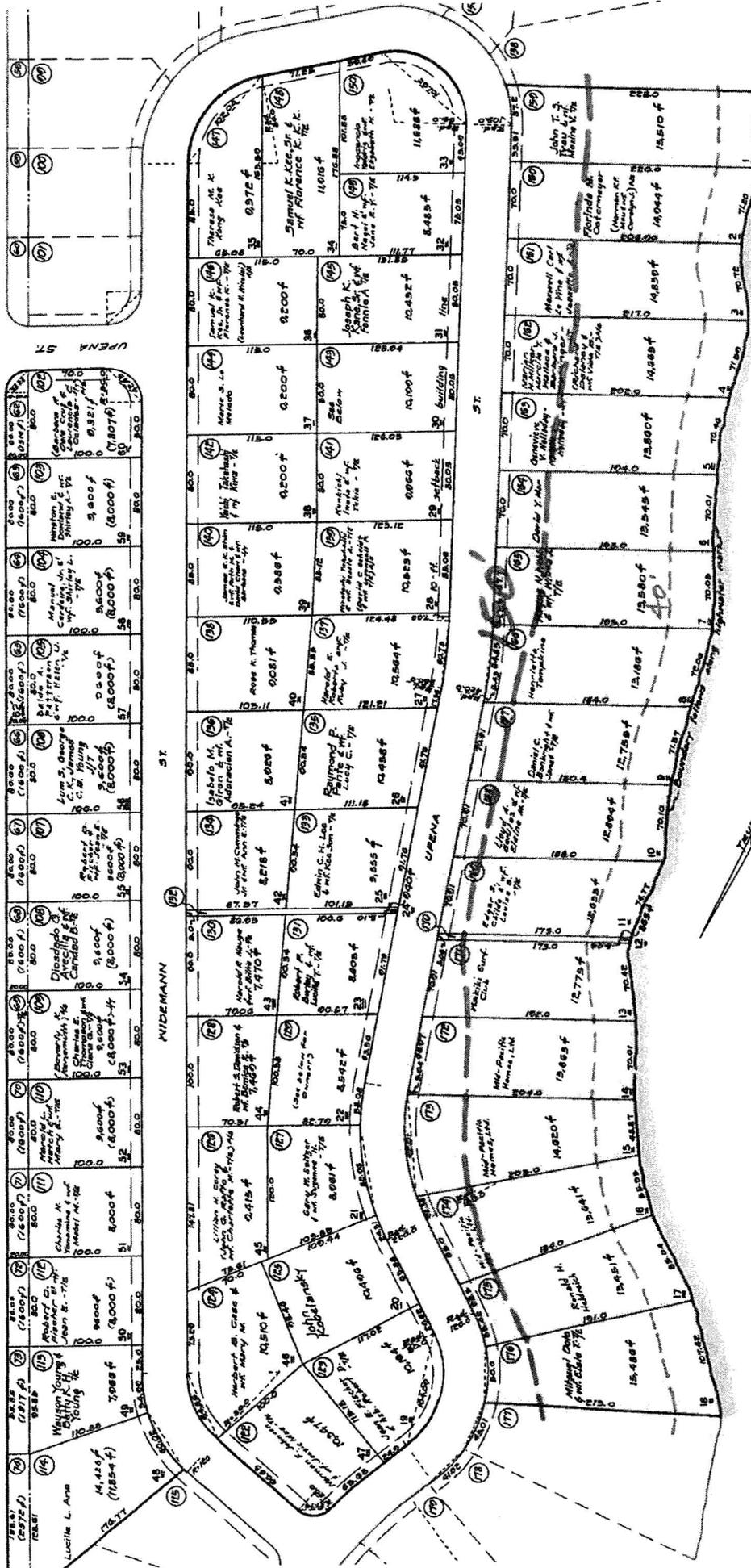
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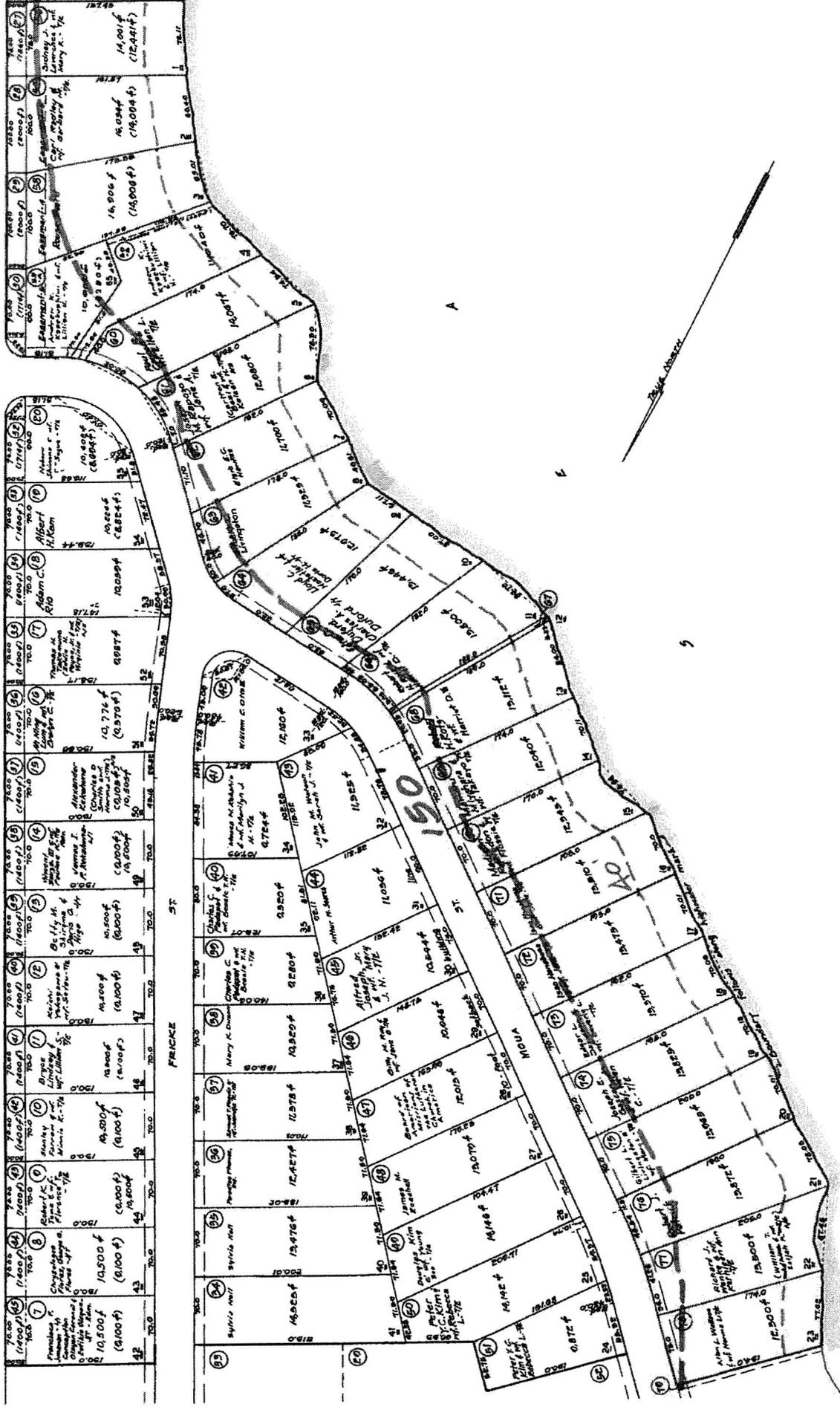
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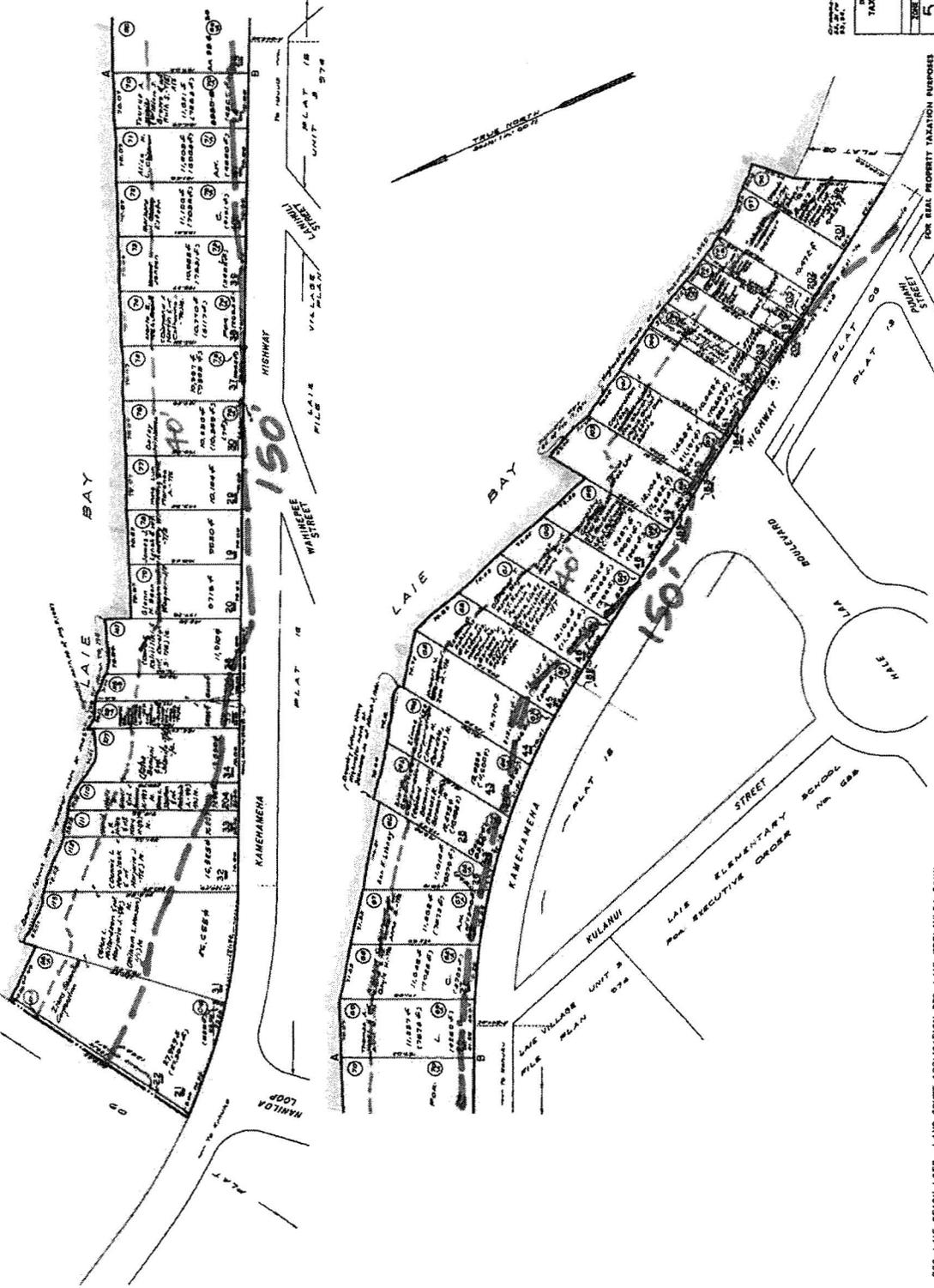
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DEPARTMENT OF TAXATION TAXATION MAPS BUREAU STATE OF HAWAII TAX MAP	5 5 03
DATE OF REVISION: 05/03/03	
SCALE: AS SHOWN ON THE MAP	
FOR REAL PROPERTY TAXATION PURPOSES SUBJECT TO CHANGE	

FOR LAIE BEACH LOTS, LAND COURT APPLICATION 772, LAIE, KOOLAUPA, OAHU.

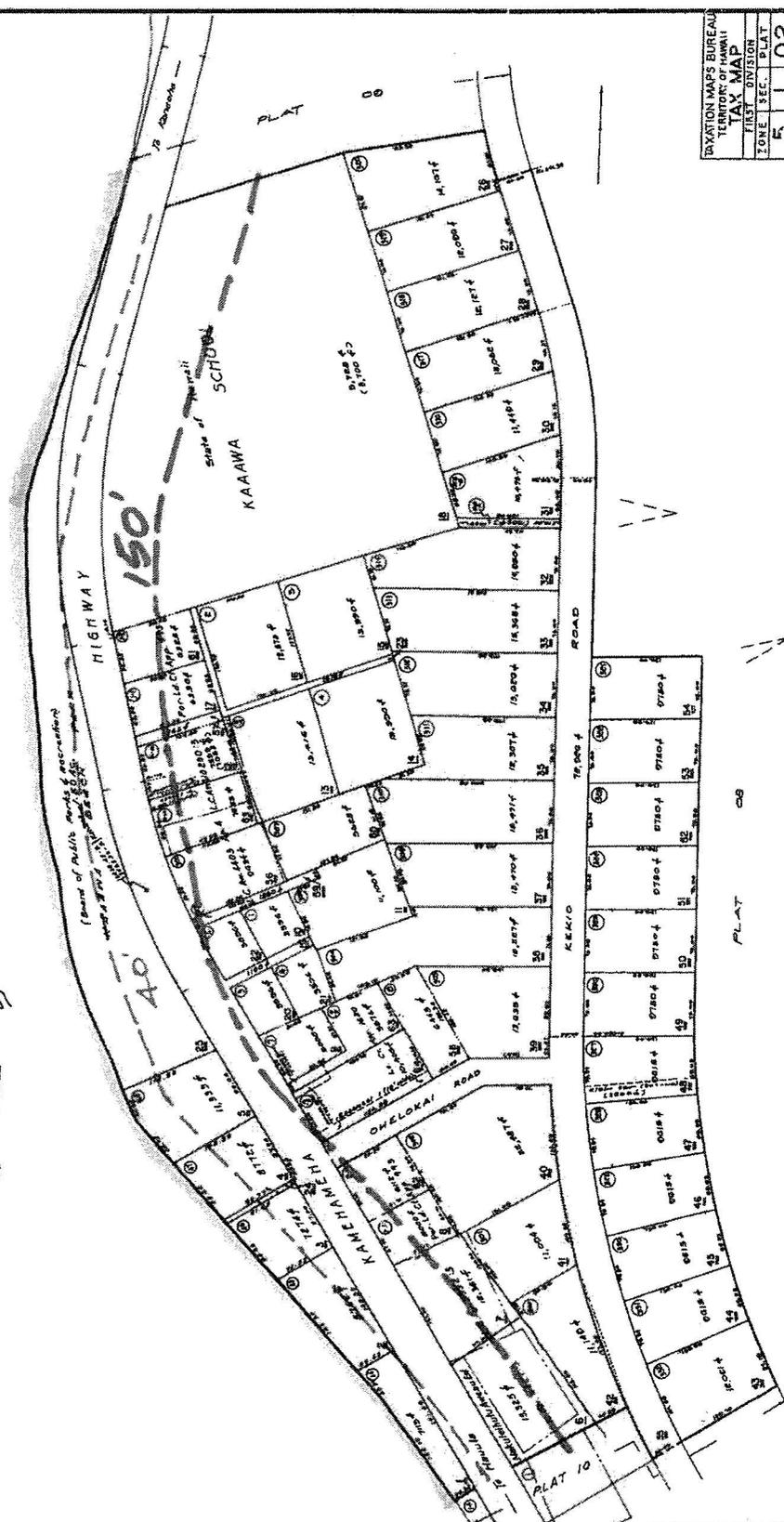
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FOR THE COUNTY OF HAWAII

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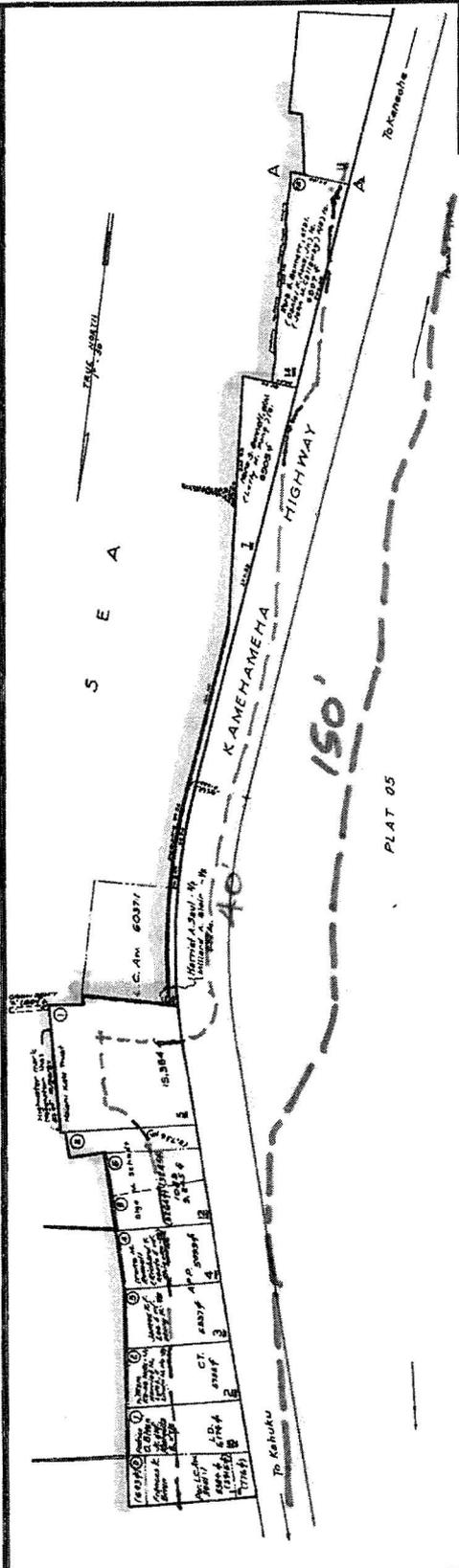
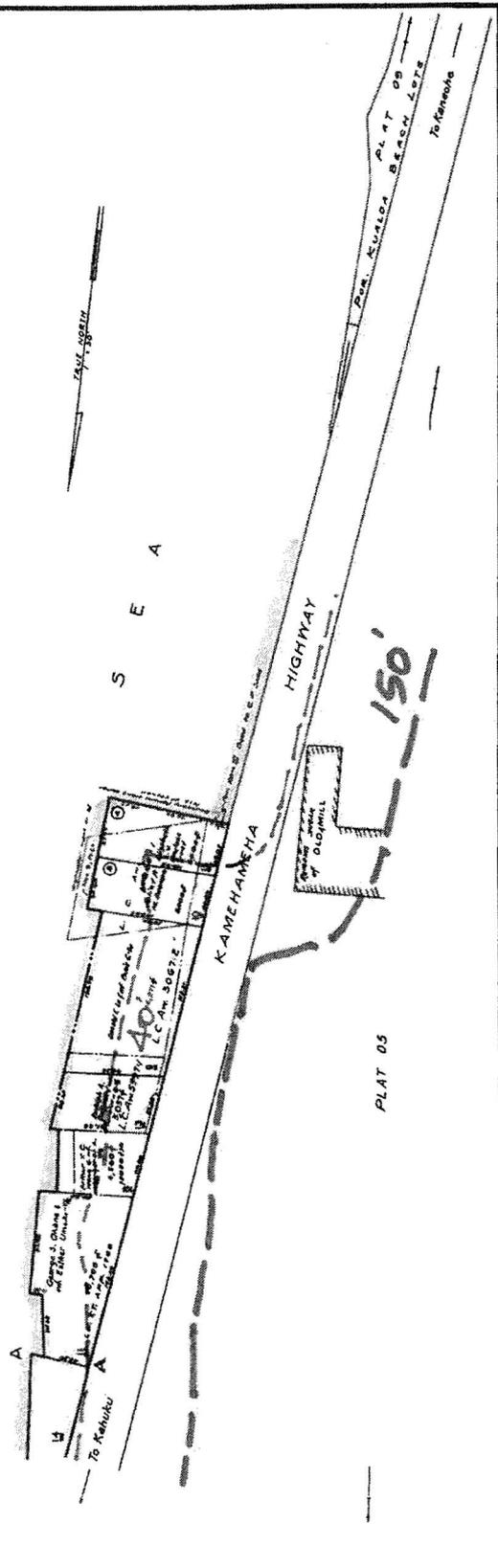


TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
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CONTAINING PARCELS			
SCALE: 1 in. = 60 ft.			

ADVANCE SHEET  
SUBJECT TO CHANGE

POR. KAAAWA BEACH LOTS, KAAAWA, KOOLAULOA, OAHU

Orig. No. 1000  
 Source: M.L.N. & L.T.R.  
 Date: 10/16/54  
 By: M.L.N. & L.T.R.  
 Date: 10/16/54



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SCALE 1 IN. = 30 FT.			

SUBJECT TO CHANGE

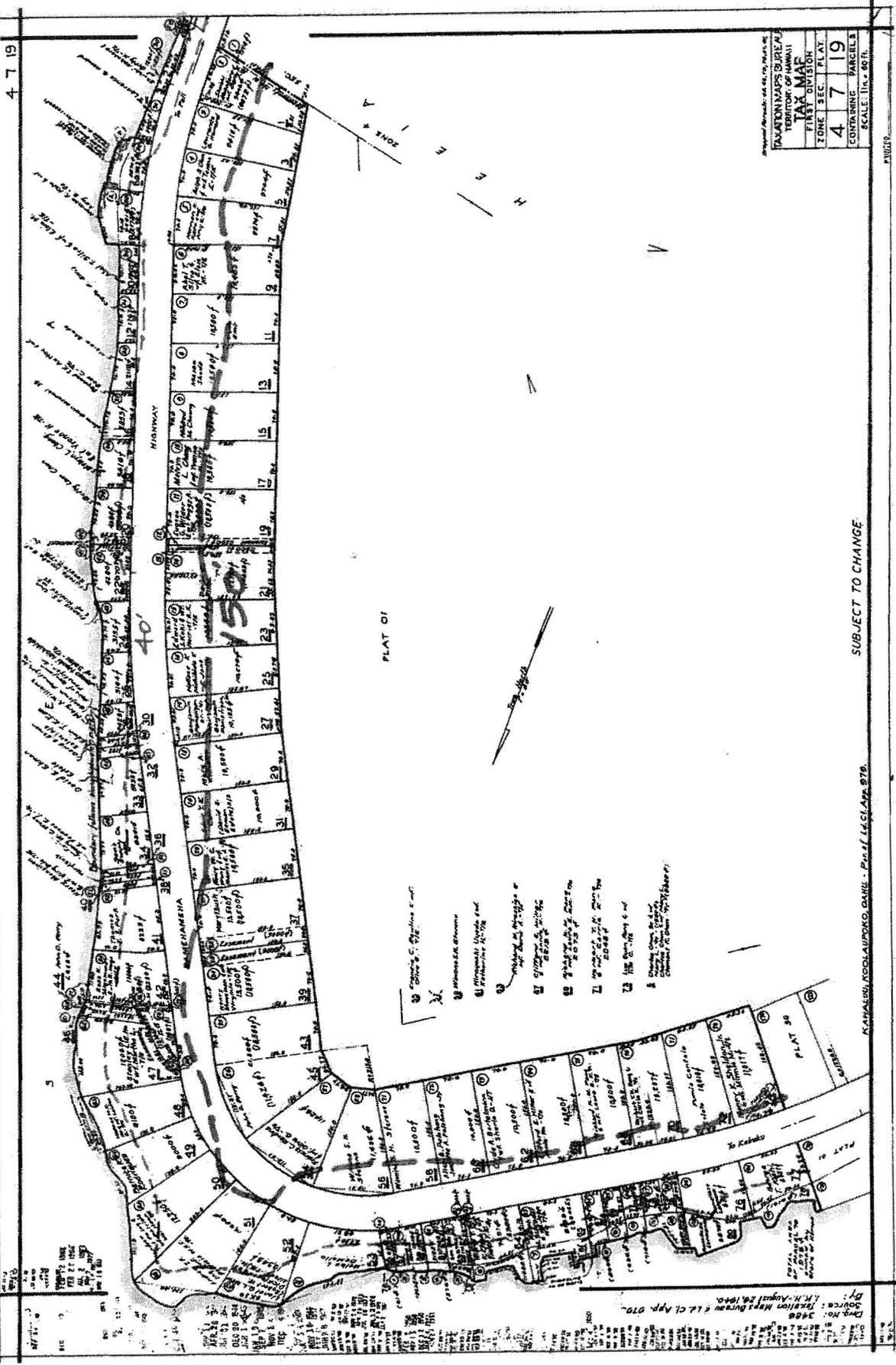
FOR KUALOA, KOOLAUPOKO, OAHU

DISTRICT ENGINEER  
 HONOLULU  
 DEPARTMENT OF PUBLIC WORKS  
 DIVISION OF HIGHWAYS  
 MAP NO. 1000  
 DATE: 1908

Orig. No. 218A  
 Source: M.H.K. & T.M.B.  
 By: H.M. P.V. Dec. 1951



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TAXATION MAPS BUREAU	
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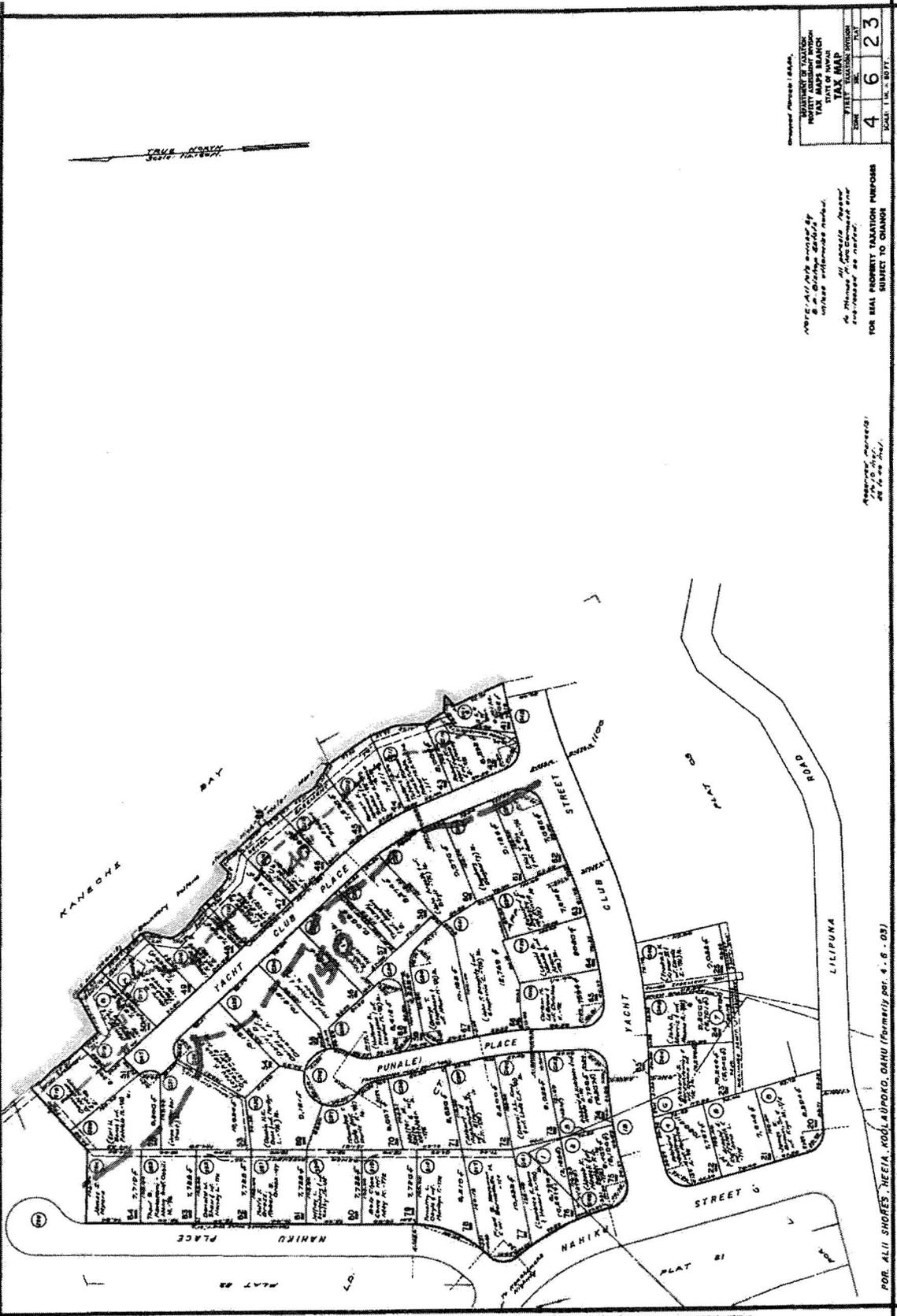
PLAT 01

SUBJECT TO CHANGE

KARAMAYEV, KOOL-AUPOKO, BANI - Plat of 14th App. 978.

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By: L. H. ...  
 Source: ...  
 Plat of 14th App. 978.



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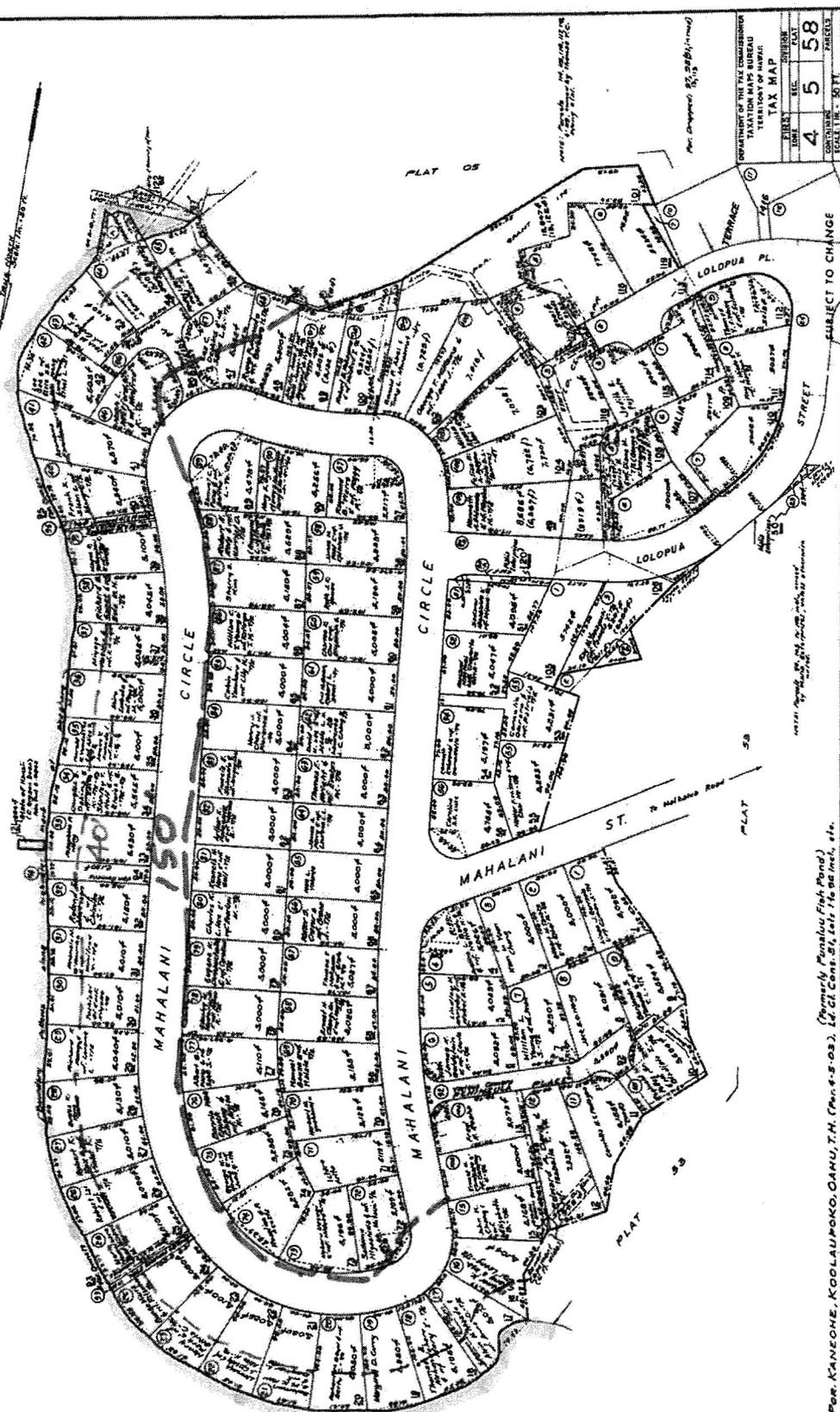
NOTE: THIS MAP WAS MADE BY  
 THE HAWAIIAN ENGINEERING  
 & SURVEYING COMPANY  
 UNDER CONTRACT TO THE  
 TERRITORY OF HAWAII  
 IN 1917. THE TERRITORY  
 HAS SINCE BEEN ACQUIRED  
 BY THE UNITED STATES  
 GOVERNMENT.  
 FOR REAL PROPERTY TAXATION PURPOSES  
 SUBJECT TO CHANGE

APPROVED AND CORRECTED  
 AT HONOLULU, HAWAII  
 THIS 14th DAY OF 1923

FOR ALI SHORES, HEAIA, KOOLAUPOKO, OAHU (FORMERLY) PAR. 4 - 6 - 03



KANEOHE BAY

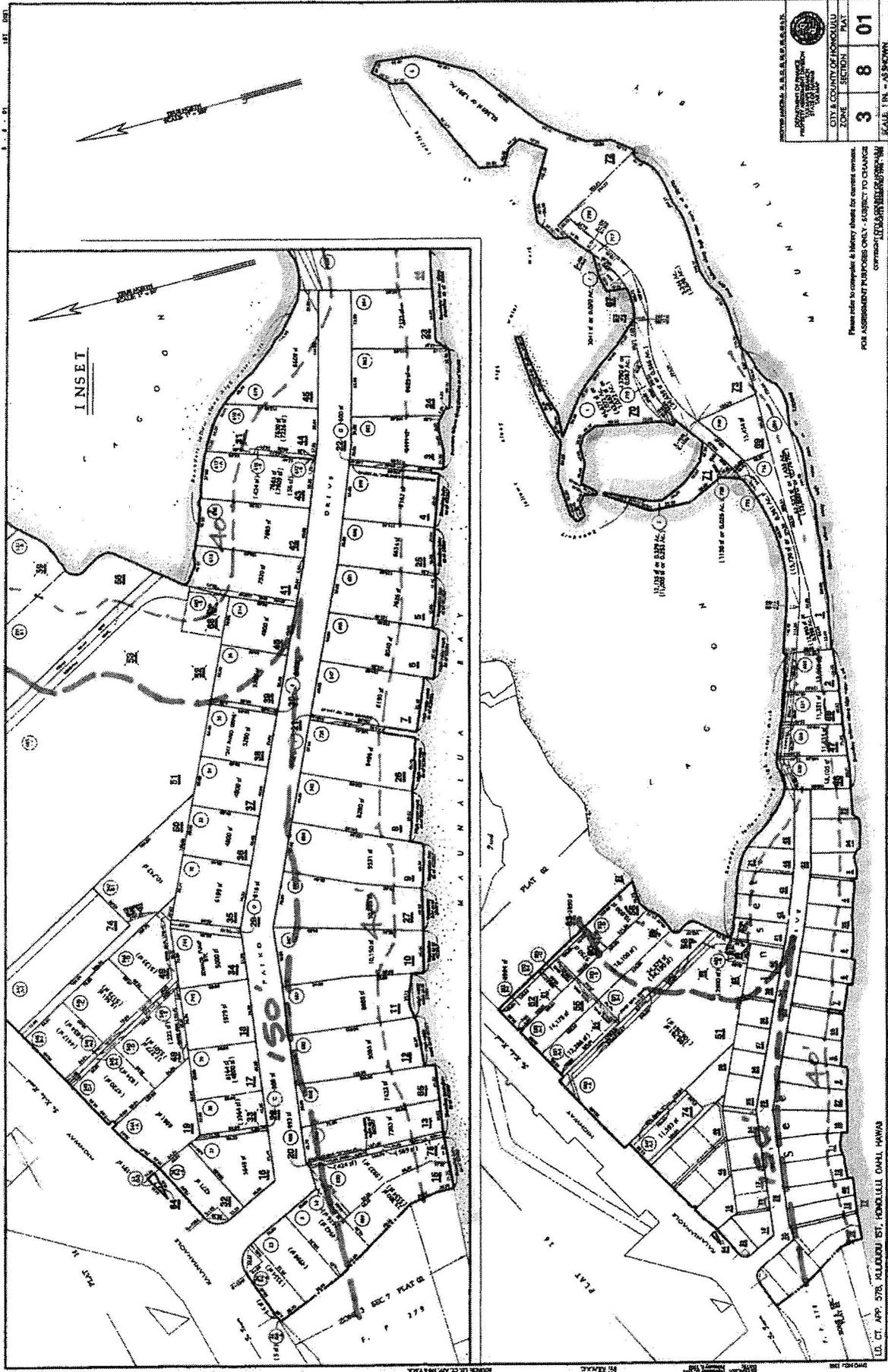


DEPARTMENT OF THE LAND AND NATURAL RESOURCES	
TERRITORY OF HAWAII	
TAX MAP	
PLAT	4 5 58
SHEET	58
SCALE 1" = 50'	

one no. 4724, Green Street, Honolulu, T.H. (No. 4-5-58).  
 source: U.S. Coast and Geodetic Survey, 1958.  
 BY: H. H. H. Date: April, 1958.  
 SECTION 57, 58 & 59, DEPT. OF THE LAND AND NATURAL RESOURCES, TERRITORY OF HAWAII.

FOR KANEOHE, KOOLAUPOKO, OAHU, T.H. (No. 4-5-58).  
 (Formerly Mahalo Fish Pond)  
 U.S. Coast and Geodetic Survey, 1958.





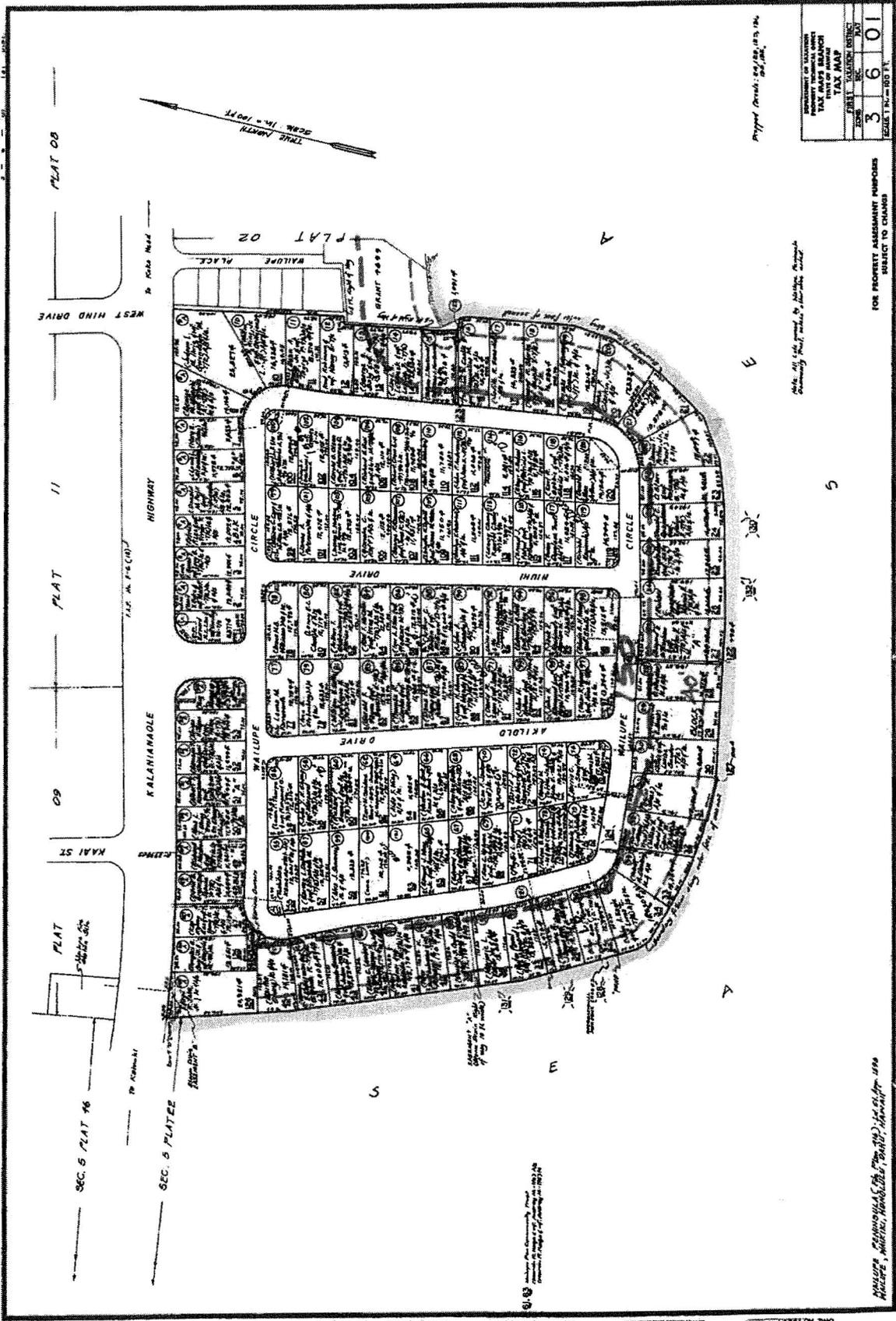
CITY & COUNTY OF HONOLULU		
ZONE	SECTION	PLAT
3	8	01
SCALE: 1" = 100' (APPROX.)		

Please refer to complete & verify sheets for correct owners.  
 FOR ASSESSMENT PURPOSES ONLY - SUBJECT TO CHANGE  
 COMMISSIONER OF LAND & NATURAL RESOURCES

U.S. CT. APP. 378, ALI DRIVE ST. HONOLULU OAHU, HAWAII

PLAT 3801, 3802, 3803, 3804, 3805, 3806, 3807, 3808, 3809, 3810, 3811, 3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 3820, 3821, 3822, 3823, 3824, 3825, 3826, 3827, 3828, 3829, 3830, 3831, 3832, 3833, 3834, 3835, 3836, 3837, 3838, 3839, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 3847, 3848, 3849, 3850, 3851, 3852, 3853, 3854, 3855, 3856, 3857, 3858, 3859, 3860, 3861, 3862, 3863, 3864, 3865, 3866, 3867, 3868, 3869, 3870, 3871, 3872, 3873, 3874, 3875, 3876, 3877, 3878, 3879, 3880, 3881, 3882, 3883, 3884, 3885, 3886, 3887, 3888, 3889, 3890, 3891, 3892, 3893, 3894, 3895, 3896, 3897, 3898, 3899, 3900, 3901, 3902, 3903, 3904, 3905, 3906, 3907, 3908, 3909, 3910, 3911, 3912, 3913, 3914, 3915, 3916, 3917, 3918, 3919, 3920, 3921, 3922, 3923, 3924, 3925, 3926, 3927, 3928, 3929, 3930, 3931, 3932, 3933, 3934, 3935, 3936, 3937, 3938, 3939, 3940, 3941, 3942, 3943, 3944, 3945, 3946, 3947, 3948, 3949, 3950, 3951, 3952, 3953, 3954, 3955, 3956, 3957, 3958, 3959, 3960, 3961, 3962, 3963, 3964, 3965, 3966, 3967, 3968, 3969, 3970, 3971, 3972, 3973, 3974, 3975, 3976, 3977, 3978, 3979, 3980, 3981, 3982, 3983, 3984, 3985, 3986, 3987, 3988, 3989, 3990, 3991, 3992, 3993, 3994, 3995, 3996, 3997, 3998, 3999, 4000





DEPARTMENT OF LAND AND NATURAL RESOURCES  
 STATE OF HAWAII  
 TAX MAPS DIVISION

SECTION	3
SUBSECTION	6
LOT	01

SCALE 1" = 100 FT.

FOR PROPERTY ASSESSMENT PURPOSES  
 SUBJECT TO CHANGE

THIS MAP IS THE PROPERTY OF THE STATE OF HAWAII AND IS LOANED TO YOU FOR YOUR INFORMATION ONLY. IT IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

5

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11

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PLAT 08

WEST HIND DRIVE

PLAT 11

09

PLAT

SEC. 5 PLAT 16

SEC. 5 PLAT 17

KALANIANAʻOLE HIGHWAY

112 W. P.S. (D)

CIRCLE

PLAT 02

ROAD NAME

TRUE NORTH  
 DEAN 14-100 FT

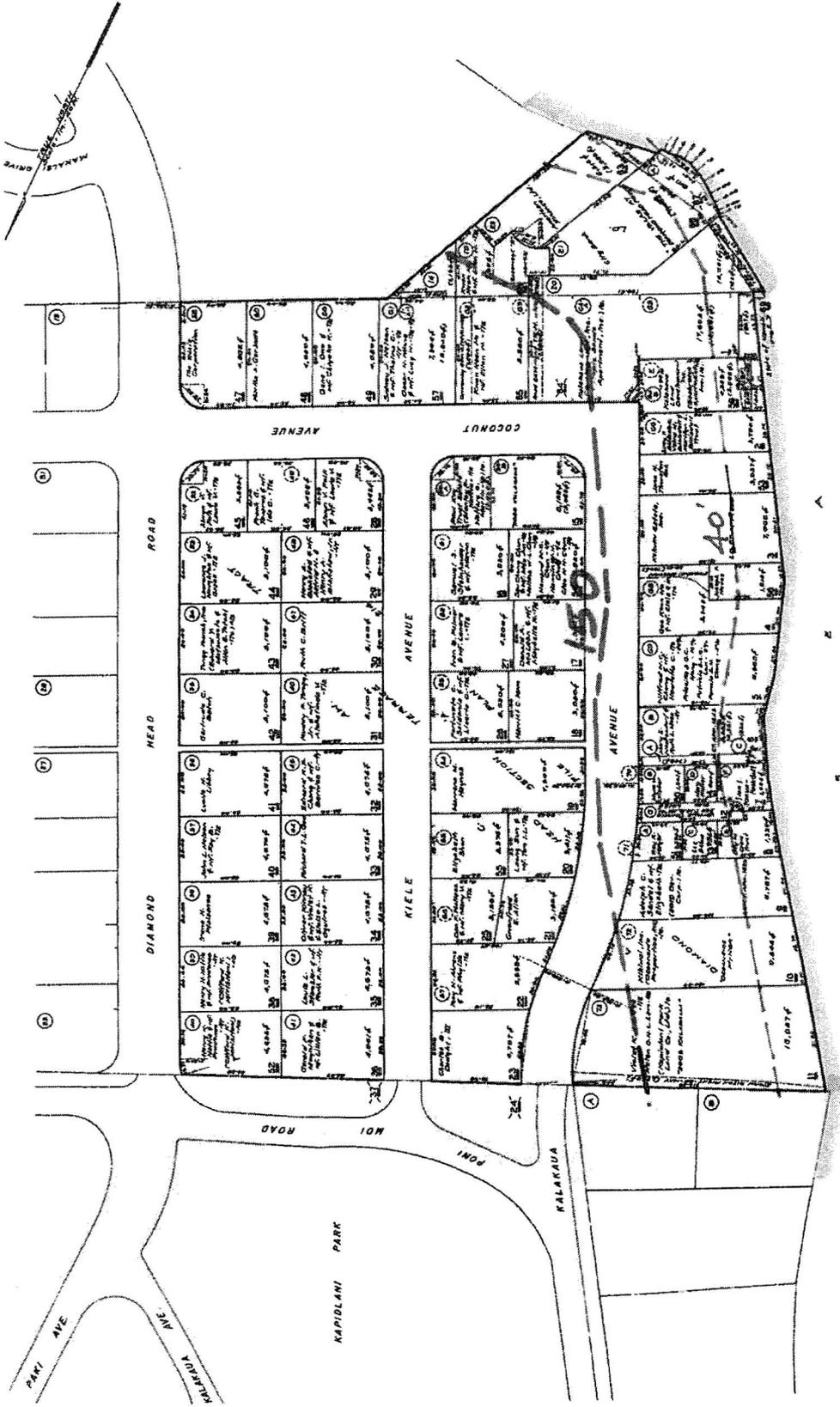
Project Number: 201/02/01/01/01

PREPARED BY: [Name]  
 DATE: [Date]

DATE: 01/17/2017

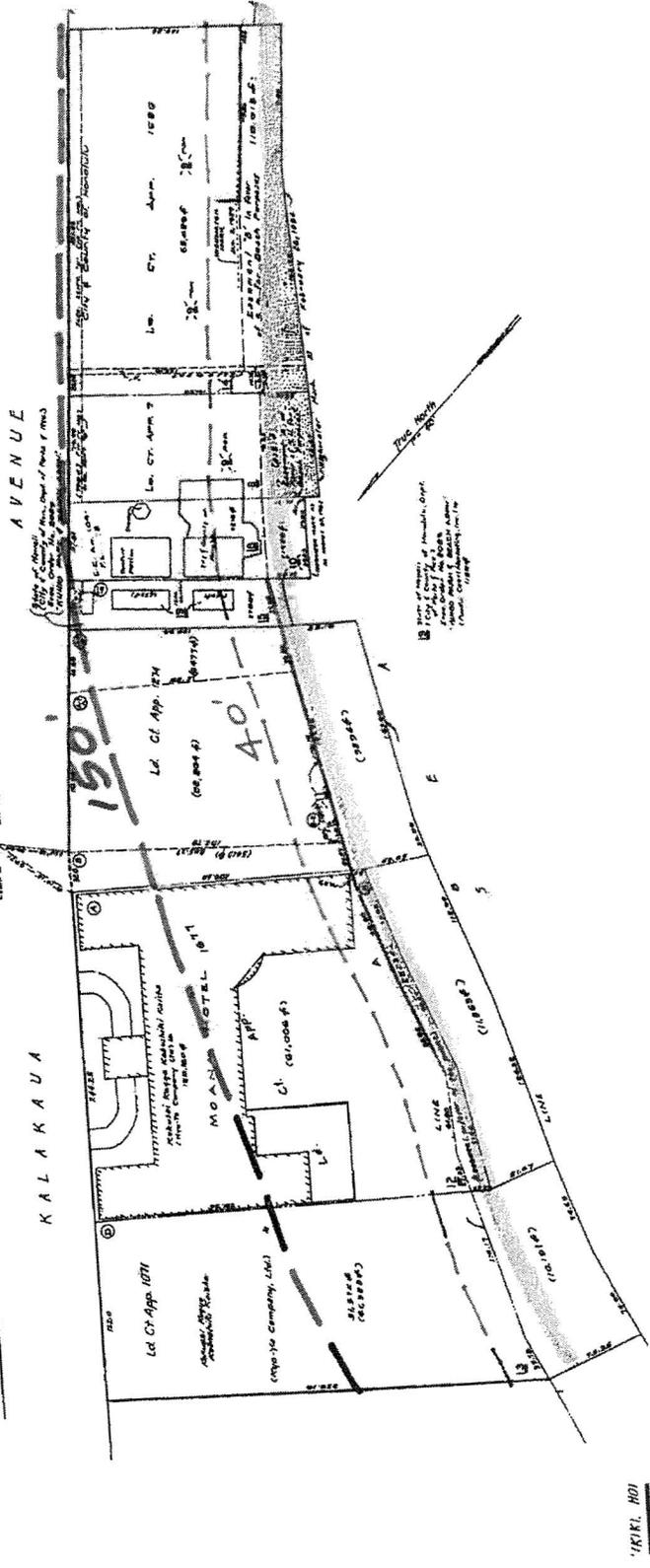
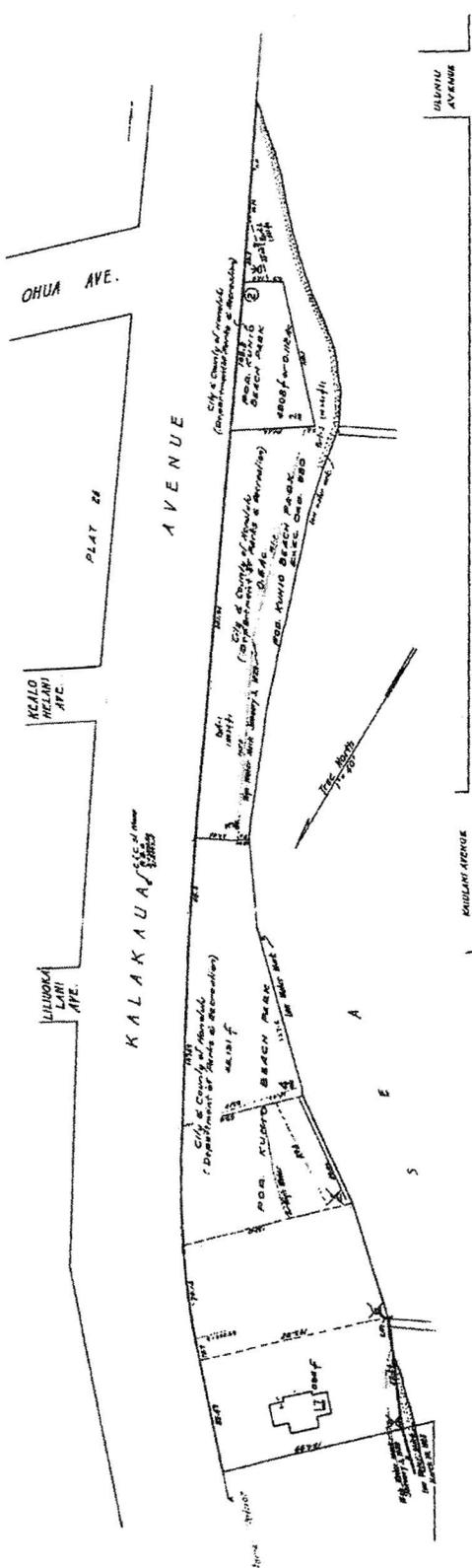
BY: [Name]

PROJECT: [Name]



3-1-33





'IKIRI, HOI

William P. Kenoi  
Mayor



Lincoln S.T. Ashida  
Corporation Counsel

Katherine A. Garson  
Assistant Corporation  
Counsel

**COUNTY OF HAWAII**  
**OFFICE OF THE CORPORATION COUNSEL**

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

January 30, 2009

The Honorable Ken Ito, Chair,  
and Members  
Committee on Water, Land and Ocean Resources  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

Dear Chair Ito and Members of the Committee:

*Re: Testimony in Support of House Bill No. 570*  
*Hearing: Monday, February 2, 2009, at 9:00 a.m.*  
*Conference Room 325*

The purpose of House Bill 570 is to require, among other matters, certain agencies to account for sea-level rise and minimize risk from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis.

We generally support House Bill 570, but would like clarifications or revisions on the following points:

- P. 2, line 1 – requires “street” parking, but many of our public access areas are not close to streets so the parking is off dirt roads etc. So we would take out the word “street.”
- P. 5, line 1 – we need definitions of “repair” and “replacement.”
- P. 7, lines 15 and 16 – should say “...where desirable, create, improve and restore...”
- P. 14, line 13 – need a definition of “reconstruction”, and clarification as to what size of demolition constitutes “development” versus exempt from “development” in P. 15, line 9.
- P. 14, line 18 – need a definition of “larger development.”
- P. 16, line 18 – need guidelines explaining what constitutes “cumulative impact.”
- P. 19, line 2 – what does the change from “substantial” to “significant” mean in terms of criteria for decision-making, and what is the definition of “significant.”

The Honorable Ken Ito, Chair  
and Members  
Committee on Water, Land and Ocean Resources  
January 30, 2009  
Page 2

- P. 20, line 6 – should say “...access to and along the shoreline...”
- P. 21, line 1 – should say “...from the state or county highway...”
- P. 24, lines 9-11 – we are the only county which hasn't established this erosion rate, partially because it is cost prohibitive with the size of our island, so if this is going to be a requirement, then some sort of provision must be made for the state to pay (or at least help) for the erosion rate study for Hawai'i island.

Thank you for your consideration of our testimony.

Sincerely,



JOSEPH K. KAMELAMELA  
Deputy Corporation Counsel,  
Litigation Supervisor  
County of Hawai'i

JKK:fc

c via email only: Kevin Dayton, Executive Assistant  
Warren Lee, Director of Public Works  
Robert A. Fitzgerald, Director of Parks and Recreation  
Bobby Jean Leithead-Todd, Deputy Director of Environmental  
Management  
Daryn Arai, Acting Planning Director .



# Sierra Club

## Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 hawaii.chapter@sierraclub.org

### HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

February 2, 2009, 9:00 A.M.

(Testimony is 3 pages long)

### TESTIMONY IN SUPPORT OF HB 570 WITH AMENDMENTS

Chairs Ito and members of the committee:

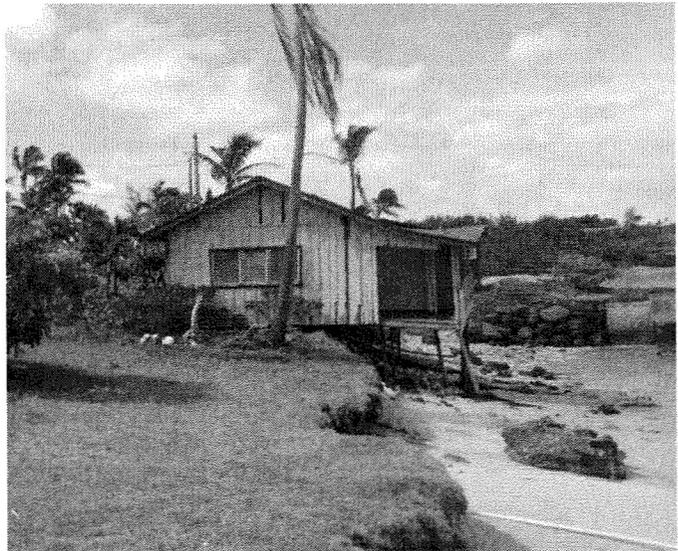
The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports HB 570, increasing the protection of Hawaii's coastlines from climate change and erosion, but we suggest some amendments. We suggest HB 570 be amended to require counties to adopt shoreline setbacks that are equal to at least 100 times the annual erosion rate plus 40 feet and to disallow seawalls unless an overwhelming public purpose is being served by their creation.

Our current statewide setback—minimum of 20 feet—is dated and dangerous. Given the rapidly expanding information base of coastal processes in the state, plus new knowledge pertaining to global warming and the impacts of sea level rise on Hawaii's coasts, we believe the legislature should greatly increase the minimum shoreline setback for new coastal developments statewide and require the counties to adopt a parcel-by-parcel setback formula that is based on the historical erosion rate of that particular area. Sometimes "one-size" doesn't fit all.

#### Managed Retreat

Given the realities of sea level rise caused by global climate change and the accompanying loss of shoreline-protecting coral reef, a policy of "managed retreat" makes the most sense to protect private property, taxpayers, and public shoreline. Setting a significant setback from the shoreline for new construction or redevelopments is the best managed retreat strategy for Hawai'i.

The threat of rising sea level is not speculative. The recent acceleration of melting in Greenland, other arctic areas, and Antarctica has shocked climatologists globally. In 2007 the Arctic ice cap melted to half what it was just four years ago. According to the United Nations, data from the world's largest glaciers in nine mountain ranges indicate that between the years 2004-2005 and 2005-2006 the average rate of melting and thinning more than doubled. *Nature Geoscience* reported in January of 2008



that sea levels may rise five feet or more this century. Rising sea level and its related impacts will literally change the landscape of Hawai'i as we know it. We will have to redraw the map of our islands.

### **Significant Shoreline Setback not without Precedent**

Setting a significant shoreline setback is not without precedent. The County of Kaua'i recently adopted an ordinance for shoreline setback that is the strongest in the state (and likely the nation). The new law requires dwellings to be set back 70 times the erosion times the annual coastal erosion rate plus 40 feet. This aims to protect coastal structures against 70 - 100 years of erosion. Pushing buildings back from eroding waterlines, the law says, is critical to the protection of life and property, the mitigation of coastal hazards, and the preservation of coastal resources.

International examples of managed retreat and related measures as adaptation to sea-level rise include the following:

- **Aruba and Antigua:** Setback established at 50 m (~164 feet) inland from high-water mark.
- **Barbados:** A national statute establishes a minimum building setback along sandy coasts of 30 m (~100 feet) from mean high-water mark; along coastal cliffs the setback is 10 m (~33 feet) from the undercut portion of the cliff.
- **Sri Lanka:** Setback areas and *no-build zones* identified in Coastal Zone Management Plan. Minimum setbacks of 60 m (~200 feet) from line of mean sea level are regarded as good planning practice.
- **Australia:** Several states have coastal setback and minimum elevation policies, including those to accommodate potential sea-level rise and storm surge. In South Australia, setbacks take into account the 100-year erosional trend plus the effect of a 0.3-m sea-level rise to 2050. Building sites should be above storm-surge flood level for the 100-year return interval.

Other US coastal states have taken a protective approach to shoreline setback as well.

In Maine, where local officials can determine such setback requirements, 75 ft. is the minimum; however, that's not necessarily adequate in all cases. In 1995, for example, the top edge of a bluff shoreline moved inland about 200 ft. in just a few hours, destroying two homes and leaving two others in jeopardy.

In North Carolina, the setback is measured landward from the line of stable natural vegetation nearest the sea, usually near the base of the frontal dune system. All single-family homes and buildings of 5,000 square feet or smaller, as well as their septic systems, must be located 30 times the historical, long-term erosion rate from this line with a minimum setback of 60 ft. For larger buildings, the minimum setback is 120 ft.

Rhode Island rules also require a setback equal to 30 times the annual erosion rate for residential structures. Theoretically, that would allow a homeowner 30 years before a house would be threatened—or enough time to pay off the mortgage. The setback for commercial property is 60 times the annual erosion rate.

Ultimately, HB 570 would prevent inappropriate construction too close to the shoreline. When dwellings and buildings are built too close to the shore, beach-destroying seawalls are often requested when erosion threatens to undermine the structures.

### Suggested Amendments

The Sierra Club respectfully asks that HB 570 be amended in the following ways.

First, we believe that in addition to the 40-foot minimum setback, the counties should be required to adopt ordinances that establish an additional setback that is based on the annual erosion rate. It should not be optional. Maui and Kaua'i have already adopted such ordinances. The state should direct all the counties to adopt such parcel-by-parcel erosion rates by a certain date (perhaps January 1, 2010). Page 24, lines 9 – 11 should be amended as follows:

**(a) The several counties through rules adopted pursuant to chapter 91 or ordinance ~~may~~ shall require that shoreline setback lines be established at...**

Second, the Sierra Club believes that the erosion rate-based standard should be set at 100 times the annual erosion rate. This formula would better account for accelerating erosion and sea level rise, as the annual erosion rate today is likely less than what it will be 10 or 20 years hence. Page 24, lines 9 – 11 should read:

**...a distance not less than the average annual erosion rate based on a ~~fifty-year~~ one hundred-year projection, in addition to the minimum distance established in section 205A-43.**

Third, the Sierra Club believes a variance to permit private facilities or improvements should **not** adversely affect beach processes, nor artificially fix the shoreline. Given the overall context and intent of the proposed changes, we suspect the omission of the language below was in error? Page 26, lines 7 – 9 should read (without any omission):

**Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; . . . .**

Finally, we believe that private structures that permanently fix the shoreline (i.e. seawalls) should not be allowed except by variance and only when an overwhelming public interest is served. Given rising sea levels and increased erosion, policymakers and planners will have to start making extremely tough choices regarding protection of private structures, shoreline, and Hawaii's beaches. Allowing seawalls simply because a homeowner will experience "hardship"—however defined through rulemaking—will likely result in more and more of Hawaii's shoreline being hardened by seawalls and the beaches gone. This is not a preferred future, either for residents, visitors, or the environment. Therefore, the language on page 26, paragraph 9, should be amended as follows:

**(9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority also finds that ~~shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area~~ such facilities or improvements are clearly in the public interest, the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless ~~it is~~ also clearly in the public interest, and provided further that any structure or improvement does not limit or severely reduce public access or public shoreline use.**

Thank you for the opportunity to testify.

[REDACTED]

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 30, 2009 12:50 PM  
**To:** WLOtestimony  
**Cc:** [REDACTED]  
**Subject:** Testimony for HB570 on 2/2/2009 9:00:00 AM

Testimony for WLO 2/2/2009 9:00:00 AM HB570

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: James Coon  
Organization: Individual  
Address: [REDACTED]  
Phone: [REDACTED]  
E-mail: [REDACTED]  
Submitted on: 1/30/2009

**Comments:**

I am a charter member of MACZAC and while I cannot speak for the group I am well acquainted with the merits of this bill. This is an important step in long range planning for sea level rise. Please pass this bill.