

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

February 9, 2018

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 18HD-008

HAWAII

Issuance of Direct Lease of Submerged Lands to the Trustees of the Estate of Bernice Pauahi Bishop for Cultural and Historical Site Preservation Purposes, Kahalu'u, North Kona, Island of Hawai'i, Tax Map Keys: (3) 7-8-013:seaward of 002 and 043.

APPLICANT:

Trustees of the Estate of Bernice Pauahi Bishop

LEGAL REFERENCE:

Sections 171-43.1 and 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government submerged lands situate at Kahalu'u, North Kona, Island of Hawai'i, seaward of Tax Map Keys: (3) 7-8-013:002 & 043, as shown on the attached map labeled **Exhibit A**.

AREA:

3.992 acres, more or less.

ZONING:

State Land Use District:      Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_ NO  
\_\_\_\_ x \_\_\_\_

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Cultural and historical site preservation purposes.

LEASE TERM:

Sixty-five (65) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment ("EA") for the subject project was published in the OEQC's Environmental Notice on June 23, 2015 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>x</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u>  </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Obtain legislative approval pursuant to Section 171-53, HRS.

REMARKS:

Applicant Trustees of the Estate of Bernice Pauahi Bishop, through its trade name Kamehameha Schools ("KS") is requesting approval from the Board of a direct lease of

submerged lands seaward of the parcel identified as Tax Map Keys (3) 7-8-013:002 & 043 (“Property”). The Property served as the site of the now defunct Kona Lagoon Hotel and the Keauhou Beach Resort. KS now seeks to use the Property as the site of the Kahalu‘u Ma Kai Educational and Cultural Complex (“Project”). KS states that the Project is consistent with their mission of providing high quality educational experiences for Native Hawaiian children and families in collaboration with community stakeholders, and that it will be the center of their educational offerings in the West Hawai‘i region. The project will include the construction of Heritage Center, multi-purpose building, halau, comfort station, storage buildings, and several hale for camping, canoe making and ki‘i carving activities. Additionally, the Project seeks to include the restoration and interpretive management of several sacred heiau and the Pā o Ka Menehune Fishpond, which are the subject of this lease request.

On May 24, 2013 KS submitted an application for shoreline certification for the Property. The purpose of the certified shoreline was for KS to obtain a Special Management Area (“SMA”) permit from the County of Hawaii for the demolition of the remaining hotel structures and construction of the Project. A site inspection was conducted on July 9, 2013 by the State Surveyor and Department staff. As a result of the site inspection, the shoreline was located further mauka than proposed by KS, resulting in portions of the hotel structures encroaching on State submerged lands. At the time, KS did not take any action to submit revised shoreline maps or to resolve the encroachments, and the shoreline application was rejected.

After the rejection of the shoreline, KS approached Land Division staff to discuss the shoreline and encroachment issues. The first issue was that KS did not concur with the location of the shoreline as located by State Surveyor. Ultimately, KS sought and received a waiver for the certified shoreline from the County of Hawaii Planning Department, provided that the shoreline as located by the State Surveyor would be used to determine setbacks for the project and serve as the jurisdictional boundary between the County and State. The County of Hawaii Leeward Planning Commission (“Commission”) approved KS’ SMA Use Permit Application on November 2, 2015. Despite obtaining regulatory approval, KS raised concerns over the State’s ownership of the submerged lands situated between the shoreline and the record boundary of the property, and the potential impacts it would pose on the project.

KS asserts that the Project site is the location of the Pā O Ka Menehune fishpond, and therefore the lands within the fishpond, even though submerged, remain private. While the Department concurs with that position generally, the Department cannot confirm the existence of a fishpond at the Property, as no evidence of a fishpond was observed on the site inspection. Therefore, the Department takes the position that the submerged lands are public, unless sufficient evidence to the contrary is provided. However, in order to work collaboratively rather than in conflict, the Department and KS have “agreed to disagree” on the ownership of the submerged lands, and instead request that the Board approve a direct lease of submerged lands situated between the shoreline and the record boundary of the Property.

KS notes that a direct lease, rather than a non-exclusive easement, is necessary to achieve the goals of the Project. Most importantly, there are two heiau (Ke‘euku Heiau/Hale O Papa,



SIHP 03818 & Hapaiali'i Heiau, SIHP 03817) located on the submerged land area, and KS states that having the ability to control and limit public access to the area is essential in order to successfully manage and restore the heiau. In addition to the two heiau, KS has also identified a "probable burial area" located at a sand dune that would be included in the proposed lease area. KS notes that the lease will be for the preservation and management of these historic archaeological sites, and no commercial activity or development shall occur in the proposed lease area. KS will remove encroachments from the lease area related to the old hotels.

Although public access along the shoreline area is integral to the Department's mission, so is the protection of Native Hawaiian cultural and historical resources. This instance serves as a balancing of those two key interests, and in order to mitigate the impacts to shoreline access, KS has proposed a "managed public access" that would allow the public to access to submerged land area that does not encroach onto the cultural and historical resource areas. A map describing the managed public access plan is attached as **Exhibit B**. The public will continue to have access to the beach area on the southern portion of the property. To facilitate public access KS will construct a mauka to makai public access corridor to the shoreline area from a 10 stall parking lot as part of the Project. The parking lot and access would be open to the public every day during daylight hours. KS will also provide limited after-hours access for fishermen to the beach area. Additionally, as noted in the Commission's findings as part of the SMA approval, the final public access plan is subject to the approval by the County Planning Director.

In order to acknowledge the issues previously discussed, KS has requested that additional terms be incorporated into the lease:

- 1) KS and the Department will agree to the shoreline as located by the State Surveyor as a regulatory line to determine shoreline uses and setbacks, with each party reserving its rights, claims and defenses. Additionally KS requests that no certified shoreline for the Property be processed unless agreed to by the parties through an amendment of the lease;
- 2) KS and the Department "agree to disagree" on the ownership of the submerged lands which are subject to the lease area, with each party reserving their respective rights, duties and obligations; and
- 3) Pursuant to KS' commitment to provide public access to and along the shoreline in accordance with the requirements of the SMA approval, KS and the Department will favorably recommend that the Planning Director approve the Managed Public Access Plan, including access to and along the shoreline.

Given the unique circumstances surrounding this lease, staff is generally amenable to KS' request. Staff notes that the terms requested by KS will not obligate the State to compromise its position on the ownership of submerged lands. Additionally, the Department can support the County's approval of the Managed Public Access Plan provided the Board approves the lease for that purpose. However, as the final lease document will be subject to review by the Attorney General, staff recommends that the Board delegate to the Chairperson, as advised by the Attorney General, the authority to negotiate the specific terms and conditions with KS. Finally,

given the issues regarding the ownership of the submerged lands and the proposed use, staff recommends that the lease be issued at gratis. KS is a tax exempt 501(c)(3) organization, and qualifies for a direct lease at nominal consideration.

RECOMMENDATION: That the Board:

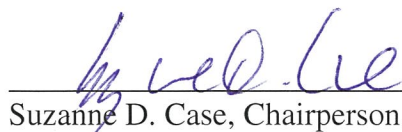
1. Find that the public interest demands the issuance of this direct lease to the Trustees of the Estate of Bernice Pauahi Bishop for cultural and historical site preservation purposes.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the Trustees for the Estate of Bernice Pauahi Bishop covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current lease document form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



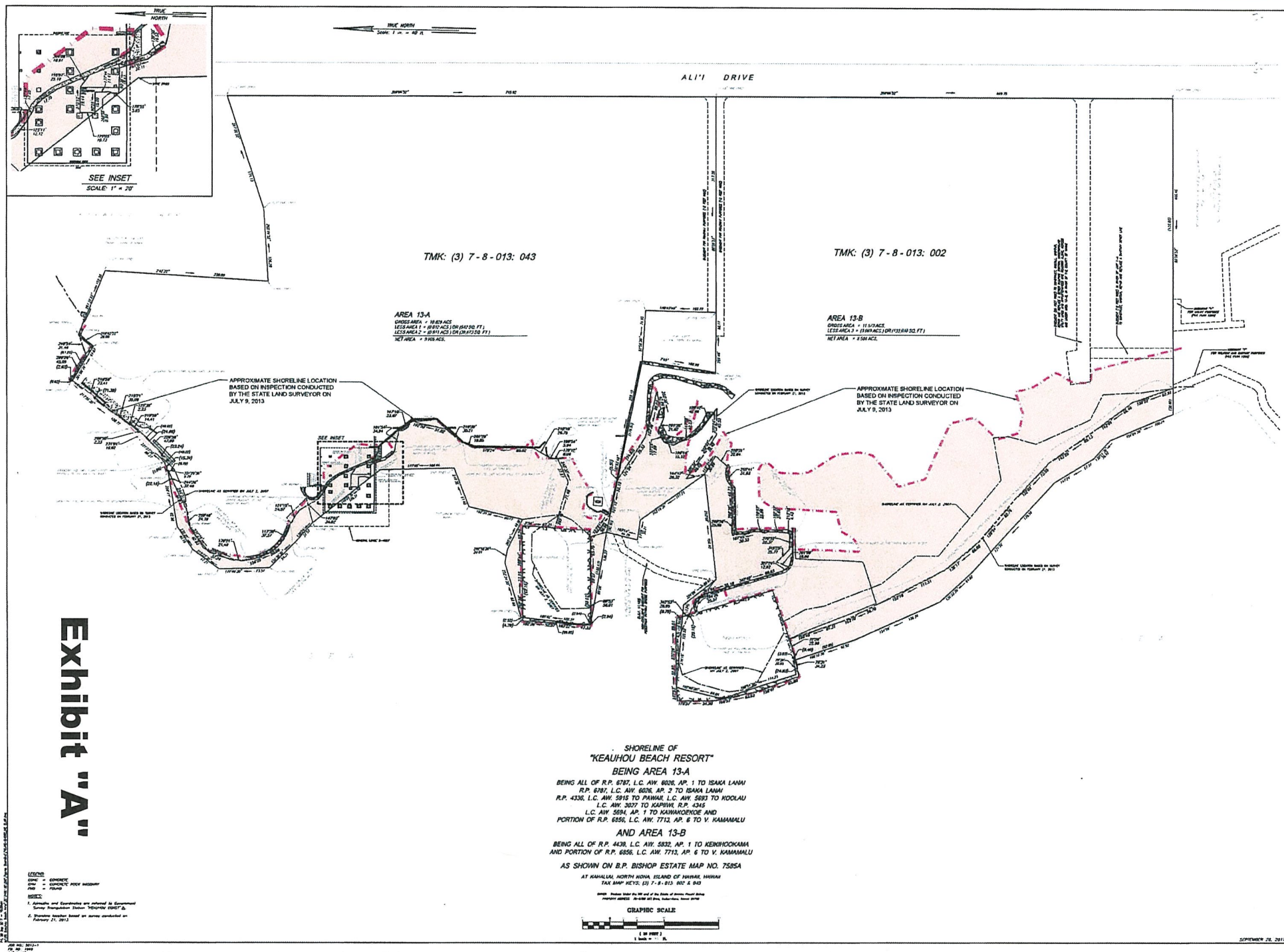
Ian Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

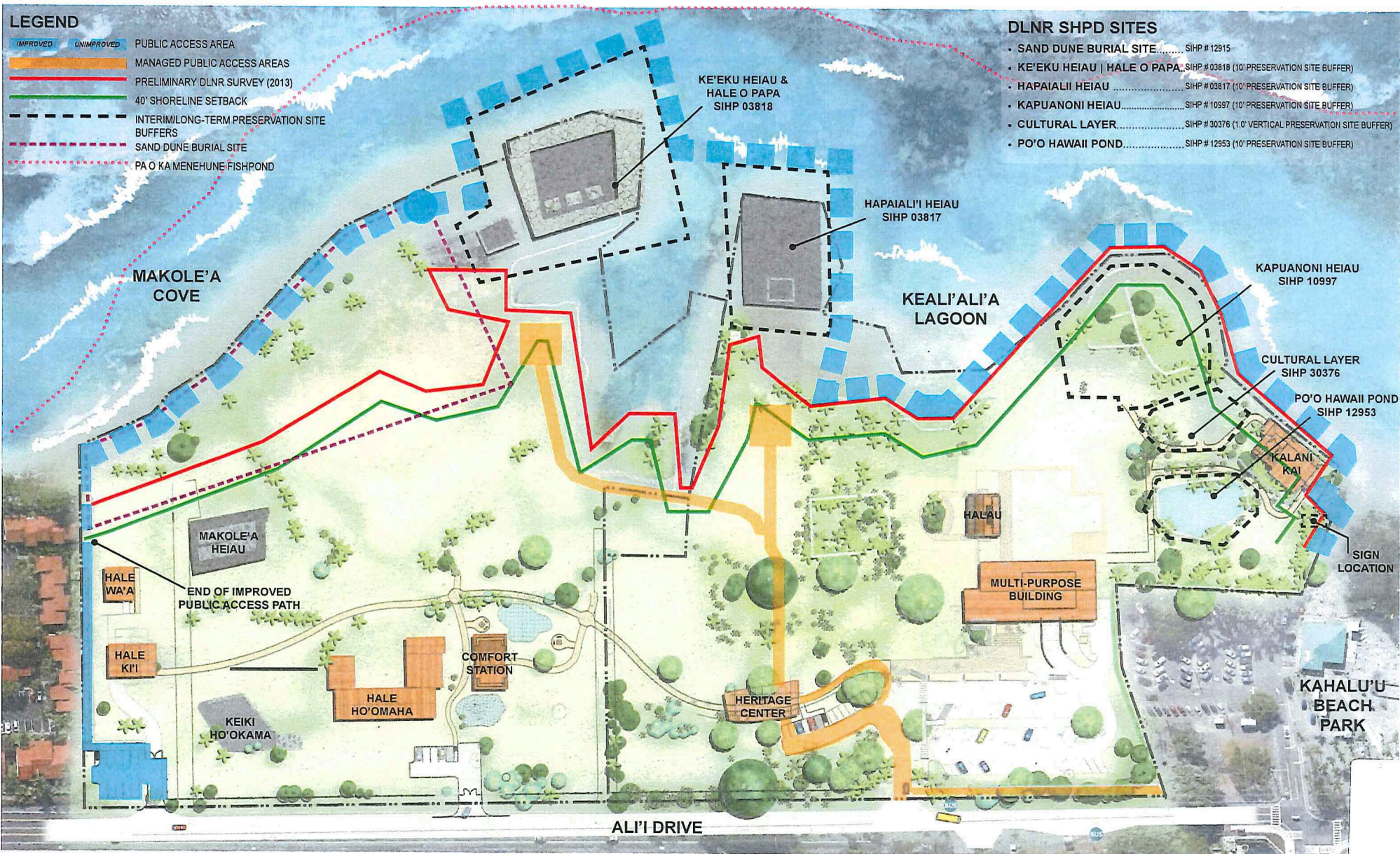


Suzanne D. Case, Chairperson









## COMPREHENSIVE PUBLIC ACCESS PLAN - SITE PLAN

KAHALU'U MA KAI

MARCH 2017

kya design group



# Exhibit "B"