

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

February 4, 2022

**Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

REGARDING: Request for Administrative Fines and other Penalties against Mr. Donald King trustee of the KING, DONALD R TRUST and Mrs. Julianne King trustee of the KING, JULIANNE Y TRUST for the Conservation District Enforcement Case OA 22-13 Regarding the Alleged Unauthorized Construction of a Road and Placement of Landscaping Located Within the Conservation District at the end of Po'opo'o Place, Lanikai Beach Tract, Kailua, Ko'olaupoko, O'ahu Tax Map Key (TMK): (1) 4-3-002:001

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

AGAINST: Mr. Donald King trustee of the KING, DONALD R TRUST
Mrs. Julianne King trustee of the KING, JULIANNE Y TRUST
(collectively, "Landowners")

LOCATION: End of Po'opo'o Place, Lanikai Beach Tract, Kailua, Ko'olaupoko, O'ahu

TAX MAP KEY: (1) 4-3-002:001

SUBZONE: Limited Subzone in the State Land Use Conservation District

SUMMARY:

The landowners have admitted to constructing an unauthorized access road on TMK: (1) 4-3-002:001 ("Subject Parcel"), located within the Limited Subzone of the State Land Use Conservation District, without prior authorization. The unauthorized road was apparently constructed in the Conservation District to facilitate improvements and alterations to the structures on the landowners adjoining parcel, TMK: (1) 4-3-002:053, which lies in the Urban District. The Department of Land and Natural Resources' Office of Conservation and Coastal Lands' ("OCCL") records indicate that the landowners were previously

notified that the proposed construction of a road on the Subject Parcel would require a Conservation District Use Application (“CDUA”) for a Conservation District Use Permit issued by the Board of Land and Natural Resources (“CDUP” or “Board Permit”).

DESCRIPTION OF AREA:

The subject area is an undeveloped parcel located approximately 2.5 miles east of Kailua on the windward coast of O’ahu (***Exhibit 1***). The Subject Parcel, TMK: (1) 4-3-002:001 is owned by the DONALD R KING TRUST and the JULIANNE Y KING TRUST and lies in the Limited Subzone of the State Land Use Conservation District (***Exhibit 2***). The parcel is approximately 75.852-acres and located on the makai slopes of the Lanikai foothills at an elevation range of 110ft to 603ft above sea level. The parcel appears to contain slopes ranging from approximately 20% to 70%. According to the U.S. Department of Agriculture (USDA) Natural Conservation Service, the property contains Papa’a clay soils as well as stony steep land. Papa’a clay soils are characterized as well drained producing high runoff and erosion hazards.

Single-family residences that comprise the Lanikai neighborhood are situated below/makai of TMK: (1) 4-3-002:001. It appears that residents of makai parcels neighboring the Subject Parcel have in the past have experienced flooding problems caused by upland runoff likely emanating from the subject property.

The Landowners appear to also own a neighboring parcel, TMK: (1) 4-3-002:053 (the “Adjoining Parcel”). The Adjoining Parcel lies in the State Land Use Urban District and contains two (2) residential structures and a garage. According to the City and County of Honolulu Department of Planning and Permitting’s website, the residential structures appear to have been recently renovated or altered and a new pool was installed in 2020.

BACKGROUND:

The Landowners appear to have purchased TMK: (1) 4-3-002:001 in or around May 2012. Subsequently, the OCCL began receiving inquiries and applications from the Landowners regarding their proposal to create an access road on TMK: (1) 4-3-002:001. The following is a chronological account of events between May 2012 and mid-2021:

August 23, 2012: Inquiry letter from the Landowners regarding the permitting requirements for constructing an access road on the Subject Parcel, TMK: (1) 4-3-002:001, received by OCCL. The proposed access road was described as being approximately 140ft long by 12ft wide with a turnaround area at the end, paved, and would follow the existing grade (***Exhibit 3***).

September 17, 2012: OCCL’s response letter to Landowners [COR: OA 13-16] stating that the proposed access road would require them to file a CDUA and all required attachments including a draft Environmental Assessment pursuant to Hawaii Administrative Rules (“HAR”),

§13-5-22 P-13 LAND AND RESOURCE MANAGEMENT (D-2) *Road construction and major erosion control projects*. The OCCL also advised the Landowners that any plans submitted with the anticipated CDUA would need to include the seal of a Professional Engineer (“P.E.”), given the Subject Parcel’s slopes and the soil types at issue (**Exhibit 4**).

February 22, 2016: Site Plan Approval (“SPA”) application from the Landowners for the proposed road and associated landscaping is received by OCCL.

March 11, 2016: OCCL’s response letter [COR: OA 16-160] returning the Landowners’ check for their SPA application fee and reiterating that the proposed access road would require the Landowners to apply for (and obtain) Board permit, which would also require an Environmental Assessment pursuant to Hawaii Revised Statutes (“HRS”) Chapter 343. The letter also noted that there appeared to be an unauthorized encroachment (noted as a walkway) on the Subject Parcel that led to a second dwelling located on the Adjoining Parcel, TMK: (1) 4-3-002:053. Additionally, the OCCL requested more details be included in a future submittal regarding the proposed road and associated landscaping (**Exhibit 5**).

December 30, 2020: Purported SPA Application submitted by the Landowners to OCCL, in which the Landowners requested a proposed access road and associated landscaping on the Subject Parcel.

February 3, 2021: The OCCL returned the Landowners’ incomplete SPA application [SPA OA 21-6], which appeared to be lacking the required information. Further, OCCL staff (“Staff”) reminded the landowners that the proposed access road and associated landscaping would require the filing of a complete CDUA for Board permit and an Environmental Assessment pursuant to HRS Chapter 343 and HAR, §13-5-22 P-13 LAND AND RESOURCE MANAGEMENT (D-2) *Road construction and major erosion control projects* (**Exhibit 6**).

[ALLEGED] UNAUTHORIZED LAND USE IN THE CONSERVATION DISTRICT:

On August 30, 2021, the OCCL received a Conservation District Use Application [CDUA OA-3881] from the Landowners for a proposed road and associated landscaping on TMK: (1) 4-3-002:001 (**Exhibit 7**). Based on photos reviewed by OCCL Staff as well as photos submitted as part of the CDUA, it appeared that an unauthorized road had been constructed, and landscaping had already been placed as proposed on TMK: (1) 4-3-002:001. See **Exhibit 7** pages 29-32 and **Exhibit 8**.

On September 21, 2021, Staff conducted a site visit to the area. Upon arriving at the Subject Parcel, Staff was greeted by the landowners who escorted Staff onto the property. Staff confirmed that it appeared that an alleged unauthorized road had been constructed on the Subject Parcel, and landscaping had been placed on the Subject Parcel. (**Exhibit 9**)

On September 28, 2021, the OCCL rejected the Landowners' August 30, 2021 CDUA due to the alleged unauthorized land use. Pursuant to HAR, §13-5-31 (e), "No permit application shall be processed by the department or board until any violations pending against the subject parcel are resolved." (**Exhibit 10**)

On October 5, 2021, the OCCL issued to the Landowners a written Notice of Alleged Violation [ENF: OA 22-13] regarding the alleged unauthorized construction of a road and associated landscaping on TMK: (1) 4-3-002:001. (**Exhibit 11**)

On November 21, 2021, the Landowners sent a letter regarding ENF: OA 22-13 and alleged unauthorized land uses to the Chairperson of the Board of Land and Natural Resources. According to the letter, the Landowners acknowledge creating a road and placing concrete on TMK: (1) 4-3-002:001 without first obtaining the required authorization they were previously advised to obtain. The letter states that the landowners would like to resolve the alleged unauthorized land uses in order to resubmit their application for proposed land uses on TMK: (1) 4-3-002:001. (**Exhibit 12**)

CONSERVATION DISTRICT RULES AND STATUTES:

Land uses in the Conservation District are regulated under HRS Chapter 183C, and HAR, Chapter 13-5. These chapters identify land uses that may be applied for within the Conservation District, and they also provide for penalties, collection of administrative costs, and damages for uses of Conservation District land that are not allowed or for which no permit has been obtained.

Section 13-5-2, HAR, defines "land use" as follows:

- (1) the placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) the grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) the subdivision of land; or
- (4) the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land

Under HRS, §183C-7 (Penalty for violation):

- (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter and
- (b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, willful violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to \$15,000 per day per violation for each day in which the violation persists.

The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.

Pursuant to HAR, §13-5-6 (Penalty), “[a]ny person, firm, government agency, or corporation violating any of the provision of Chapter 13-5 or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS.” Haw. Admin. R. § 13-5-6 (a).

DISCUSSION:

Staff had previously determined and informed the Landowners that the proposed construction of a road and associated landscaping on the Subject Parcel would require them to submit a CUA to obtain a Board permit. It appears that TMK: (1) 4-3-002:001 has been placed in the Limited Subzone of the State Land Use Conservation District based on the parcel’s steep topography as well as potential drainage and erosion issues. Previous applications processed by the Department of Land and Natural Resources for siting development on TMK: (1) 4-3-002:001 indicate that the Lanikai community is aware of and sensitive to potential ground disturbing activities that may and contribute to hazardous conditions for neighboring residences.

Here, OCCL Staff’s observations during a site visit to the area and photographic evidence confirm that “land use” occurred on the Subject Parcel in order to construct an unauthorized road and install landscaping features that have been in place for more than thirty (30) days. See HAR § 13-5-2(1) & (4). According to OCCL files, no authorizations were ever issued for these land uses.

The alleged unauthorized land use occurred in the Conservation District without approval and therefore allegedly violated the above referenced chapters and rules.

Based on the *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources*, the unauthorized land use is considered a “Major” unauthorized land use since the closest identified land use appears to require a Board permit. This violation follows a penalty range of \$10,000 to \$15,000.

CONCLUSION:

Based on the above-summarized information, OCCL Staff has reached the following findings and/or conclusion regarding the alleged violation:

1. The OCCL finds that the Landowners did in fact authorize, cause, or allow:
 - The unauthorized construction of a road;
 - The unauthorized placement of landscaping in an area of less than 10,000 sq. ft; and,
 - Caused a permanent change to the topography of the land; and
2. The OCCL finds that the alleged unauthorized land uses occurred within the State Land Use Conservation District, Limited Subzone.

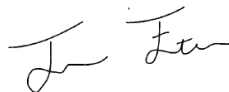
As such, STAFF RECOMMENDS:

That the Board of Land and Natural Resources:

1. Find, pursuant to HRS § 183C-7, that the Landowners violated HAR § 13-5-23 by constructing a road and placing landscaping on the Subject Parcel within the Conservation District without prior authorization.
2. Impose the following penalties for this violation:
 - a. That the landowners are fined \$15,000.00 for violating the provisions of HAR, §13-5-23 for unauthorized construction and placement of a road and landscaping in an area of less than 10,000 sq. ft within the Conservation District, Limited Subzone prior to obtaining the appropriate approvals;
 - b. That the landowners are fined an additional \$2,000.00 for administrative costs associated with the subject violations;
 - c. That the landowners shall pay all designated fines and administrative costs (\$17,000.00) within ninety (90) days from the date of the Board’s action;

- d. That the landowners shall submit an After-the-Fact (ATF) Conservation District Use Application (CDUA) with DLNR and OCCL in accordance with HAR, §13-5 and all requested attachments, such as but not limited to an Environmental Assessment, within one hundred eighty (180) days from the date of the Board's action;
 - e. That in the event of failure of the landowner to comply with any order herein, the landowner shall be fined an additional \$15,000.00 per day until the order is complied with;
 - f. That in the event of failure of the landowner to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs; and,
 - g. The above noted conditions of Enforcement file OA 22-13 shall be recorded with the deed instrument pursuant to HAR, §13-5-6(e).
3. Delegate authority to the Chairperson to effectuate the above recommendations, subject to such conditions as may be prescribed by the Chairperson to best serve the interest of the State, without further consultation with the Board, subject to review and approval by the Department of the Attorney General.

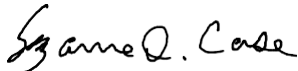
Respectfully submitted,



Trevor Fitzpatrick, Staff Planner
Office of Conservation and Coastal Lands

TC

Approved for submittal:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Exhibit List For Item K-1

- Exhibit 1: Location Map (Page 9)**
- Exhibit 2: TMK: (1) 4-3-002:001 Limited Subzone Map (Page 10)**
- Exhibit 3: Letter from Don & Julianne King (COR: OA 10-19) (Pages 11-20)**
- Exhibit 4: OCCL Response (COR: OA 13-16) (Page 21)**
- Exhibit 5: OCCL Response to King SPA App via COR: OA 16-160 (Pages 22-24)**
- Exhibit 6: OCCL Response to SPA application OA 21-6 (Pages 25-26)**
- Exhibit 7: Pages from King CDUA OA-3881 & Draft EA for Proposed Road(Pages 27-32)**
- Exhibit 8: Google Photos of Alleged Unauthorized Road and Landscaping (Pages 33-38)**
- Exhibit 9: OCCL Staff Site Visit Photos from 9/21/2021 (Figures 1-6; Pages 39-44)**
- Exhibit 10: OCCL Rejection Letter for CDUA OA-3881 (Pages 45-46)**
- Exhibit 11: ENF: OA 22-13 Notice of Alleged Violation Letter (Pages 47-50)**
- Exhibit 12: King's Letter to Chair Regarding ENF: OA 22-13 (Pages 51-52)**

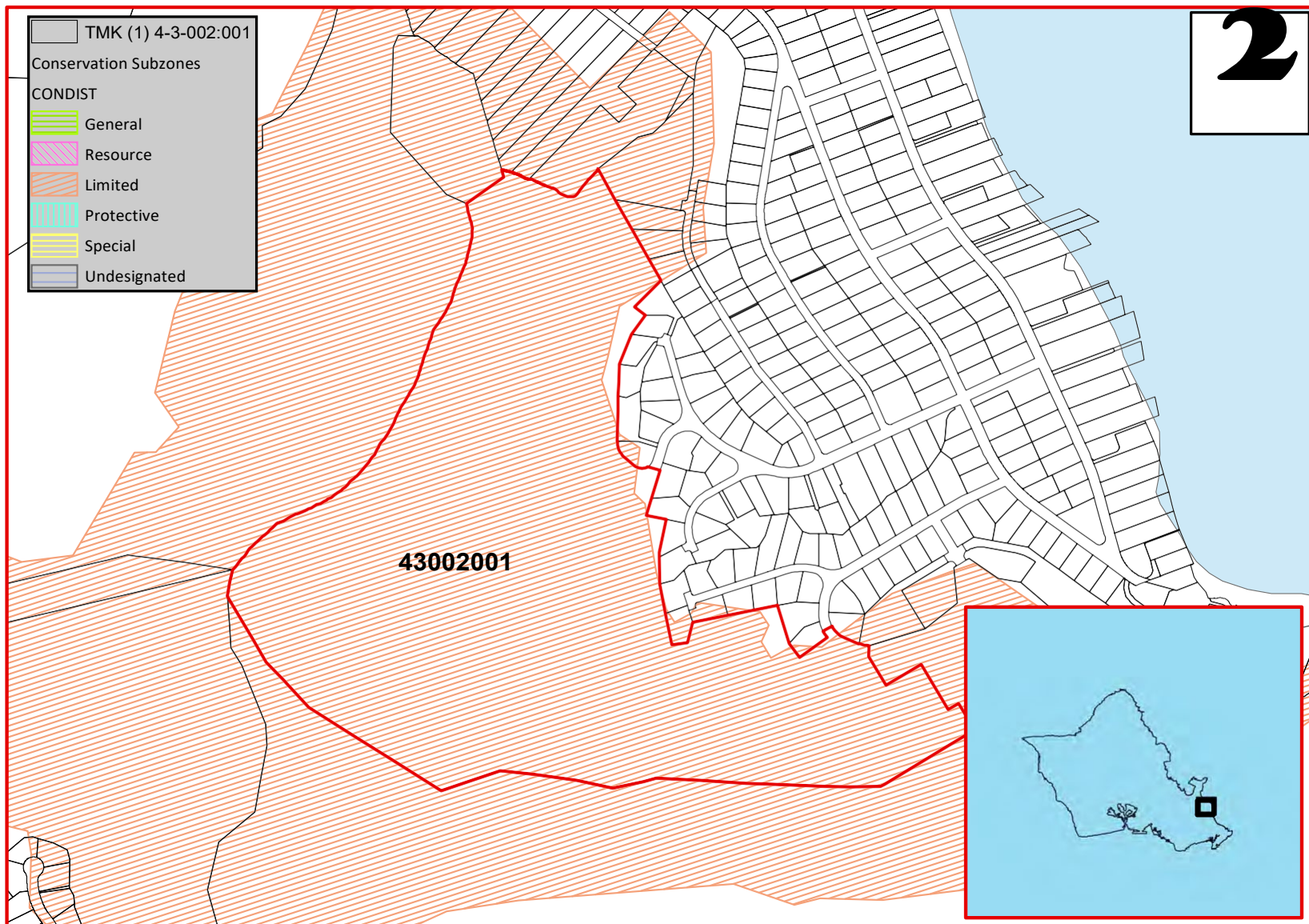


Exhibit 1: Location Map

K-1

TMK: (1) 4-3-002:001 Subject Parcel

0 250 500 1,000 Feet



Produced by Trevor Fitzpatrick @ OCCL

All boundaries are approximate

Date: 11/8/2021

Exhibit 2: TMK: (1) 4-3-002:001

K-1

Page 10

OA-13-16

Samuel J Lemmo
DLNR OCCL
1151 Punchbowl st. room 131
Honolulu HI 96813

RECEIVED
2012 AUG 23 P 3:41
8/21/12
Don & Julianne King
320 Poopoo Place
Kailua, HI 96734

RE land TMK 43002001

Dear Mr. Lemmo

We would like to inquire about applying for a permit from the DLNR for work on TMK 43002001 in Lanikai, Kailua, Koolau-poko. The land is approximately 75 acres, in the limited subzone of the conservation district.

The proposed improvement is a short paved access road, approximately 140' long by 12' wide, with a turn around area at the end. It would follow the existing grade, with very little grading or grubbing required. Trees in the area include Kiawe, Milo, and Be-still and Haole Koa.

We do not anticipate needing to remove any trees.

The proposed path of the access road would follow a previously graded ramp on the property up a gentle slope, dating from the original grading of the Lanikai subdivision in the 1940's. The residence nearest this proposed access road is our home, 320 Poopoo Place, which was built in 1948. The proposed access road would end at a flat area, which was also graded at the same time as the house pad on our adjoining property.

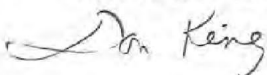
The proposed access road would cross the bottom corner of our adjoining property at 320 Poopoo Place. Because we own both properties, my understanding is that an easement would not be needed at this time.

The access road would allow for vehicle access and parking. Currently there is no parking for the property. Future needs include access for planting native trees and controlling introduced species.

Please advise us on whether a DLNR permit will be required, and if so, how to proceed with the permit application.

Mahalo,

Don & Julianne King



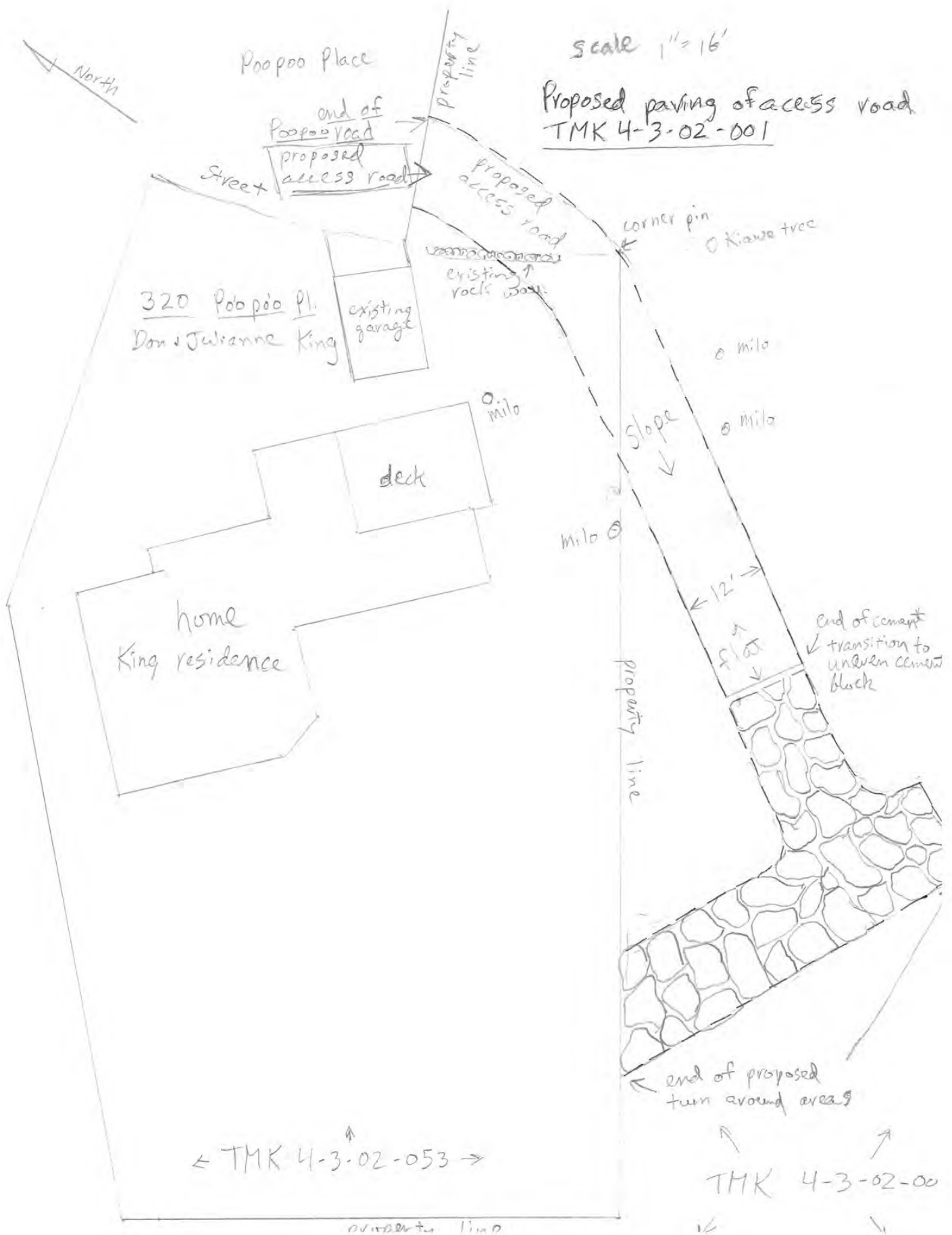


Exhibit 3: Landowners' Site Plan for Proposed Road



from near the end of Poopoo Place
looking uphill
property corner pin middle left of picture
370 Poopoo Place - right

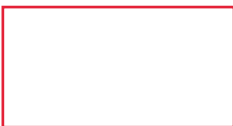
Exhibit 3: Landowners' Photo of Beginning of Proposed Road





corner pin on left
looking uphill

Exhibit 3: Landowners' Photo of Approximate Boundary between Parcel 001 & 053 for Proposed Road





looking downhill to Poopoo Pl.
corner pin is center right of picture
from midway up the ramp

Exhibit 3: Landowners' Photo Showing the terminus of Poopoo Place and Portion of Parcel 001 being used as what appears to be a Carport.





looking down hill from top of ramp

Exhibit 3: Landowners' Photo of Potential Grade/Steepness for Proposed Road





looking uphill from bottom of flat area

Exhibit 3: Landowners' Photo Showing the area for the proposed terminus and turnaround areas for the Proposed Road.





looking downhill from top of flat area
King residence on the left

Exhibit 3: Landowners' Photo Showing a different angle of the area for the proposed terminus and turnaround areas for the Proposed Road.



TMK 4-3-002-001

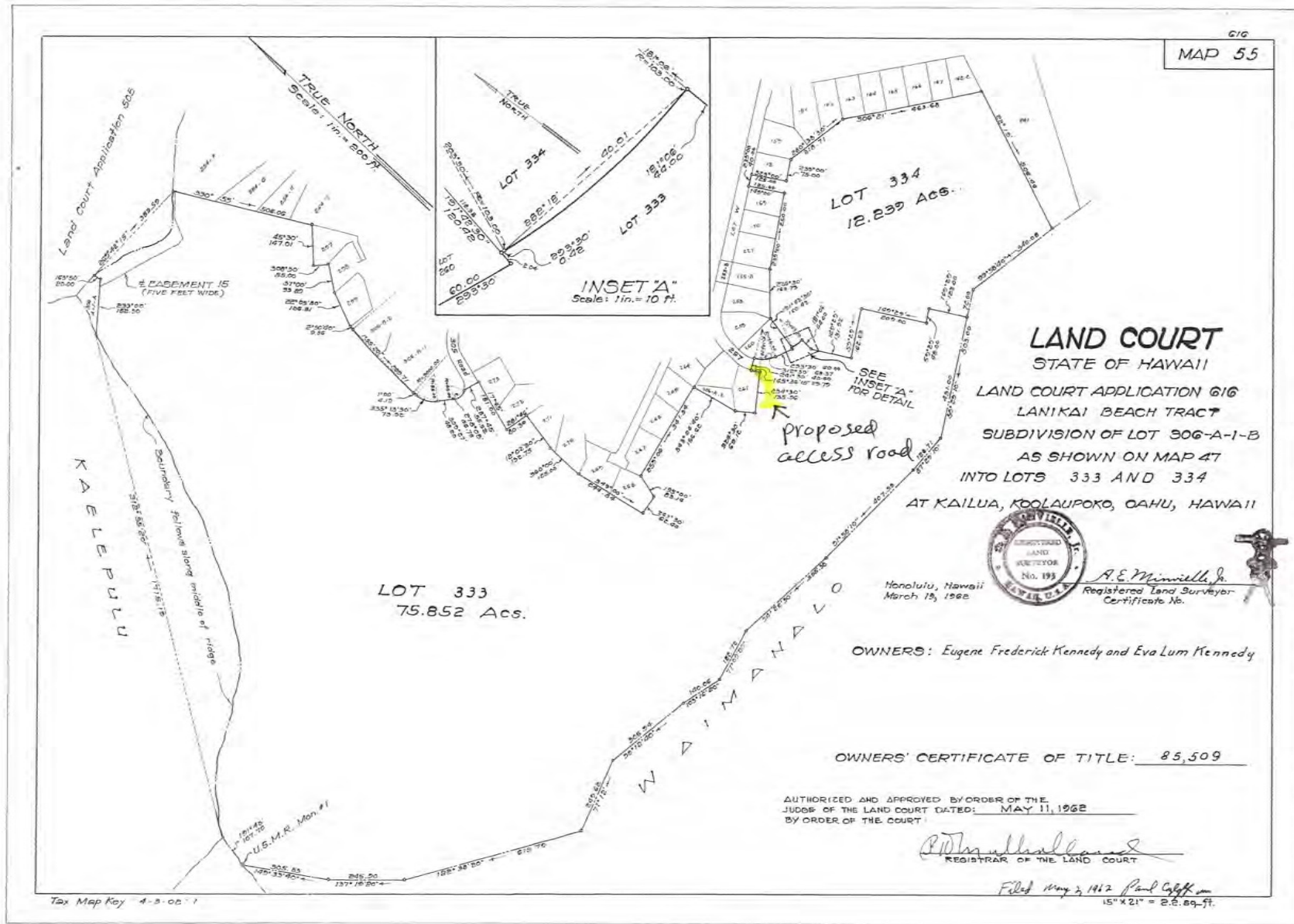


Exhibit 3: Landowners' Land Court Map showing parcel 001, parcel 053, & approximate location of Proposed Road.



4-3-002-001

Exhibit 3: Landowners' Screenshot of a TMK Map identifying the approximate location of Proposed Road on TMK: (1) 4-3-002:001.



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

PAUL J. CONRY
INTERIM FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

REF:OCCL:TM

Correspondence: OA 13-16

Don and Julianne King
320 Po'opo'o Place
Kailua, HI 96734

SEP 17 2012

SUBJECT: Inquiry Regarding an Access Road In the Conservation District to an Adjacent Urban Property Located at Kailua, Oahu, TMK: (1) 4-3-002:001

Dear Mr. and Ms. King:

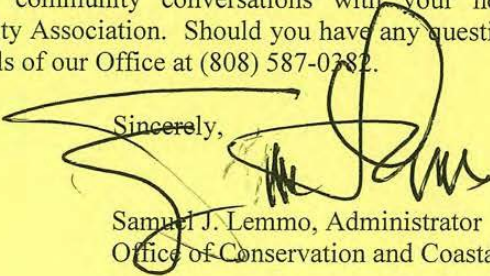
The Office of Conservation and Coastal Lands (OCCL) is in receipt of your inquiry regarding the subject matter. According to your information, you own two adjacent parcels, with one parcel within the Conservation District Limited subzone and another in the Urban District. You would like to create access to your urban lot through the Conservation District.

You believe that the proposed path of the access road would follow a previously graded ramp on the Conservation District property up a gently slope that was created during the original grading of the Lanikai subdivision in the 1940's. The proposed access road would be paved, approximately 140' long x 12' wide (1,680-ft²) and would end at a flat area. The purpose of the access road would be to allow for vehicular access and parking within your urban lot. In the future, you would like to improve access to your Conservation lot to maintain the property.

The OCCL notes the subject area lies within the Limited subzone of the Conservation District. The current request appears to be an identified land use pursuant to the Hawaii Administrative Rules (HAR) §13-5-22, LAND AND RESOURCE MANAGEMENT (D-2) Road construction and major erosion control projects. This would require the filing of a Conservation District Use Application and all required attachments including a draft Environmental Assessment. Given the slope and soil type of the proposed area, all plans shall include the seal of a Professional Engineer (P.E). To allow, modify or deny the proposed use would be at the discretion of the Board of Land and Natural Resources.

You may wish to begin your community conversations with your neighbors and the Neighborhood Board or Community Association. Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at (808) 587-0382.

Sincerely,


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

C: City & County of Honolulu

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

Correspondence: OA 16-160

MAR 11 2016

Harvey Hida
Hida Okamoto and Associates
1440 Kapiolani Blvd., Suite 1120
Honolulu, HI 96814

SUBJECT: Site Plan Approval Request for a Driveway Located at the end of Po'opo'o Place, Kailua,
O'ahu, TMK: (1) 4-3-002:001

Dear Mr. Hida:

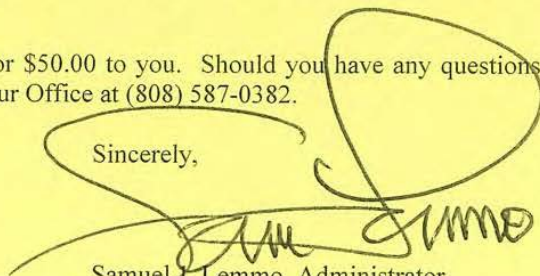
The Office of Conservation and Coastal Lands (OCCL) has reviewed your submitted information regarding the subject matter. We are unable to process your Site Plan Approval (SPA) request as an *Accessory Structure* as there is no land use upon the parcel that the proposed driveway could be accessory to. The OCCL had previously corresponded with your client and noted that the proposed use would require a Board permit and Environmental Assessment (Attached) pursuant to Chapter 13-5. The OCCL stands by our past determination.

In reviewing the submitted SPA request information, there appears to be a small encroachment noted as a walkway upon parcel 001 that leads to a second dwelling at the back of parcel 053. In addition, the proposed driveway appears to cross over a dry stream bed. The OCCL notes our records indicate there may be drainage challenges upon the subject parcel. Further, the subject area appears to be in the Special Management Area (SMA) and requires County review.

When submitting the application, the land use must be described in more detail: what is the width and area of this 140-ft long driveway? What is the end of the driveway made of? How much cut and fill will there be? How will the driveway help anchor the soil and make erosion less likely in the area? What is this CRM Grade Adjust Wall? What is the wall made of and what are the dimensions? Describe or include a landscaping plan. Explain how the specific landscaping would aid in stabilizing the soil and fire prevention. Please note plantings shall be appropriate to the site location and preference to plant materials that are endemic or indigenous to Hawai'i, the introduction of invasive plant species is prohibited.

We are returning your client's check for \$50.00 to you. Should you have any questions regarding this correspondence contact Tiger Mills or our Office at (808) 587-0382.

Sincerely,


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

C: ODLO
City-DPP

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
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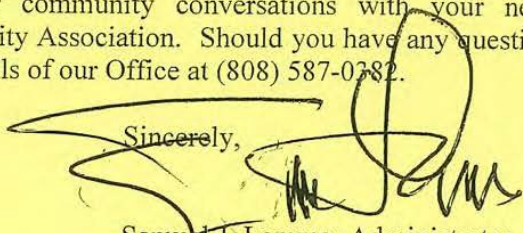
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Sincerely,


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

C: City & County of Honolulu

Attachment

DAVID Y. IGE
GOVERNOR OF HAWAII



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

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

Ref: OCCL:RB

SPA: OA 21-6

Mr. Don King
320 Poopoo Place
Kailua, Hawaii, 96734

FEB - 3 2021

SUBJECT: Site Plan Approval (SPA) for paved driveway and landscaping
Located at the end of Poopoo Place, Kailua, Oahu
Tax Map Key: (1) 4-3-002:001

Dear Mr. King:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your Conservation District Use Application (CDUA) and Environmental Assessment. OCCL records indicate the subject parcel appears to be in the Limited subzone of the Conservation District. The parcel is approximately 75.85 acres.

The OCCL is rejecting SPA OA 21-6 because of the following:

1. **Identified land uses:** as noted in Correspondence OA 16-160 to Harvey Hida of Hida Okamoto and Associates, "we are unable to process your Site Plan Approval (SPA) request as an *Accessory Structure* as there is no land use upon the parcel that the proposed driveway could be accessory to." Additionally, this letter states that the proposed driveway would require a Board permit. Your application states 13-5-22, P-9 STRUCTURES, ACCESSORY (B-1) as the land use for the road. The appropriate land use for the proposed road is 13-5-22, P-13 ROAD CONSTRUCTION AND MAJOR EROSION CONTROL PROJECTS (D-2). Additionally, your application checked "Departmental permit," you must check "Board permit" and submit all appropriate documentation;
2. **Correspondence OA 16-160:** states that the proposed driveway appears to cross over a dry stream bed. How will erosion be handled once the road is complete? Will the proposed landscaping help stabilize the soil, limit runoff;
3. **Application fee:** this was not submitted with the application;
4. **State Historic Preservation Division (SHPD) HRS Submittal Form:** this form was not submitted with your application and it must be submitted with application;
5. **CDUA signatures:** you did not sign as the landowner nor the Certification page;
6. **CDUA application:** you only completed the "Proposed Use" question. All application questions must be answered. Additionally, you propose landscaping as a land use but did not

describe it in "Proposed Uses," be sure to describe all proposed land uses, in entirety, in all application questions;

7. Draft Environmental Assessment (DEA):

- Formatting: needs page numbers; please justify all text. Maps need to be bigger and photos in color.
- Office of Environmental and Quality Control (OEQC) rules are listed in your DEA as Chapter 200, which are the old rules. The current OEQC rules are Hawaii Administrative Rule (HAR) Chapter 11-200.1. Please refer to this when drafting the EA. For example, 11.200.1-18 is the preparation and required contents of a draft EA. You must follow these rules in completing the DEA. Such as:
 - 11-200.1-18 (d) (3) List of all required permits and approvals (state, federal, and county). Please list all required permits for this project.
 - 11-200.1-18 (d) (4) Identification of agencies, citizen groups, and individuals consulted in preparing the draft EA. 1.8 of the DEA states, "the information contained in this EA has been developed from planning and design efforts, from experiences and observations living at the site for 20 years, consultation with neighbors, and from technical and historical documents." What technical and historical documents? Who did you consult with? Per OEQC rules, you must identify all individuals consulted.
- In several areas of the DEA, you state the driveway will "allow for management of the conservation land including invasive species and planting native species." Please elaborate on this: do you have a management plan?
- Grading and site plans must be done by a licensed engineer.
- The Proposed Driveway Plan shows a CRM wall at the driveway's terminus and along a portion of the concrete driveway. Is this part of the driveway construction? If so, please describe in CDUA and DEA.
- 2.7 of DEA: "Then the site will be graded, with excess cut removed." Where will this cut be removed to?

The OCCL recommends you contact a consultant to help in the preparation of the CDUA and EA for submittal to the Department for processing. The Department is returning your application. Should you have any questions, please feel free to contact Rachel Beasley at (808) 798-6481

Sincerely,

Sam Lemmo

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

c: C&C of Honolulu-DPP
ODLO

Landscape Plan

scale 1"=24'

Prepared by Don King
8-22-2021

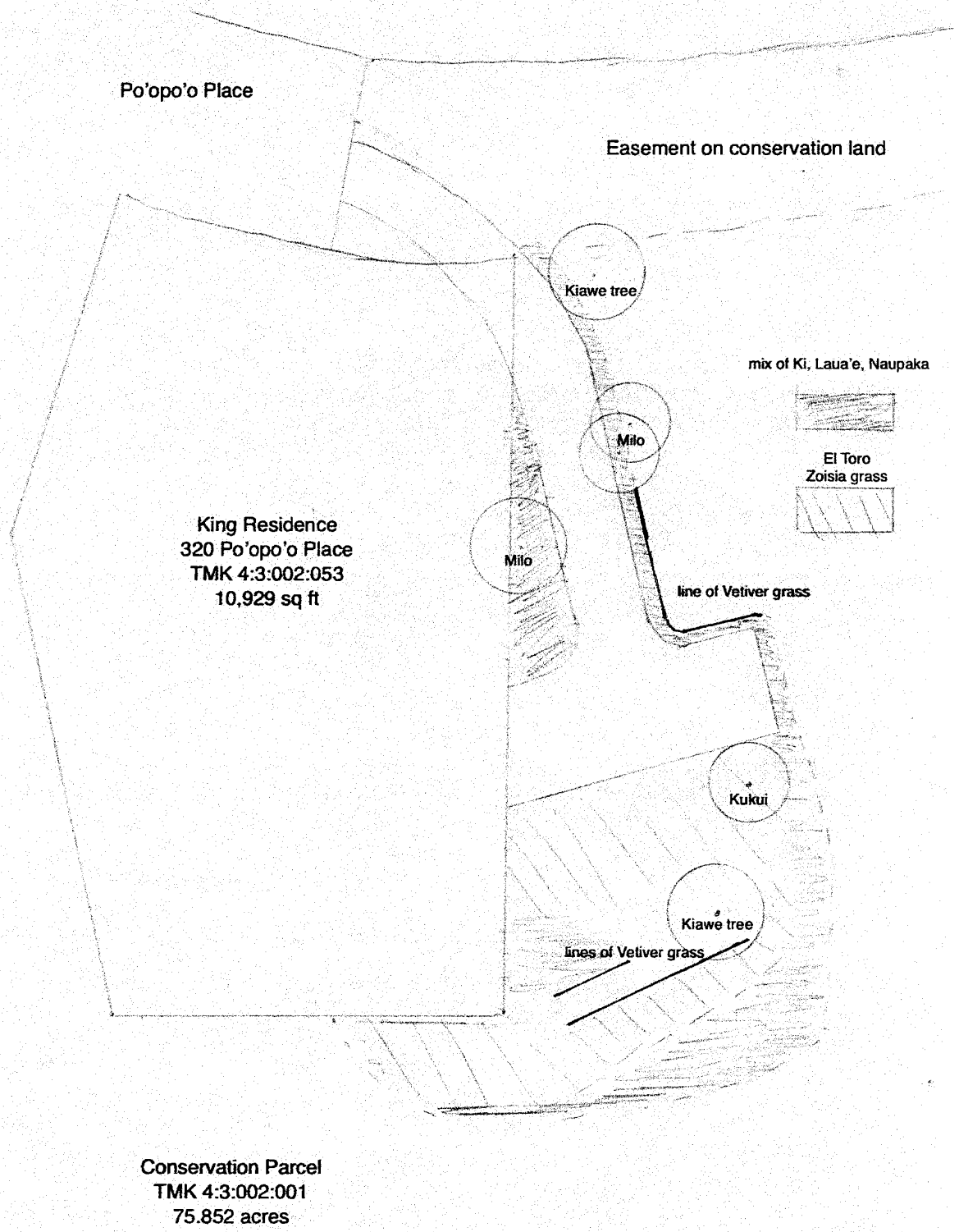


Figure 5
From midway up the slope looking north to the end of
Po'opo'o Pl.
Residential lot on the left.

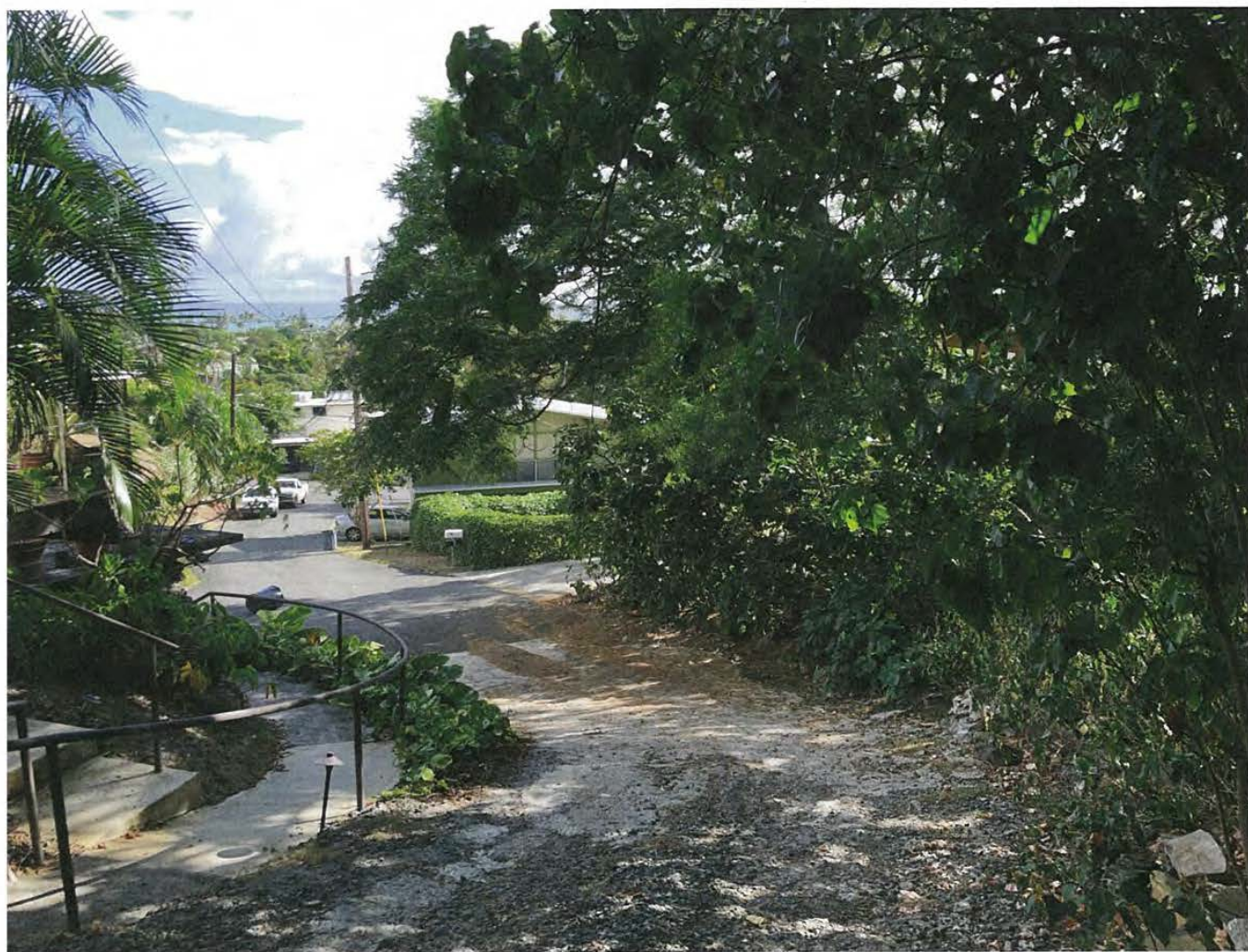


Exhibit 7: Landowners' Photo of Unauthorized Road from Draft EA for King CDUA OA-3881

Figure 6
Looking north-east down the slope.
Residential lot on the left.



Exhibit 7: Landowners' Photo of Unauthorized Road comprised of gravel and concrete from Draft EA for King CDUA OA-3881.

Figure 7
Looking south-east from the top of the slope.



Exhibit 7: Landowners' Photo of turnaround portion of Unauthorized Road and nearby gully or drainage ditch from Draft EA for King CDUA OA-3881.

Figure 8
Looking south from the top of the slope at
the turn around area.
Residential lot on the right.
Kaiwa ridgeline in the background



Exhibit 7: Landowners' Photo of terminus of Unauthorized Road and encroaching staircase/walkway in the Conservation District from Draft EA for King CDUA OA-3881.



Figure 1: Google Earth 2015 Aerial Image of Subject Area and Alleged Unauthorized Improvements.

Exhibit 8: Google Photos of Alleged Unauthorized Road and Landscaping





Figure 2 Google Maps Street View (dated July 2011) of the end of Poopoo Place and Parcel 001. It appears that the end of Poopoo Place was being used for parking and/or as a carport.

Exhibit 8: Google Photos of Alleged Unauthorized Road and Landscaping

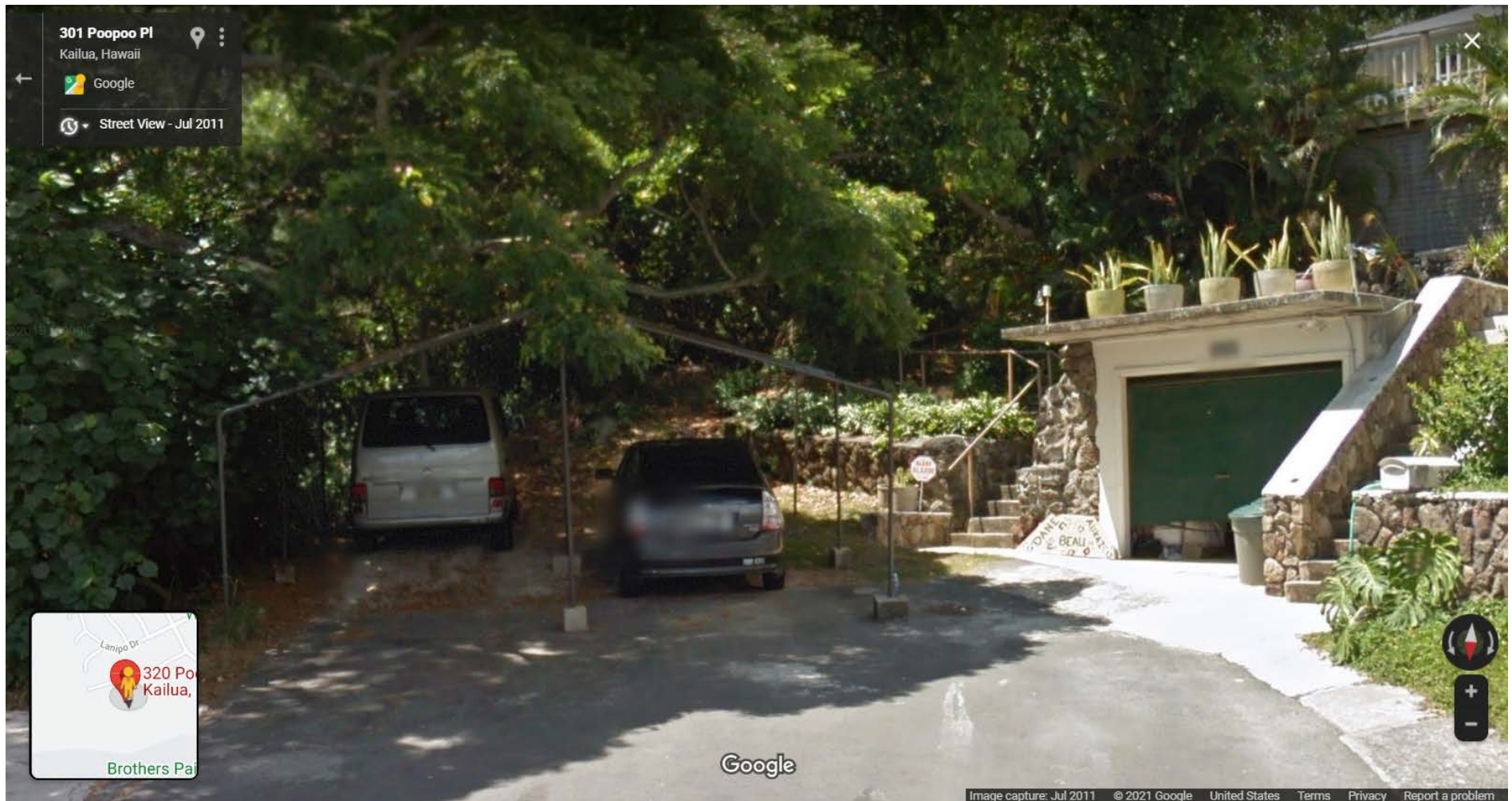


Figure 3 Google Maps Street View (dated July 2011) Zoomed in on the end of Poopoo Place showing the area of the alleged unauthorized improvements was vegetated and that there did not appear to be a road or access on TMK: (1) 4-3-002:001.

Exhibit 8: Google Photos of Alleged Unauthorized Road and Landscaping



Figure 4 Google Maps Street View (dated July 2011) of the DONALD R KING TRUST and JULIANNE Y KING TRUST Residence and Garage on TMK: (1) 4-3-002:053.

Exhibit 8: Google Photos of Alleged Unauthorized Road and Landscaping

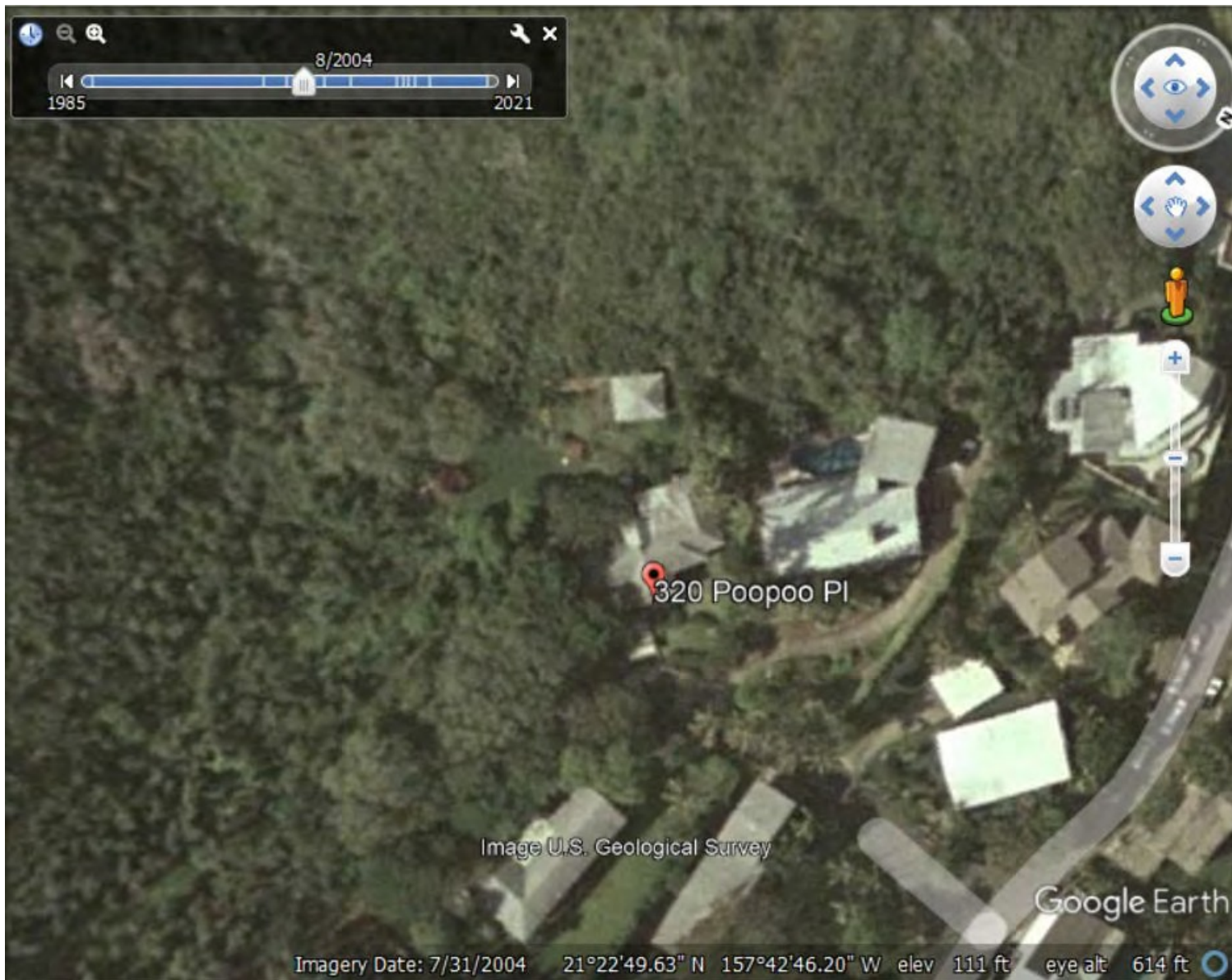


Figure 5 7/31/2004 Google Earth Aerial Image Appearing to Show Subject Area without Alleged Unauthorized Improvements.

Exhibit 8: Google Photos of Alleged Unauthorized Road and Landscaping

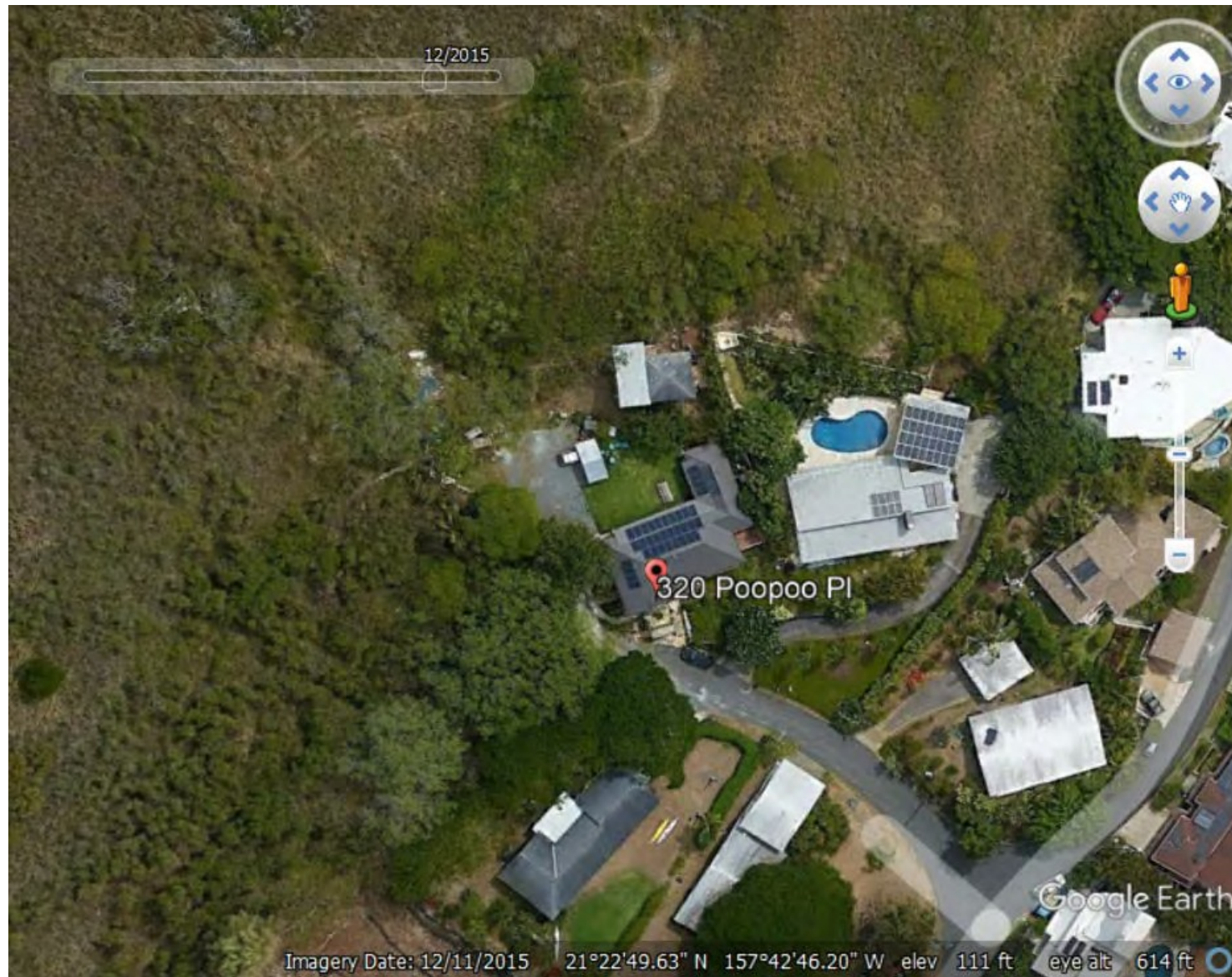


Figure 6: 12/11/2015 Google Earth Aerial Image Appearing to Show Subject Area with Alleged Unauthorized Improvements.

Exhibit 8: Google Photos of Alleged Unauthorized Road and Landscaping



Figure 1: OCCL Photo from 9/21/2021 Site Visit Confirming that an Alleged Unauthorized Road had been Constructed at the end of Poopoo Place on TMK: (1) 4-3-002:001.



Figure 2 OCCL Photo from 9/21/2021 Site Visit Showing Alleged Unauthorized Road.

Exhibit 9: OCCL Staff Site Visit Photos from 9/21/2021

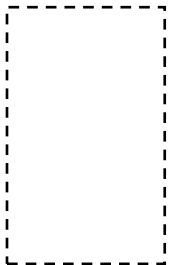




Figure 3 OCCL Photo from 9/21/2021 Site Visit showing Alleged Unauthorized Road. It appears that fill material was brought in for construction of Alleged Unauthorized Road.



Figure 4 OCCL Photo 9/21/2021 Site Visit Showing Alleged Unauthorized Road Comprised of Concrete and Gravel.



Figure 5 OCCL Photo from 9/21/2021 Site Visit showing terminus and turnaround area of the Alleged Unauthorized Road, Landscaping Improvements, and Encroaching Stair Case on TMK: (1) 4-3-002:001.

Exhibit 9: OCCL Staff Site Visit Photos from 9/21/2021





Figure 6: OCCL Photo from 9/21/2021 Site Visit showing terminus and turnaround area of the Alleged Unauthorized Road composed of gravel. Additionally, the photo shows the alleged unauthorized and encroaching staircase (stairs on the left) on TMK: (1) 4-3-002:001 as well as a second dwelling on TMK: (1) 4-3-002:053.

Exhibit 9: OCCL Staff Site Visit Photos from 9/21/2021



DAVID Y. IGE
GOVERNOR OF
HAWAII



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

REF: OCCL: TF

CDUA OA-3881

SEP 28 2021

Don King
320 Poopoo Place
Kailua, HI 96734

SUBJECT: Conservation District Use Application (CDUA) OA-3881 for Road Construction and Landscaping.
Located at Lanipo Drive
Lanikai Beach Tract, Kailua, Koolaupoko, Oahu
Tax Map Key (TMK): (1) 4-3-002:001

Dear Mr. King:

The Office of Conservation and Coastal Lands (OCCL) has received your application for road construction and landscaping on the subject parcel. The parcel appears to be in the Limited Subzone of the State Land Use Conservation District.

Based on the information contained in your application materials as well as a site visit to the area on 9/21/2021, it appears that an alleged unauthorized road and associated landscaping has been constructed and placed on TMK: (1) 4-3-002:001. This appears to be an alleged violation of Hawaii Revised Statutes (HRS), Chapter 183C and Hawaii Administrative Rules (HAR), Chapter 13-5. Additionally, pursuant to HAR, §13-5-31 (e) *No permit application shall be processed by the department or board until any violations pending against the subject parcel are resolved.* Based on the above, the OCCL is rejecting your CDUA and returning its checks (#5238 - \$1000.00 and #5239 - \$25.00). Please coordinate for the application to be picked up within thirty (30) days.

The OCCL intends to schedule this matter before the Board of Land and Natural Resources (BLNR) for final disposition. You will be notified of the date, time, and place/forum for this BLNR meeting in the future.

Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office at (808) 798-6660 or trevor.j.fitzpatrick@hawaii.gov.

REF: OCCL: TF
Mr. Don King

CDUA OA-3881

Sincerely,



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

CC: *Oahu Division of Land Office*
City and County of Honolulu, Department of Planning and Permitting
Hida Okamoto and Associates
Attn: Harvey Hida
1400 Kapiolani Blvd, Suite 1120, Honolulu, HI 96734

Attach: Ck. #5238 (\$1000)
Ck. #5239 (\$25.00)

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
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SUZANNE D. CASE
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BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TF

ENF: OA 22-13

NOTICE OF ALLEGED VIOLATION

Oct 5, 2021

CERTIFIED MAIL/RETURN RECEIPT

7020 2450 0000 0356 0028

DONALD R KING TR
JULIANNE Y KING TR
320 Poopoo Place
Kailua, HI 96734

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District
Located at Poopoo Drive
Lanikai Beach Tract, Kailua, Koolau-poko, Oahu
Tax Map Key (TMK): (1) 4-3-002:001

Dear Trustees:

NOTICE IS HEREBY GIVEN that you may be in violation of Hawai'i Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District. HAR, §13-5 contains the rules and regulations as well as the identified land uses within the State Land Use Conservation District, and was enacted pursuant to Hawai'i Revised Statutes (HRS), Chapter 183C.

The Department of Land and Natural Resources (DLNR) has reason to believe that:

1. The location of the alleged unauthorized land uses is on TMK: (1) 4-3-002:001 and are in the Conservation District, Limited Subzone;
2. Based on the information in application materials submitted to OCCL as well as Staff's site visit to the area on 9/21/2021, it appears that an alleged unauthorized road and associated landscaping has been constructed and placed on TMK: (1) 4-3-002:001 (**Exhibit 1**);
3. Pursuant HAR, §13-5-2, "*land use*" is defined as:

REF: OCCL: TF
DONALD R KING TR
JULIANNE Y KING TR

ENF: OA 22-13

- (1) *the placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;*
- (2) *the grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;*
- (3) *the subdivision of land; or*
- (4) *the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.*

4. These land uses were not authorized by the Department of Land and Natural Resources under HAR, Chapter 13-5.

We recommend that you cease any further activities within the Conservation District immediately. Pursuant to HRS §183C-7 and HAR §13-5-6, the Board of Land and Natural Resources may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs for a prohibited use in the Conservation District. Should you fail to immediately cease such activity after written or verbal notification from the Department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

The OCCL intends to schedule this matter before the Board of Land and Natural Resources for final disposition. You will be notified of the time and place for this Board meeting in the future.

Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at (808) 798-6660.

Sincerely,

A stylized signature consisting of three diamond shapes containing question marks, followed by the text "Q.c" and another diamond shape containing a question mark.

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

f_

CC: Oahu Land Division Office
DOCARE - Oahu
City and County of Honolulu, Department of Planning and Permitting

Exhibit 1

Page 1 of 2

Landscape Plan

scale 1"=24'

Prepared by Don King
8-22-2021

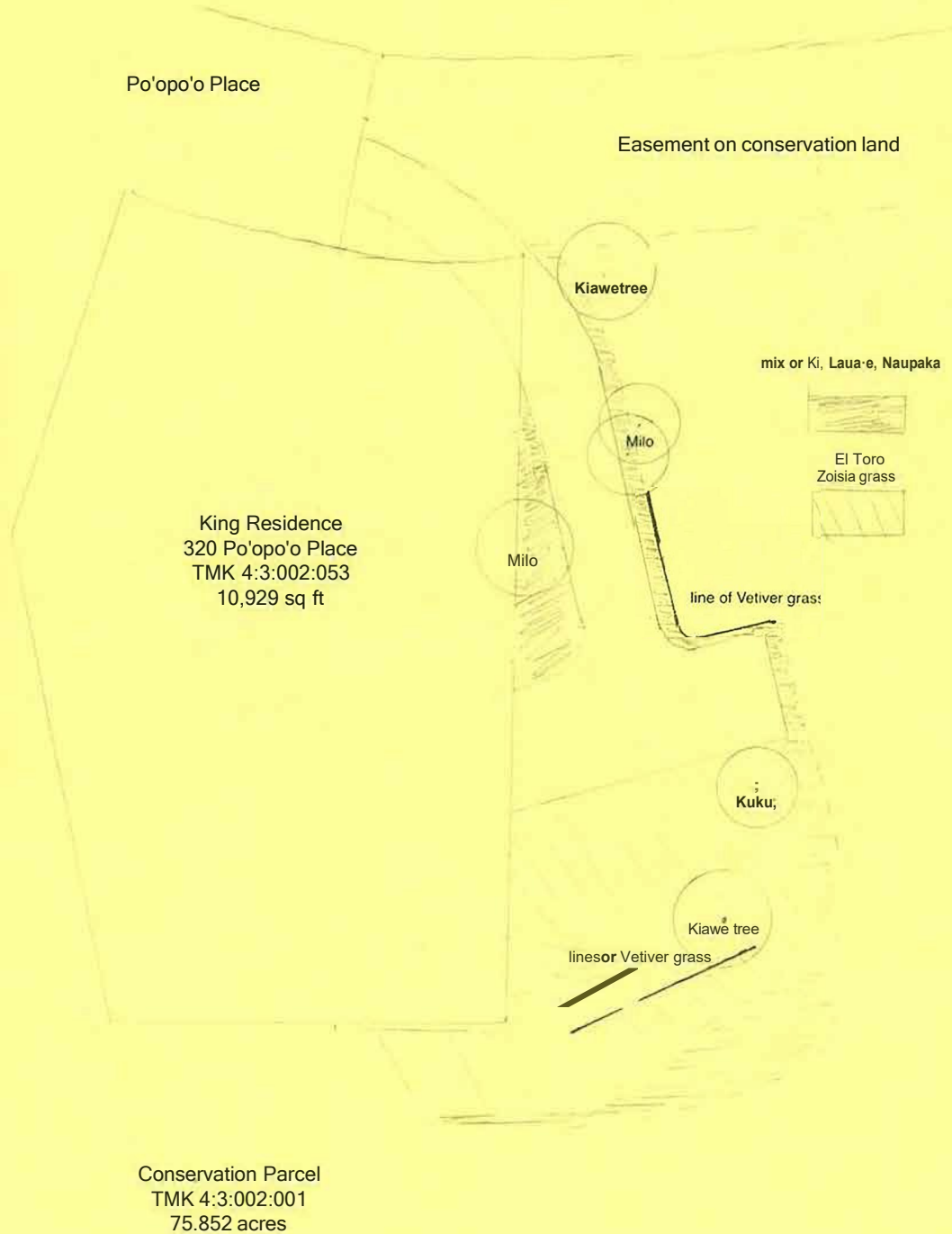


Exhibit 1

Page 2 of 2



Exhibit 11: ENF: OA 22-13 Notice of Alleged Violation Letter

Don King
320 Poopoo Place
Kailua, HI 96734

Suzanne Case
Chairperson
Board of Land and Natural Resources
PO BOX 621
Honolulu, HI 96809

November 20, 2021

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District
Located at Poopoo Drive
Lanikai Beach Tract, Kailua, Koolauapoko, Oahu
Tax Map Key (TMK): (1) 4-3-002:001

Chair Case:

I am writing to you because I have a growing concern that I will not be able to provide safe access to my house in Lanikai.

As you know, with growing visitor inundation into Lanikai and ongoing construction in the roadways, all on-street parking has been stopped. The only access to my house is over conservation district land. An added challenge we have is that our son with autism has services from the Department of Health with home visits from providers, and a lack of parking for them is problematic. We are at the end of a dead end street where the county road meets the conservation land so there is no off street parking.

I have been working with your department in getting the necessary permitting for my driveway. I have completed and submitted a CDUA and have prepared a draft Environmental Assessment (that has concluded that the driveway will not have a significant impact). Because I was doing the application myself it took a long time.

In my haste to get safe access for my family, I put a thin layer of concrete over the driveway. When your staff came to inspect my property, they denied my application and issued me an alleged violation notice.

If what I did was wrong, I am truly sorry. I want to make things right.

I understand in many other alleged violations in the conservation district that the department orders that the activities stop, the alleged unauthorized activity be removed within 30 days, and that the person work with and coordinate with the department.

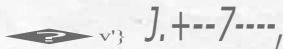
I have stopped any further activity.

I was never given the opportunity to correct any alleged deficiencies. In fact, I contacted Trevor Fitzpatrick and offered to remove the concrete and loose gravel, but he said not to do that and wait for the Land Board action on the alleged violation.

My concern is that if the Land Board determines that I have a violation then I will not be eligible for a permit.

Again, I want to make things right and can immediately work to remove the concrete and loose gravel and address any other issues that you feel would prevent us from resubmitting our application.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. +---7---," with a small mark to the left.

Don King
Applicant/land owner