TESTIMONY
SB 468

From: TIATestimony
Sent: Friday, January 30, 2009 5:48 PM
To: 't.ishii@capitol.hawaii.com'
Subject: FW: Testimony for SB468 on 2/2/2009 2:45:00 PM

-----Original Message-----
From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Friday, January 30, 2009 2:03 PM
To: TIATestimony
Cc: captcoon@hawaiiantel.net
Subject: Testimony for SB468 on 2/2/2009 2:45:00 PM

Testimony for TIA 2/2/2009 2:45:00 PM SB468

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: James Coon
Organization: Individual
Address: PO Box 847 Kula, HI
Phone: 661-4743
E-mail: captcoon@hawaiiantel.net
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.

LINDA LINGLE
GOVERNOR OF HAWAII

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
LAURA H. THIELEN
Chairperson

Before the Senate Committees on
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

Monday, February 02, 2009
2:45 pm
State Capitol, Conference Room 229

In consideration of
SENATE BILL 468
RELATING TO COASTAL ZONE MANAGEMENT

Senate Bill (SB) 468 proposes to: 1) Require affected agencies to account for sea-level rise and minimize risk from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis, 2) Preserve public access and public shoreline access, 3) Extend shoreline setback to no less than 40 ft. from shoreline and 4) Require 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 SB 468 make promising strides in this direction, and the Department supports their proposed changes with the following amendments:

- Recommend amending **§171-58.5** 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 language in **§205A-2(b)7(A), HRS,** to ensure public participation in planning activities for coastal resources and hazards.

- 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.

- 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 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 <u>not</u> require a public hearing. Because of the potential impact of coastal activities, those variances <u>not</u> 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, and will accommodate the use of average annual erosion rate data where it is appropriate.

- 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 and, where appropriate, accretion data for setback purposes as appropriate. Measures such as early planning, variances for innovative design, and minimum buildable areas shall be considered;"

OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

SB 468, RELATING TO COATAL ZONE MANAGEMENT

Senate Committees on Water, Land, Agriculture, and Hawaiian Affairs; and Transportation, International and Intergovernmental Affairs

February 2, 2009 2:45 p.m.

Room: 229

The Office of Hawaiian Affairs (OHA) **SUPPORTS, with amendments**, SB 468, 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 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 towards 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:

> Section 1(a) suggested amendments should not be contingent upon the county providing reasonable street parking. OHA suggests replacing the "provided that" wording with "and ensure that the county provide" to clarify this.

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.

Therefore, OHA urges the Committees to PASS SB468, with these suggested amendments. Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluludpp.org • CITY WEB SITE: www.honolulu.gov

MUFI HANNEMANN
MAYOR

DAVID K. TANOUE
ACTING DIRECTOR

ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 2, 2009

The Honorable Clayton Hee, Chair
and Members of the Committee on Water,
Land, Agriculture, and Hawaiian Affairs

The Honorable J. Kalani English, Chair
and Members of the Committee on Transportation,
International and Intergovernmental Affairs
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Hee, English and Members:

Subject: SENATE BILL SB 468
Relating to Coastal Zone Management

The Department of Planning and Permitting (DPP) **opposes** the proposed amendments in Senate Bill 468 relating to shoreline setbacks and shoreline setback variances. Of particular concern:

- Amendments to Section 205A-43, Hawaii Revised Statutes (HRS), included in Bill Section 5, which will increase the minimum shoreline setback from 20 to 40 feet, and eliminate the authority of the counties to prescribe rules under Chapter 91, HRS for determining the shoreline setback line.

- Amendments to Section 205A-45, HRS, included in Bill Section 7, which will mandate that the shoreline setback line shall be a distance not less than the average coastal erosion rate based on a 100-year projection, <u>in addition</u> to a minimum 40-foot requirement.

- Amendments to Section 205A-46, HRS, included in Bill Section 8, which will impose a "clear public interest" test for shoreline setback variance approvals involving private facilities or improvements that may artificially fix the shoreline, in addition to the current "hardship" criteria.

We have no objection to the establishment of shoreline setbacks based on an average coastal erosion rate. Both Maui and Kauai counties have already adopted differing methodologies which, to some degree, involve average coastal erosion rates. However, this

particular methodology is not the only reasonable and/or responsible basis for an appropriate shoreline setback for all coastlines. The State of Hawaii, for instance, estimates that 75 percent (75%) of Oahu's coastline is already developed. [Source: Hawaii State Data Book, 2004.] Along Oahu's heavily developed coastlines, most existing structures and other improvements on shoreline lots will be rendered nonconforming when the shoreline setback is increased, since development along Oahu's coastlines has now been based on a 40-foot setback for 38 years (see attachments). Indeed, significant improvement on many Oahu coastlines, from public roadways and drainage improvements to residential and resort development, occurred prior to the establishment of a shoreline setback mandate on June 22, 1970. Furthermore, there are now numerous shoreline lots on Oahu which are too narrow to support development with even a 40-foot shoreline setback. Therefore, the ability to adjust the shoreline setback to no less than 20 feet for lots with limited developable area is very important to address what will otherwise result in extreme hardship for many affected property owners.

Under contract with the DPP, the University of Hawaii (Dr. Chip Fletcher) is currently preparing a coastal erosion study for Oahu's sandy beaches. Although progress has been made, we anticipate that the conclusion of this study will still take another 1.5 years to complete. At that time, the DPP will initiate an evaluation of the study results, existing patterns of development and lot configuration along Oahu's various coastlines, and other appropriate considerations to determine reasonable, appropriate shoreline setbacks for the consideration of our City Council. It is, therefore, premature to mandate a specific methodology for the determination of shoreline setbacks until we have been able to responsibly study the relevant circumstances. What may have been determined appropriate for Maui or Kauai Counties, which have experienced significantly less coastline development to date, is not necessarily going to be appropriate for the different kinds of coastline conditions which characterize the islands of Oahu and/or Hawaii. The counties need and should have the ability and flexibility to determine shoreline setback requirements appropriate to their own jurisdictions.

Accordingly, we support bill language similar to that recommended by the State of Hawaii Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL), for Section 205A-43(a), HRS, which should read:

> "(a) [~~Setbacks along shorelines are established of not less than twenty feet and not more than forty feet inland from the shoreline.~~] <u>The shoreline setback line may be established using a method including, but not necessarily limited to, an average annual shoreline erosion rate, and shall not be less than twenty feet from the shoreline.</u> The department shall adopt rules pursuant to chapter 91, <u>prescribing procedures for determining the shoreline setback line,</u> and shall enforce the shoreline setbacks and rules pertaining thereto.

The above language clearly authorizes coastal erosion rates as an appropriate methodology for the determination of shoreline setback lines, but will further provide for the

adoption of variable setbacks based on determined erosion hazards and other relevant considerations; and, sets the minimum shoreline setback at not less than 20 feet.

As concerned as we are about the proposed provisions to increase the minimum shoreline setbacks and the method for determining them, the proposed change to the test for granting a shoreline setback variance is particularly troubling. A "hardship" test for granting a variance is and always has been appropriate. Hardship evaluation relates the specific physical characteristics of a property to the shoreline setback requirement for the site, and determines whether without the variance the property becomes unusable. Adding a "clear public interest" test will trump hardship as the appropriate grounds for justifying a variance for private facilities or improvements, already provided under HRS Section 205A-46(a)(8). The bill in its current form would delete HRS Section 205A-46(a) (9), which requires a "clear public interest" test only for those structures which would artificially fix the shoreline makai ("seaward") of the existing shoreline. The current statute is appropriate, since the area seaward of the shoreline is reserved under state law for lateral public access. However, Senate Bill 468 would replace the existing subdivision (9) with a new subsection (b), which imposes the "clear public interest" test on virtually all private facilities and improvements within the "shoreline area," which includes all land seaward of the shoreline setback line. The land between the shoreline setback and the shoreline is private property, with no right of public access attributed to it under state law. We suspect these amendments are intended to prevent future seawalls; however, virtually any structure with a fixed location on the ground artificially fixes the shoreline, and thus becomes subject to the "clear public interest" test. Further, there are instances where seawalls and other shoreline protection structures are appropriate to protect private property rights, but such rights are not necessarily a "clear public interest."

The proposed increase in shoreline setbacks is significant, and if adopted as a state-wide standard will dramatically increase the number of shoreline setback variance applications that will be necessary for Oahu's coastal properties, both public (e.g., coastal highways and public recreation improvements) and private; a process which is both rigorous and lengthy. It will also drastically increase the number of nonconformities. These are the inevitable results of imposing a significant increase in setback requirement upon land which has already been subdivided and developed on the basis of a significantly lesser setback requirement.

The proposal to add a "clear public interest" test for all private facilities and improvements within the shoreline setback area will render shoreline setback variance requests involving private property all but impossible to support. Coupled with the proposed significant increase in shoreline setbacks, discussed above, the "clear public interest" test may render most existing shoreline subdivision lots on Oahu unusable. With no other available remedy (i.e., unable to grant a variance), there will be an inevitable sharp increase in judicial challenges involving regulatory takings. Since June 22, 1970, the subdivision of coastal property on Oahu has been based on the ability to accommodate a 40-foot shoreline setback; and, later a 60-foot setback for subdivision lots created along the shoreline after 1994. Imposing significant

increases in setback requirements, which may be 140 feet or more in some areas, on established patterns of land development will result in a tremendous loss in value for countless private landowners. This will jeopardize the personal financial standing of affected families, and induce chaos among the holders of liens, insurers, and the other numerous interests in real property along the shoreline. People on Oahu have relied for 38 years on a 20- to 60-foot shoreline setback requirement. We feel strongly that the proposals to mandate a significant increase in the shoreline setback requirement and impose a "clear public interest" test for shoreline setback variance approvals are reckless.

It is appropriate, on the other hand, to clearly authorize coastal erosion rate methodologies for the establishment of shoreline setback lines. The amendments we are supporting would accomplish this, without otherwise imposing inappropriate mandates. To that end, we prefer the proposed amendments relating to shoreline setbacks contained in Senate Bill 867.

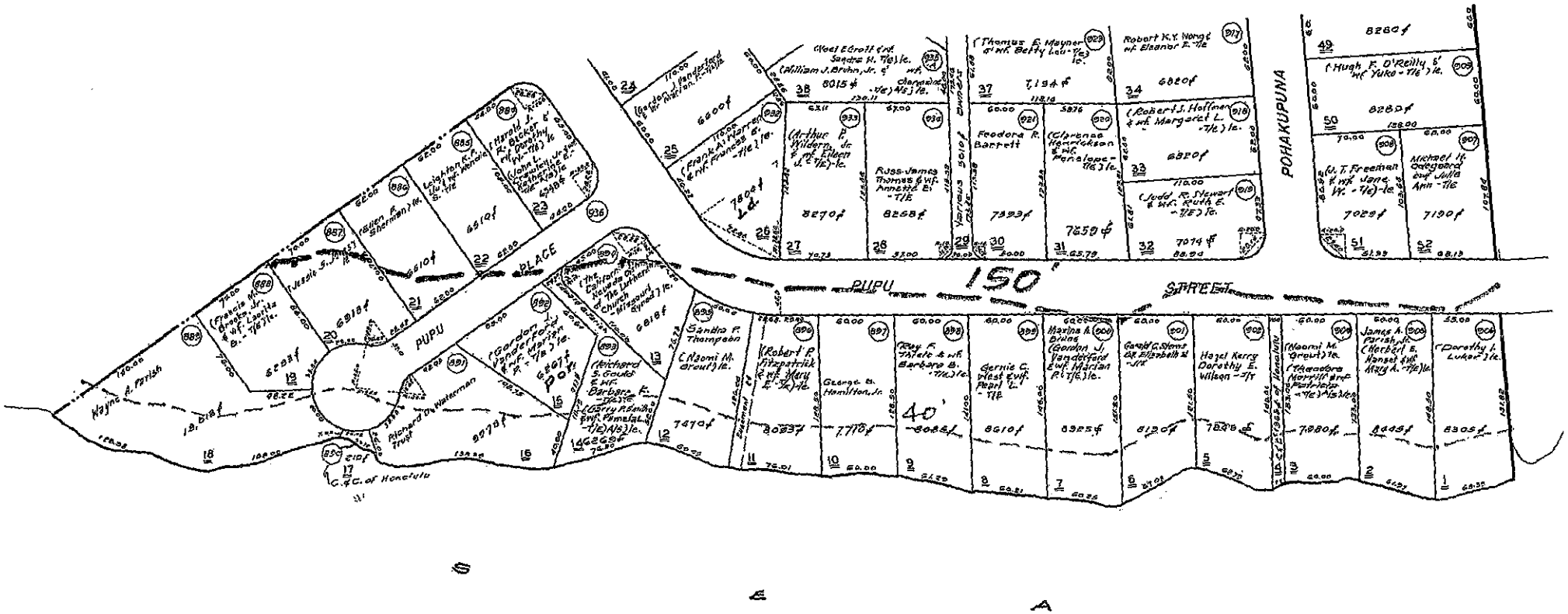
We strongly recommend that Senate Bill 468 be filed. Thank you for this opportunity to comment.

Very truly yours,

for David K. Tanoue, Acting Director
Department of Planning and Permitting

DKT:jmf
sb468-jt.doc

Attachment: Shoreline Tax Map Properties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PUPU STREET
POHAKUPUNA
150'
40'
Wayne A. Parish
Richard D. Waterman Trust
C. & C. of Honolulu
Sandra P. Thompson
(Naomi M. Grout) le.
Robert P. Fitzpatrick & wf. Mary E. -T/E) le.
George B. Hamilton, Jr.
Ray F. Tatek & wf. Barbara B. -T/E) le.
Gernie C. West & wf. Pearl L. -T/E
Maxine A. Bruns (Gordon J. Vanderford & wf. Marian P. -T/E) le.
Gerald C. Stone & wf. Elizabeth S. -J/T
Hazel Kerry Dorothy E. Wilson -J/T
(Naomi M. Grout) le. (Theodore Morrill & wf. Patricia -T/E) A/S le.
James A. Parish, Jr. (Herbert E. Hanset & wf. Mary A. -T/E) le.
(Dorothy I. Lukar) le.
(Hugh F. O'Reilly & wf. Yuko -T/E) le.
(U. T. Freeman & wf. Jane W. -T/E) le.
Michael H. Odegaard & wf. Julia Ann -T/E
Robert K.Y. Wong & wf. Eleanor F. -T/E
(Thomas E. Mayner & wf. Betty Lou -T/E) le.
(Noel E. Croft & wf. Sandra H. -T/E) le.
(William J. Bruhn, Jr. & wf. Charmaine -T/E) A/S le.
(Arthur P. Wildern, Jr. & wf. Eileen J. -T/E) le.
Russ-James Thomas & wf. Annette E. -T/E
Feodora R. Barrett
(Clarence Henrickson & wf. Penelope -T/E) le.
(Robert J. Hoffman & wf. Margaret L. -T/E) le.
(Judd R. Stewart & wf. Ruth E. -T/E) le.
(Frank A. Warren & wf. Frances E. -T/E) le.
(Gordon J. Vanderford & wf. Marian P. -T/E) le.
(Richard S. Gould & wf. Barbara K. -T/E) le.
(Garry R. Smith & wf. Pamela L. -T/E) A/S) le.
(Frances M. Brooks, Jr. & wf. Laorita B. -T/E) le.
(Jessie S. J. -T/E) le.
(Ellen F. Sherman) le.
(Leighton K. F. Lu & wf. Hendie S. -T/E
(Harold J. R. Becker & wf. Dorothy W. -T/E) le.
(John L. Kowley, Jr. & wf. Kathleen E. -T/E) A/S le.
Yarious Owners
Eastmont Ct.
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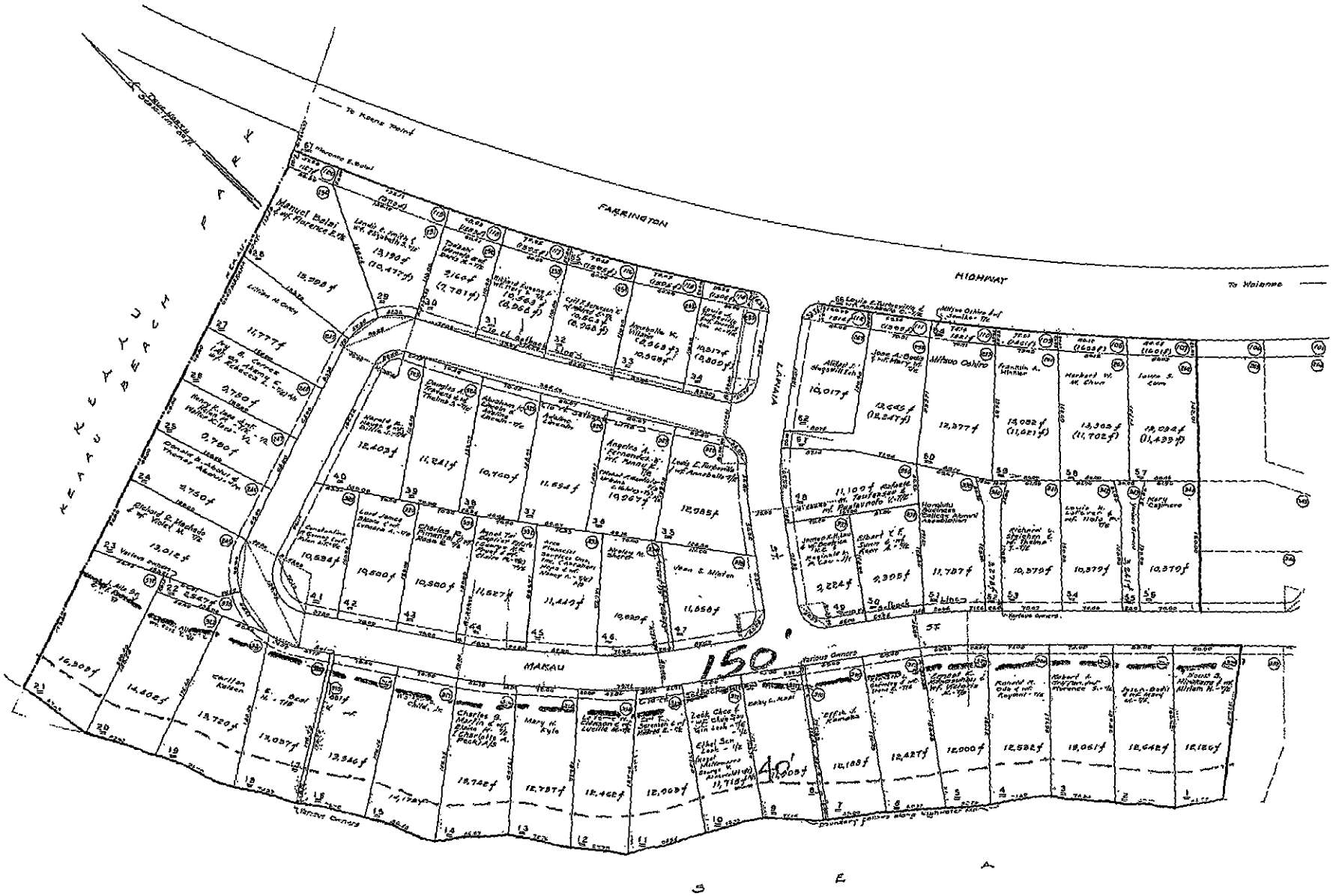
9-1-30



To Koena Point
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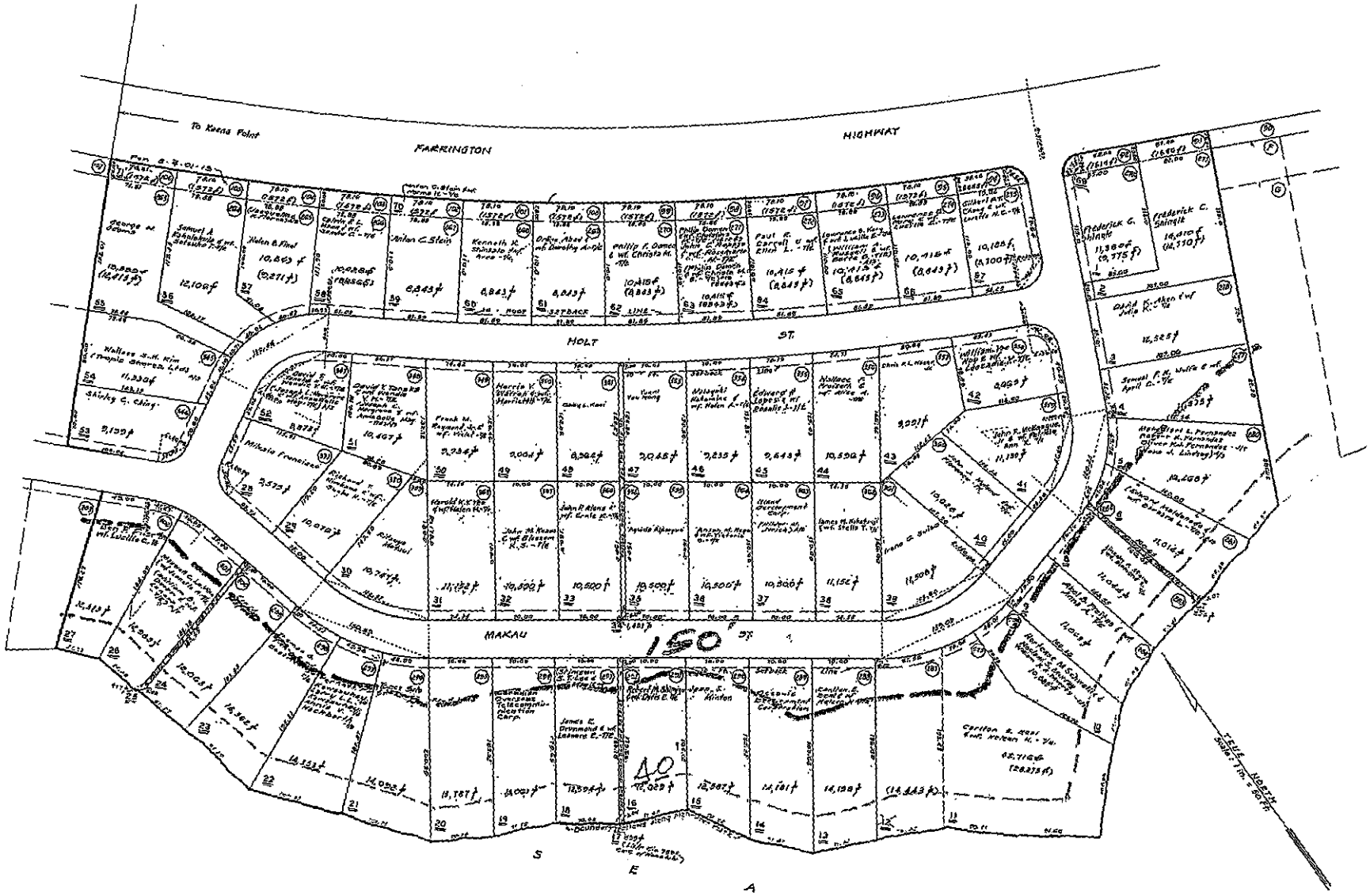
HIGHWAY
To Waianae
KEAAU BEACH PARK
LAWAIA
MAKAU
150'
40'
S E A


To Keena Point
FARRINGTON
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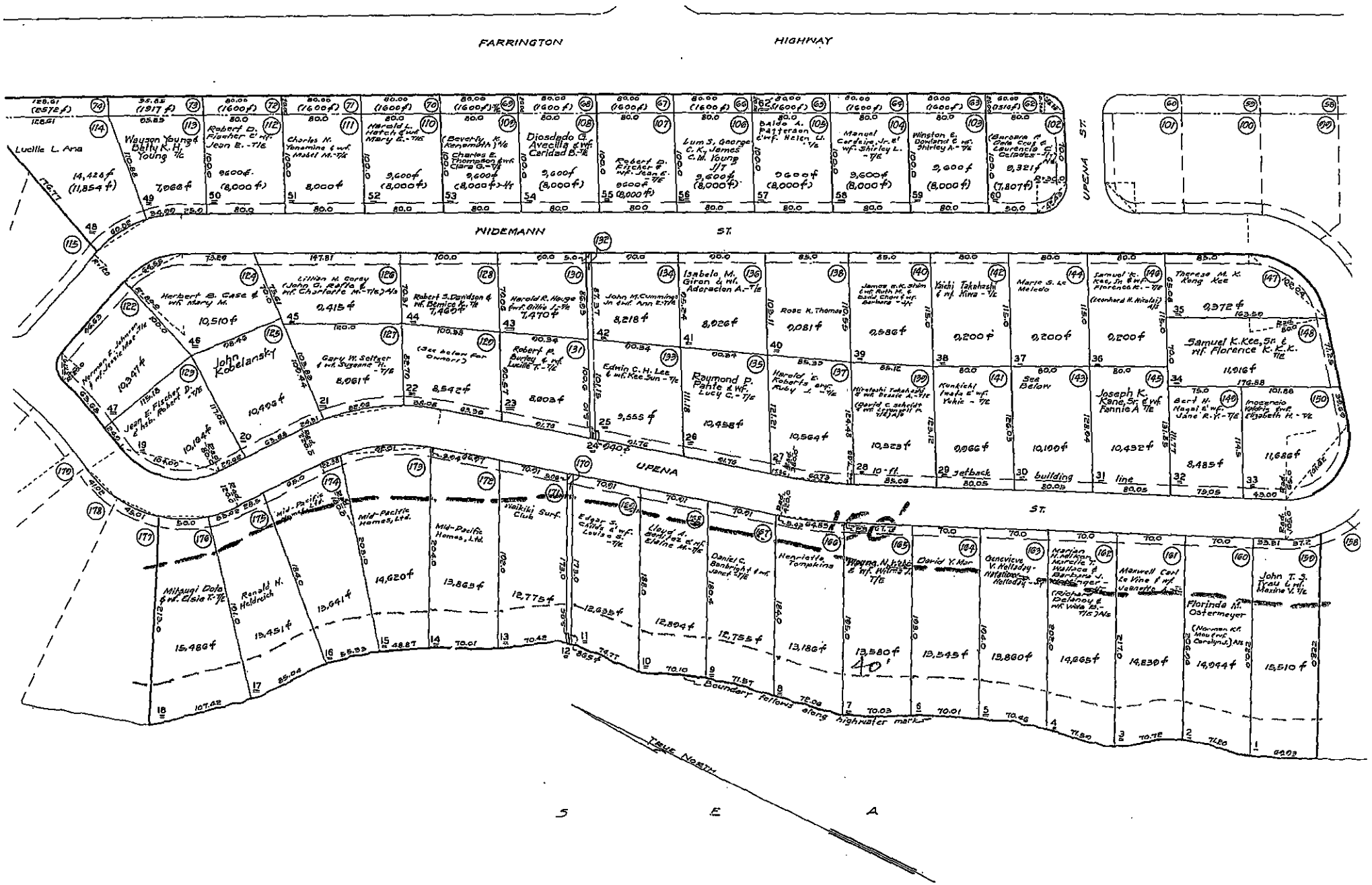
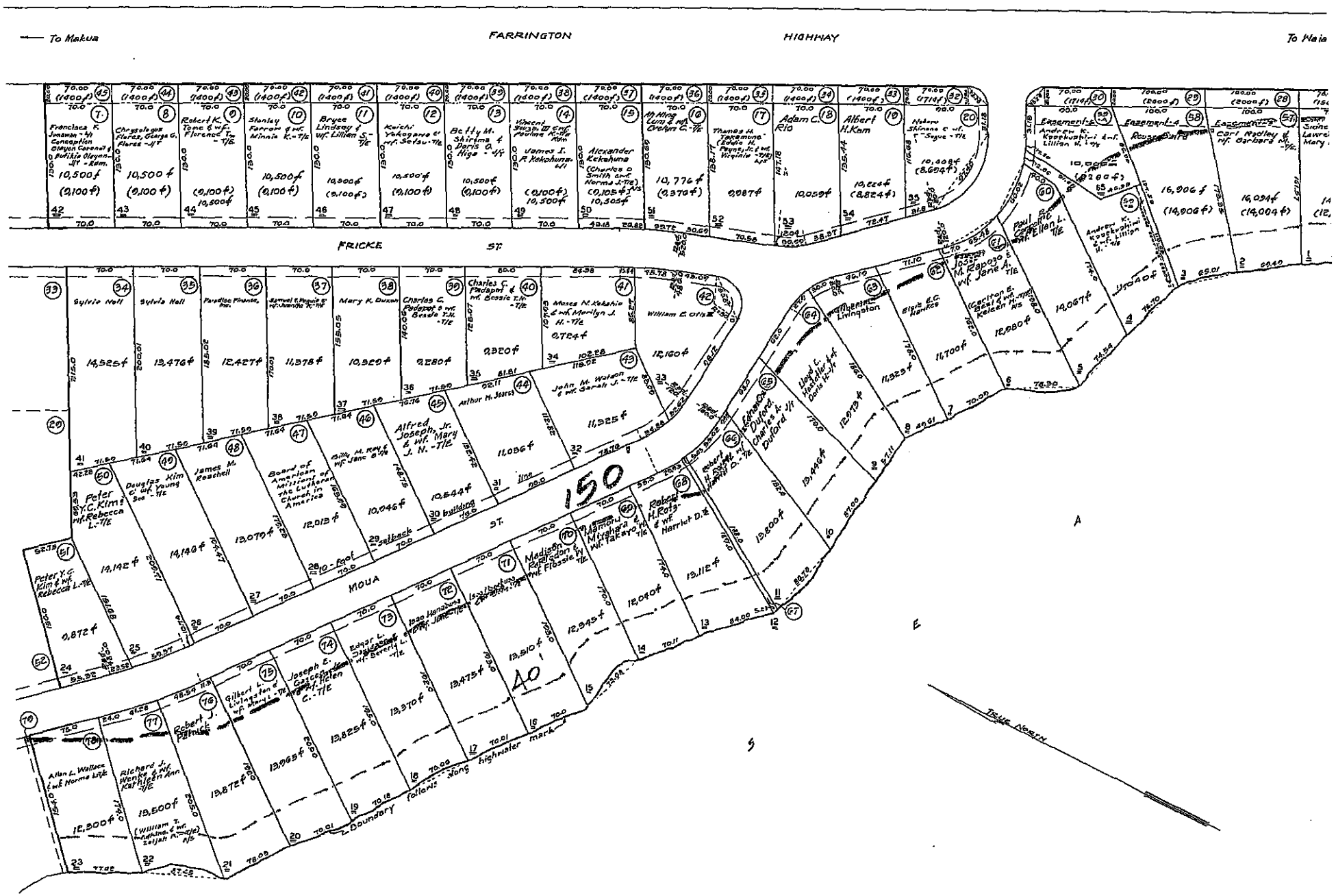
Scale: 1 in. = 50 ft.


FARRINGTON
HIGHWAY
NIDEMANN
ST.
UPENA
ST.
UPENA
ST.
Lucille L. Ana
Wayson Young & Betty K. H. Young
Robert D. Fischer & wf. Jean E.
Charles N. Yonamine & wf. Mabel M.
Harold L. Hatch & wf. Mary E.
Beverly K. Kenyonith
Charles E. Thompson & wf. Clara G.
Diosdado G. Avecilla & wf. Caridad B.
Robert P. Fischer & wf. Jean E.
Lum S. George C. K. James C. M. Young
Balda A. Patterson & wf. Helen U.
Manuel Cardoza Jr. & wf. Shirley L.
Winston E. Dowland & wf. Shirley A.
Barbara P. Dela Cruz & Laurencia C. Calpdes
Herbert B. Case & wf. Mary M.
Lillian M. Garay (John O. Rapta & wf. Charlotte M.)
Robert S. Davidson & wf. Bernice K.
Harold R. Hauge & wf. Billie J.
John M. Cummings Jr. & wf. Ann E.
Isabelo M. Giron & wf. Adoracion A.
Rose K. Thomas
James M. K. Shim & wf. Ruth M. & Saul Chon & wf. Barbara
Yoichi Takahashi & wf. Kina
Marie S. Le Melcdo
Samuel K. Kee Jr. & wf. Florence K.
Therese M. K. Kong Kee
Samuel K. Kee, Sr. & wf. Florence K. K.
John Kobelanski
Gary M. Soltzer & wf. Suzanne H.
Robert P. Burley & wf. Lucille T.
Edwin C. H. Lee & wf. Kee Sun
Raymond P. Pahte & wf. Lucy C.
Harold C. Roberts & wf. Ruby J.
Hiratashi Takahashi & wf. Bessie A.
Kenkichi Iwata & wf. Yukie
See Below
Joseph K. Kane, Sr. & wf. Fannie A.
Bert H. Nagel & wf. Jane R. Y.
Inocencio Valdez & wf. Elizabeth H.
Herman F. Johnson & wf. Jessie Mae
Jean E. Fischer & Hsb. Robert D.
Mid-Pacific Homes, Ltd.
Waikiki Surf Club
Edgar S. Cahill & wf. Louise
Lloyd J. Bellows & wf. Elaine M.
Daniel C. Bendright & wf. Janet
Henrietta Tompkins
Wayne N. Yoko & wf. Wilma M.
David Y. Mar
Genevieve V. Holladay - Holladay
Nazian N. Nelson & Marcelle V. Wallace & Barbara J. Bergner - Richard Delaney & wf. Viola B.
Maxwell Carl Le Vine & wf. Vanette
Florinda M. Ostermeyer (Norman K. Mau & wf. Carolyn J.)
John T. S. Trau & wf. Maxine V.
Mitsugi Dofa & wf. Elsie K.
Ronald N. Holdrich
Boundary follows along highwater mark
TRUE NORTH
S E A

8-4-07


To Makua
FARRINGTON
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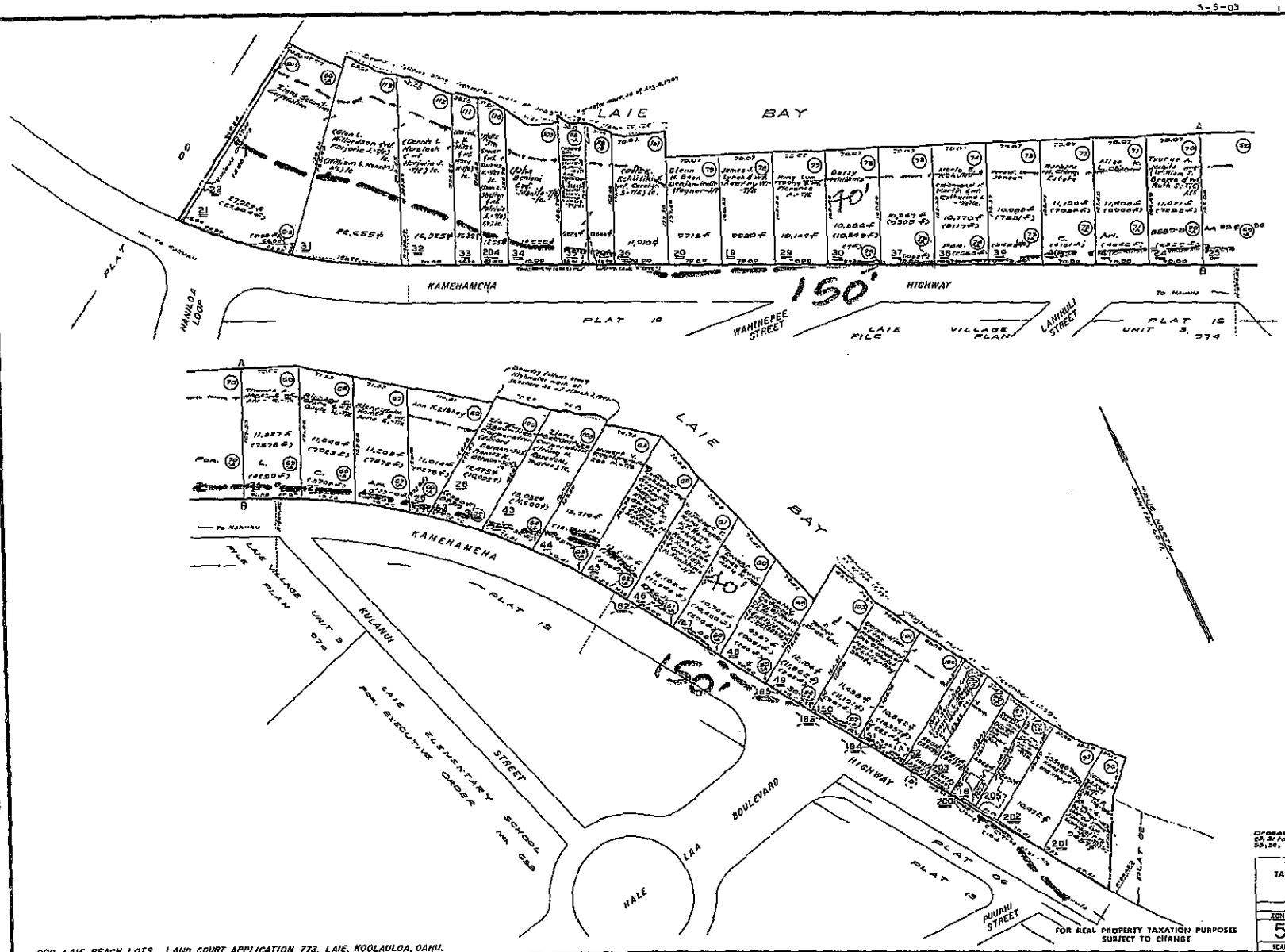
Boundary follows along highwater mark
TRUE NORTH

8-4-05



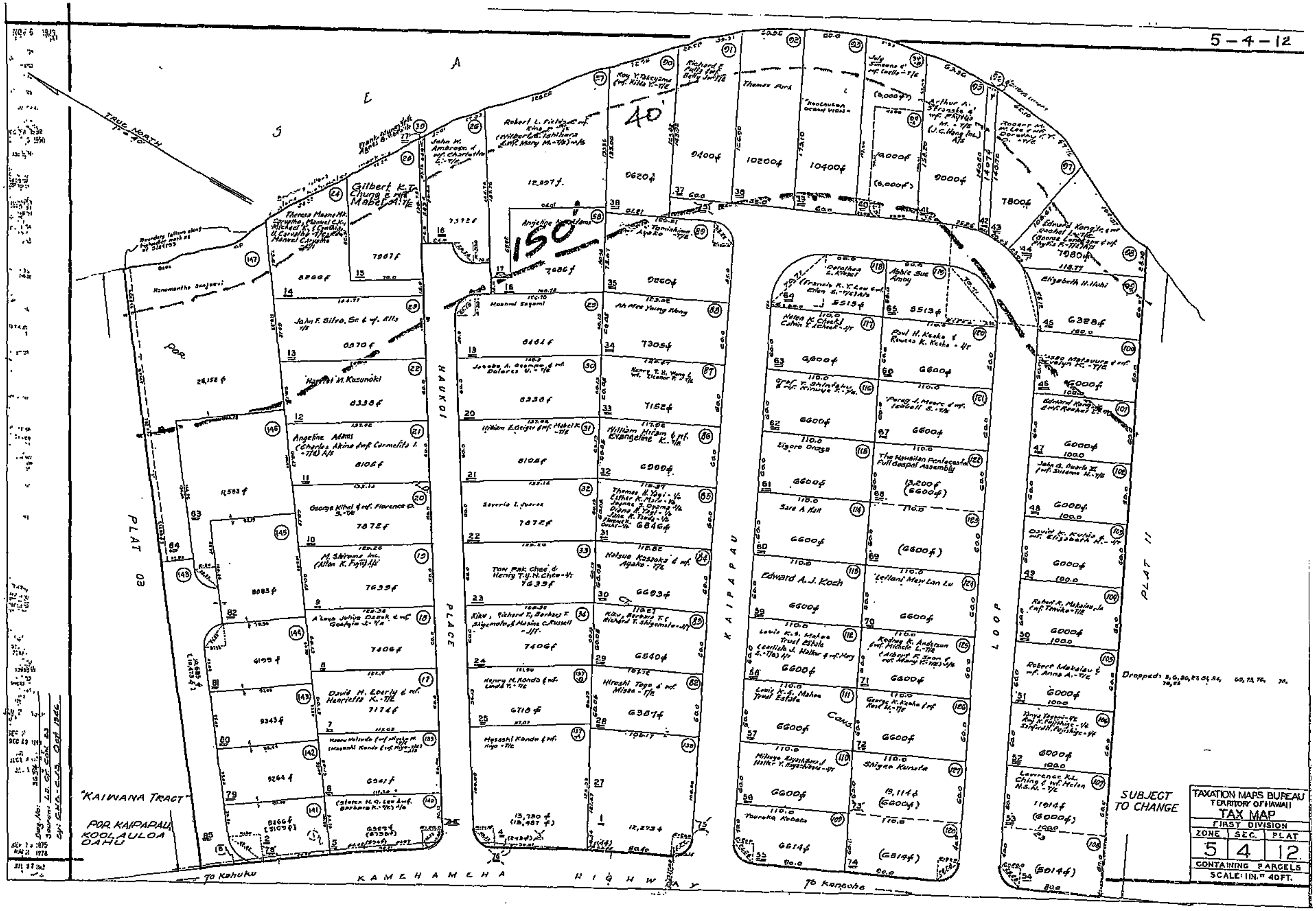
POR. LAIE BEACH LOTS, LAND COURT APPLICATION 772, LAIE, KOOLAULOA, OAHU.

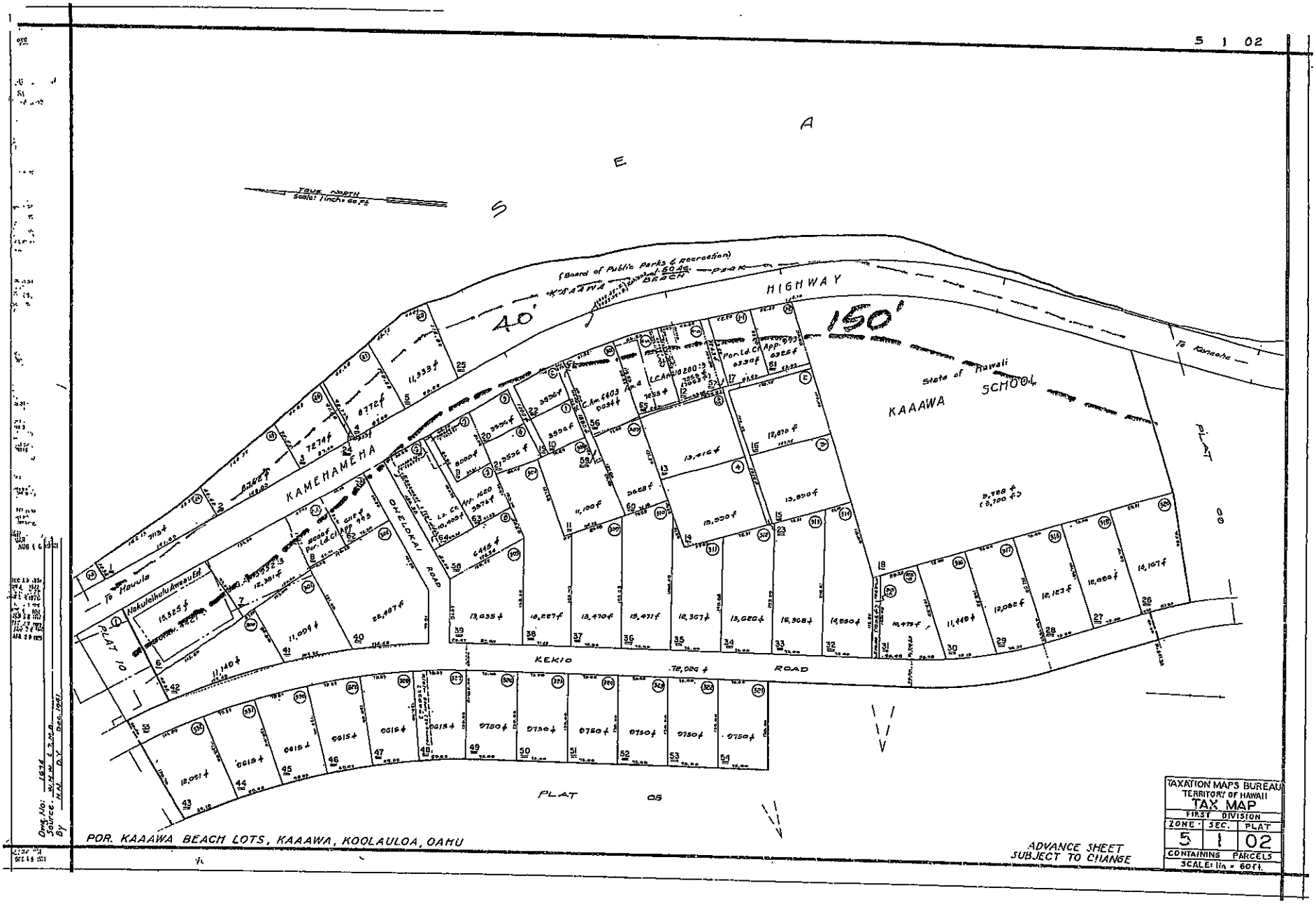
FOR REAL PROPERTY TAXATION PURPOSES SUBJECT TO CHANGE

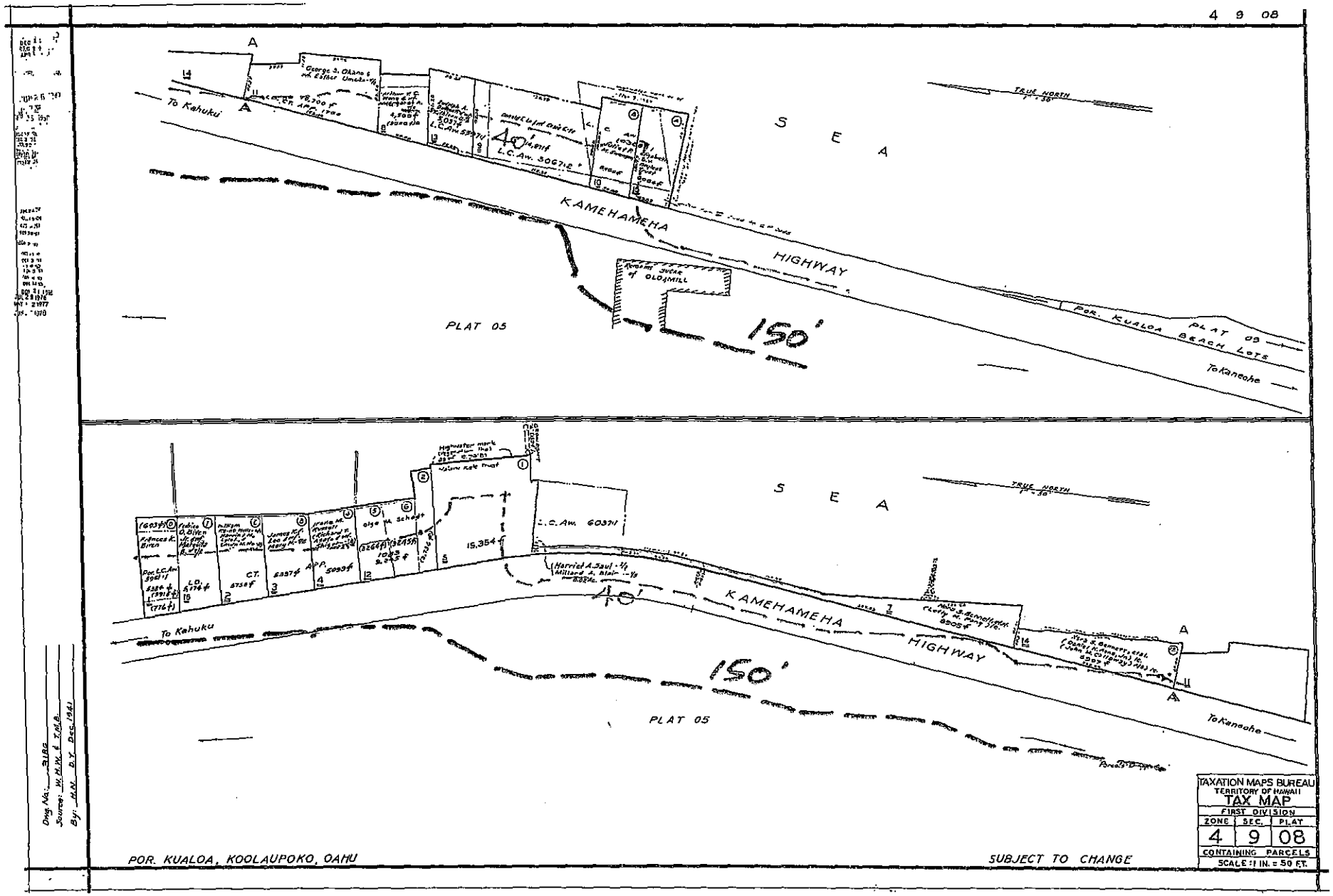
DEPARTMENT OF TAXATION
TAXATION MAPS BUREAU
STATE OF HAWAII
TAX MAP
FIRST TAXATION DIVISION

ZONE	SEC.	PLAT
5	5	03

SCALE: 1 IN. = 60 FT.


5-4-12
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FIRST DIVISION
ZONE 5 SEC. 4 PLAT 12
CONTAINING PARCELS
SCALE: 1 IN. = 40 FT.
SUBJECT TO CHANGE
"KAIWANA TRACT"
POR KAIPAPAU, KOOLAULOA, OAHU
KAMEHAMEHA HIGHWAY
To Kahuku
To Kaneohe
HAUKOI PLACE
KAIPAPAU LOOP
PLAT 03
PLAT 11
SEA
TRUE NORTH


5 1 02
TRUE NORTH
Scale: 1 inch = 60 ft.
S E A
(Board of Public Parks & Recreation)
KAAAWA BEACH PARK
HIGHWAY
40'
150'
KAMEHAMEHA
OHELOKAI ROAD
KEKIO ROAD
KAAAWA SCHOOL
State of Hawaii
To Kaneohe
To Hauula
PLAT 10
PLAT 05
PLAT 00
POR. KAAAWA BEACH LOTS, KAAAWA, KOOLAULOA, OAHU
ADVANCE SHEET
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FIRST DIVISION
ZONE 5
SEC. 1
PLAT 02
CONTAINING PARCELS
SCALE: 1in = 60ft.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A
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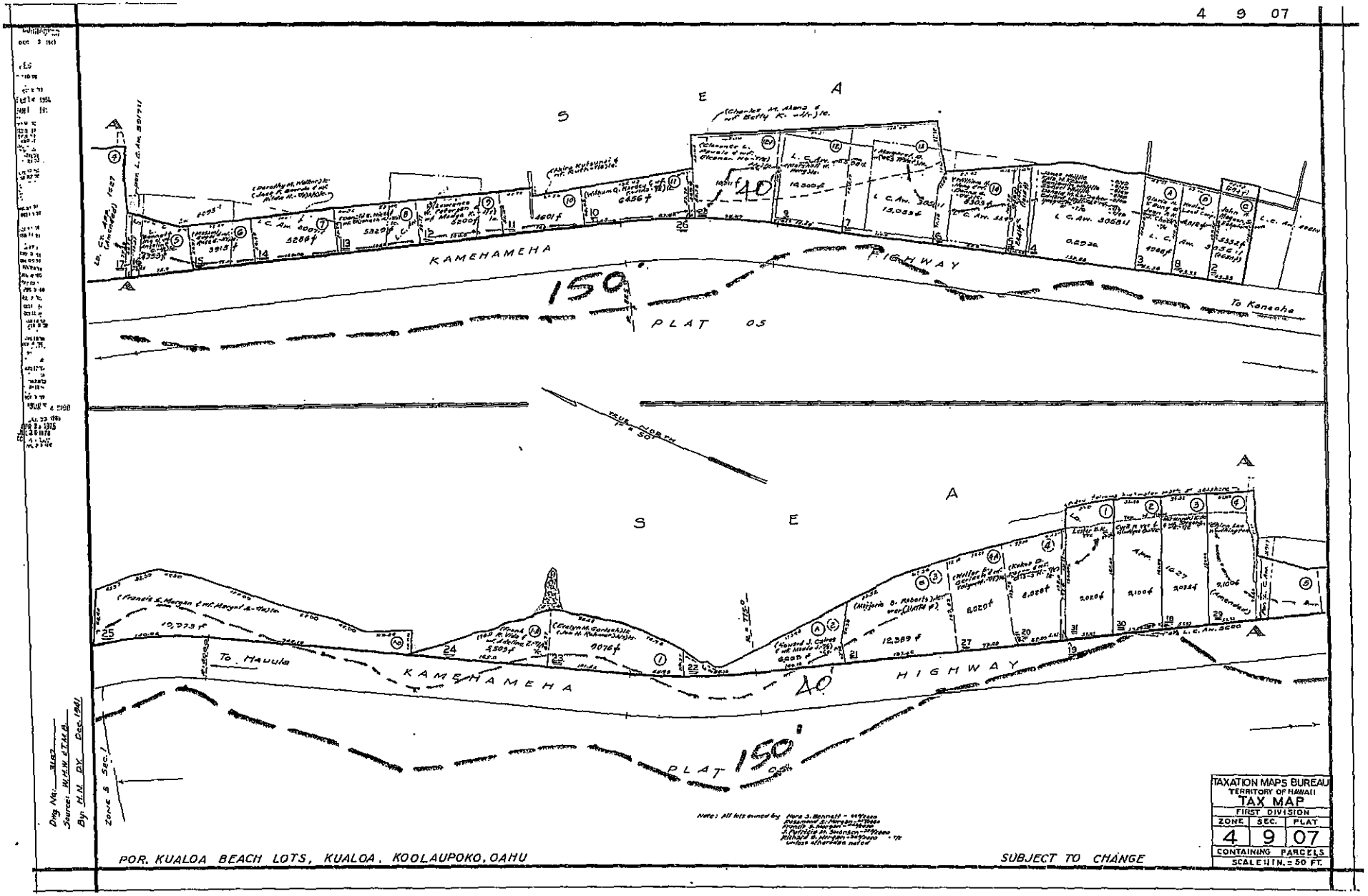
POR. KUALOA BEACH LOTS
PLAT 09
To Kaneohe
S E A
TRUE NORTH
L.C. Aw. 6037
15,354
Harriet A. Saul
Millard A. Blair
KAMEHAMEHA
HIGHWAY
40'
To Kahuku
150'
PLAT 05
To Kaneohe
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FIRST DIVISION
ZONE 4
SEC. 9
PLAT 08
CONTAINING PARCELS
SCALE: 1 IN. = 50 FT.
POR. KUALOA, KOOLAUPOKO, OAHU
SUBJECT TO CHANGE
Dwg. No.: 3186
Source: W.H.W. & T.M.B.
By: H.N. D.Y. Dec. 1941


4 9 07
S E A
KAMEHAMEHA HIGHWAY
150'
PLAT 05
To Kaneohe
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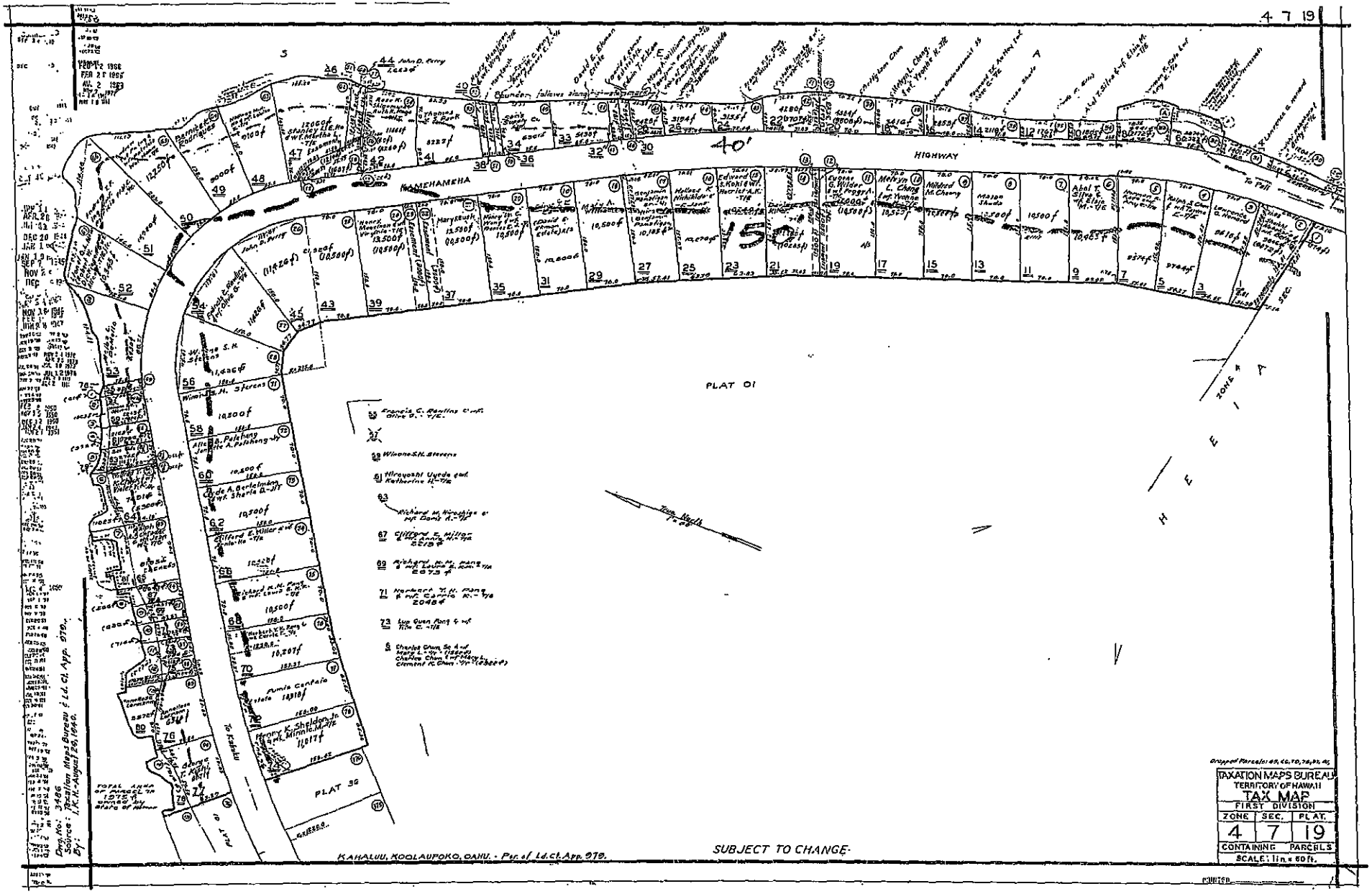
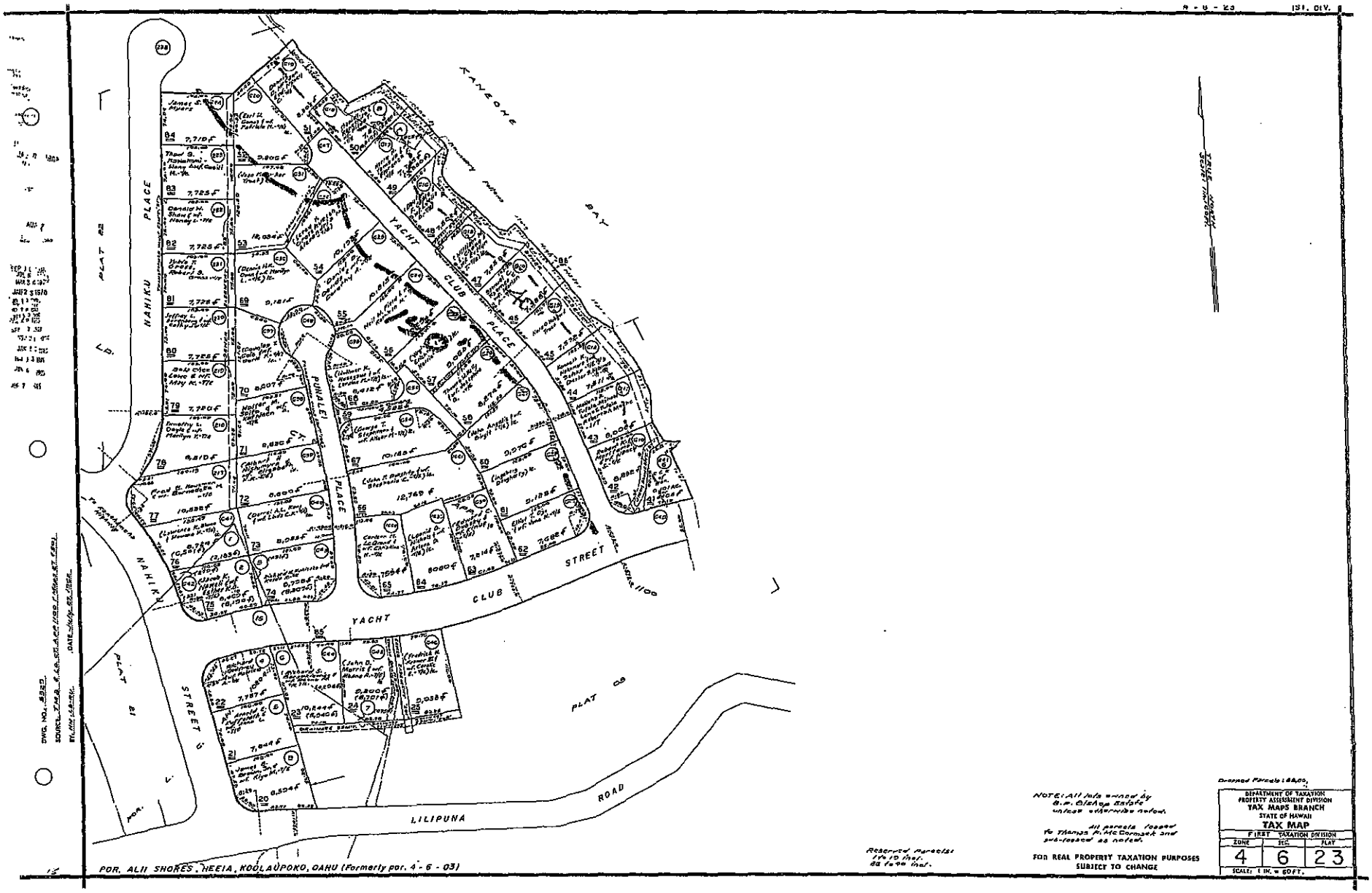
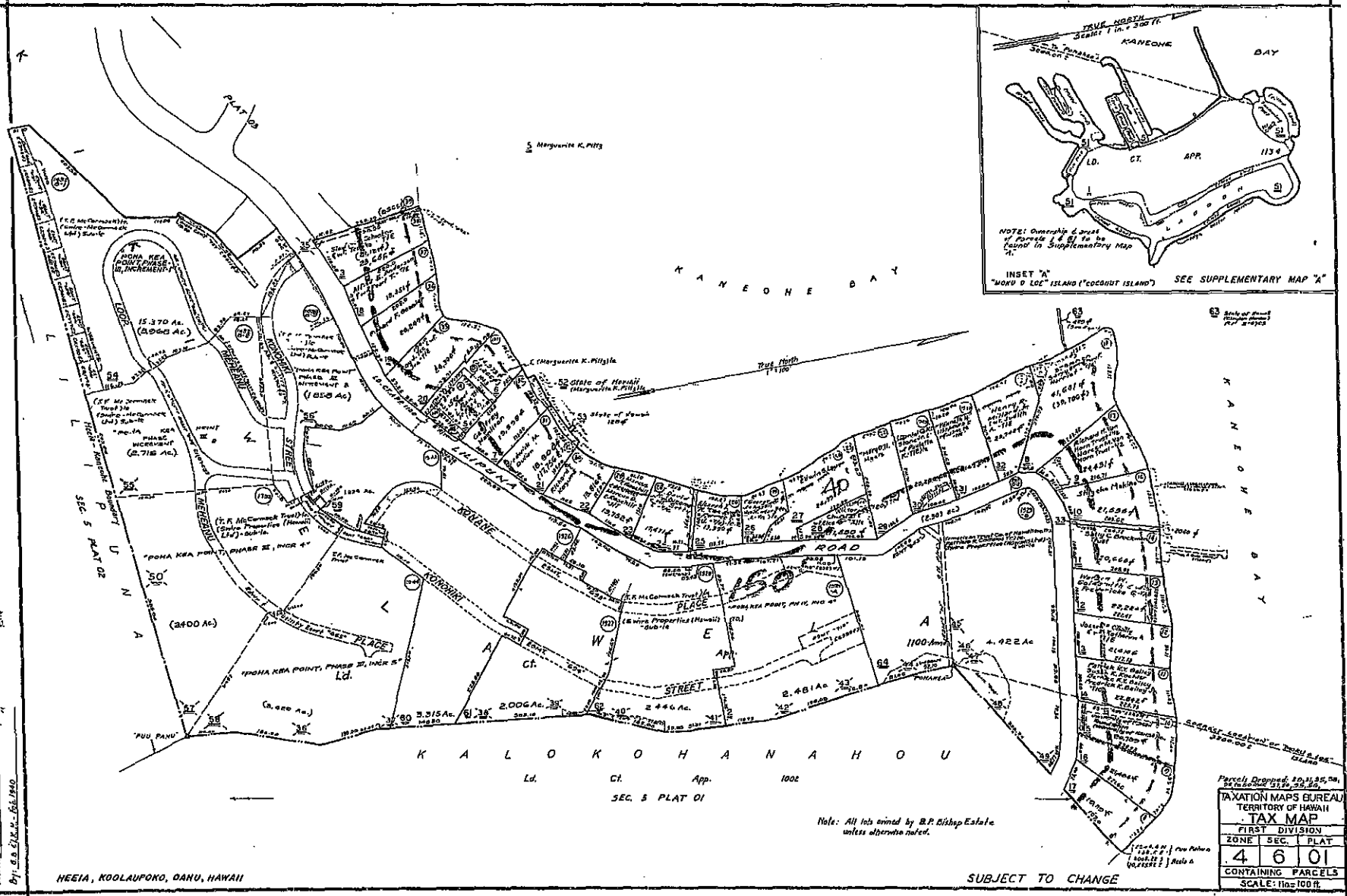
To Hauula
KAMEHAMEHA HIGHWAY
40'
PLAT 05
150'
Zone 5 Sec. 1
Dwg No. 3187
Source: W.H.W. & T.M.B.
By: H.N. DY. Dec. 1941
POR. KUALOA BEACH LOTS, KUALOA, KOOLAUPOKO, OAHU
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FIRST DIVISION
ZONE 4
SEC. 9
PLAT 07
CONTAINING PARCELS
SCALE: 1 IN. = 50 FT.

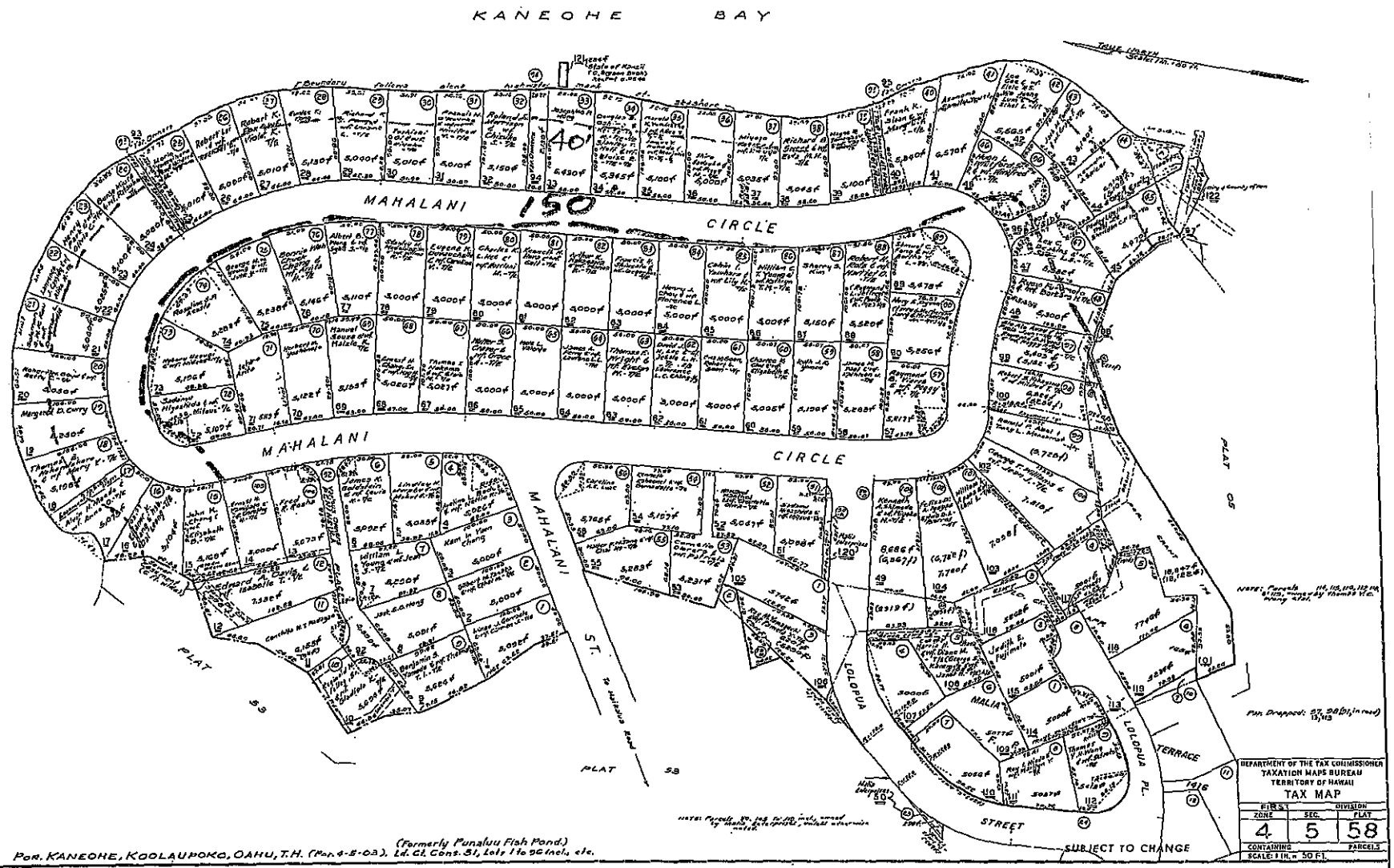


4 7 19
KAMEHAMEHA
HIGHWAY
40'
150'
PLAT 01
PLAT 36
To Kahalu
To Pali
ZONE 4
SEC.
Dwg. No: 3486
Source: Taxation Maps Bureau & Ld. Ct. App. 979.
By: I.K.H. August 28, 1940.
KAHALUU, KOOLAUPOKO, OAHU. - Per. of Ld. Ct. App. 979.
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FIRST DIVISION
ZONE 4
SEC. 7
PLAT. 19
CONTAINING PARCELS
SCALE: 1 in. = 60 ft.

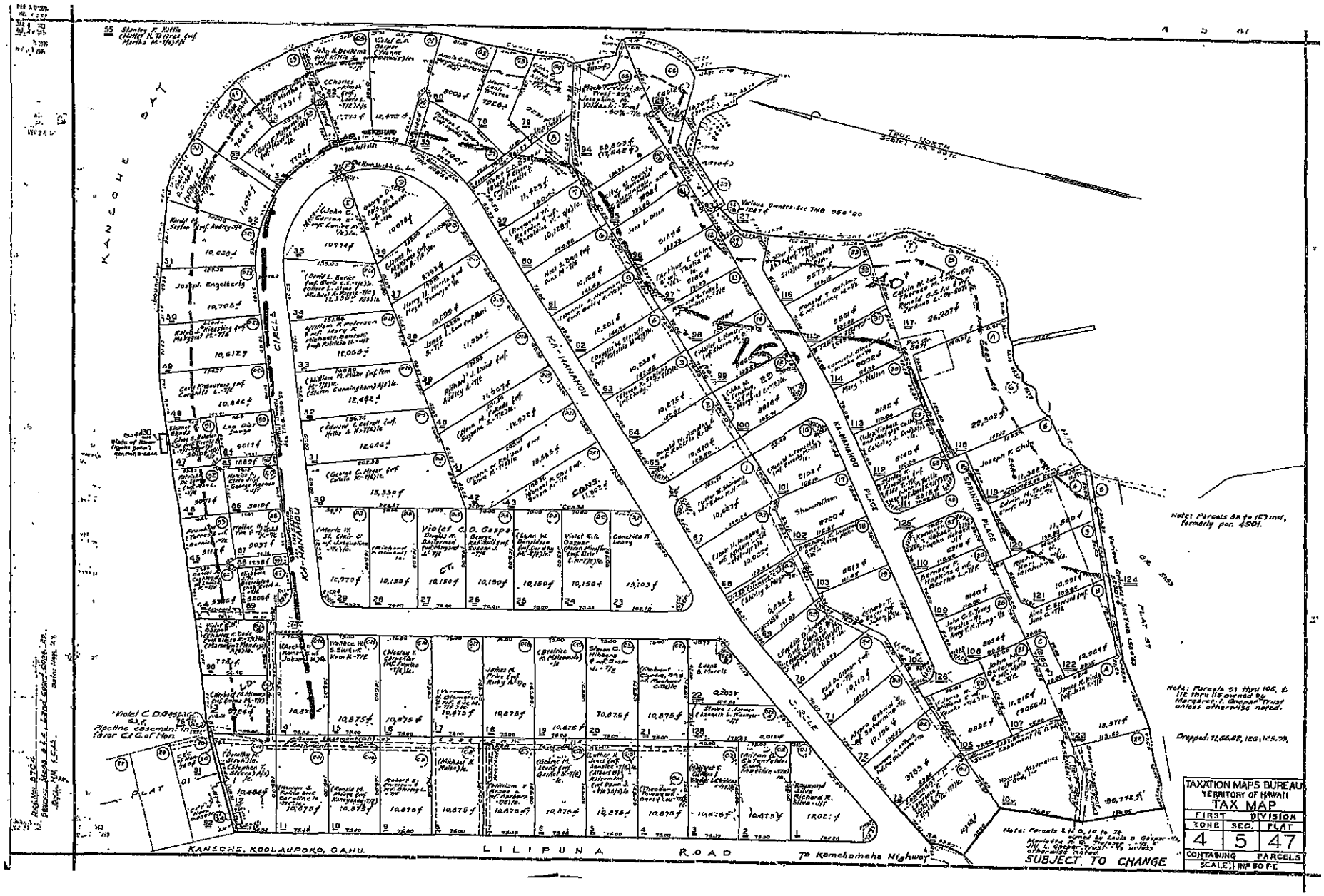


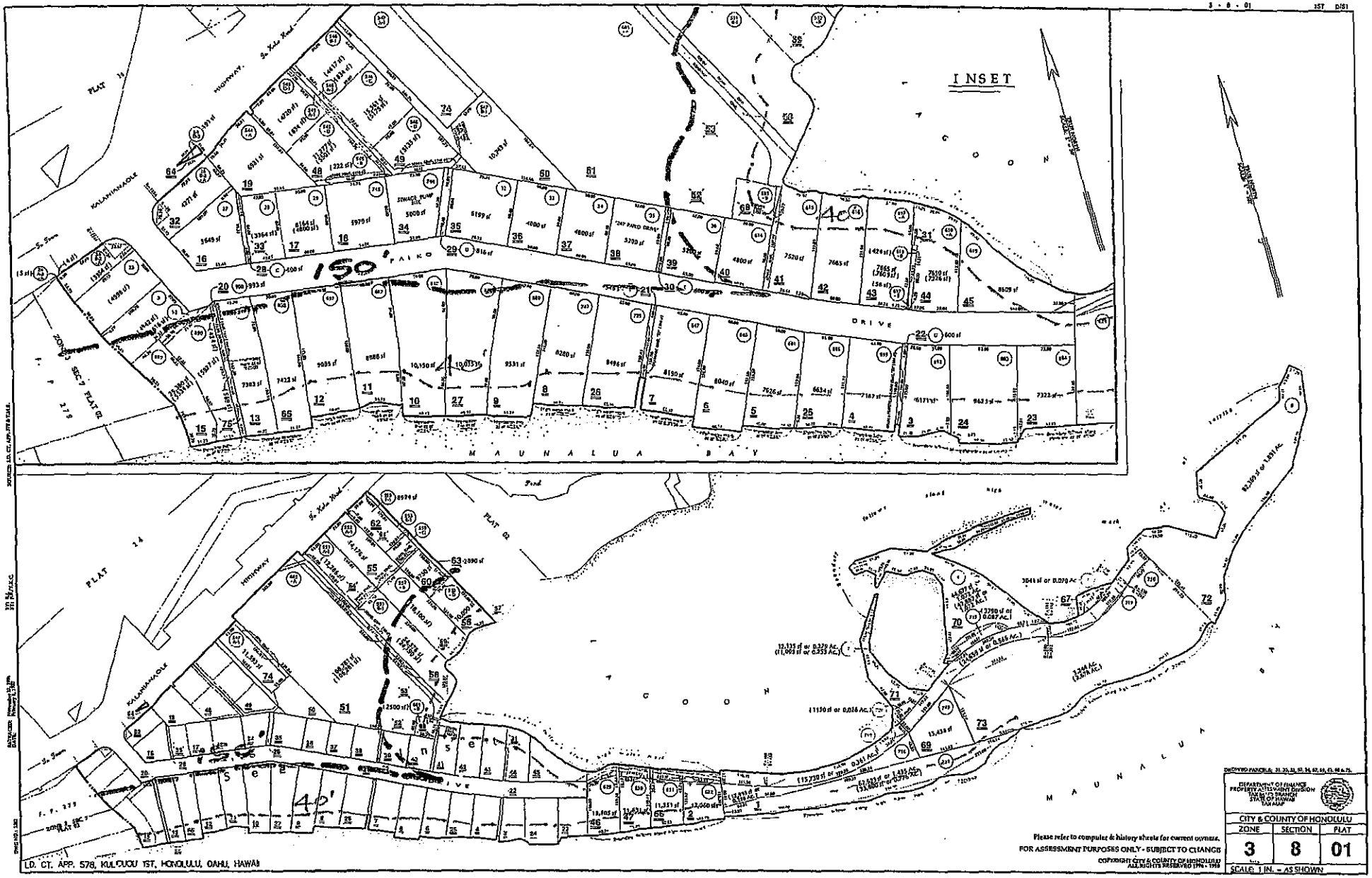
4 - 6 - 23
1ST. DIV.
KANEOHE BAY
YACHT CLUB PLACE
NAHIKU PLACE
PUNALEI PLACE
YACHT CLUB STREET
NAHIKU STREET
LILIPUNA ROAD
PLAT 22
PLAT 21
PLAT 09
POR. ALII SHORES, HEEIA, KOOLAUPOKO, OAHU (Formerly por. 4 - 6 - 03)
NOTE: All lots owned by B.P. Bishop Estate unless otherwise noted.
All parcels leased to Thomas R. McCormack and sub-leased as noted.
Reserved Parcels: 1 to 10 incl. 22 to 40 incl.
FOR REAL PROPERTY TAXATION PURPOSES SUBJECT TO CHANGE
Dropped Parcels: 68,00,
DEPARTMENT OF TAXATION
PROPERTY ASSESSMENT DIVISION
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP
FIRST TAXATION DIVISION
ZONE 4
SEC. 6
PLAT 23
SCALE: 1 IN. = 60 FT.

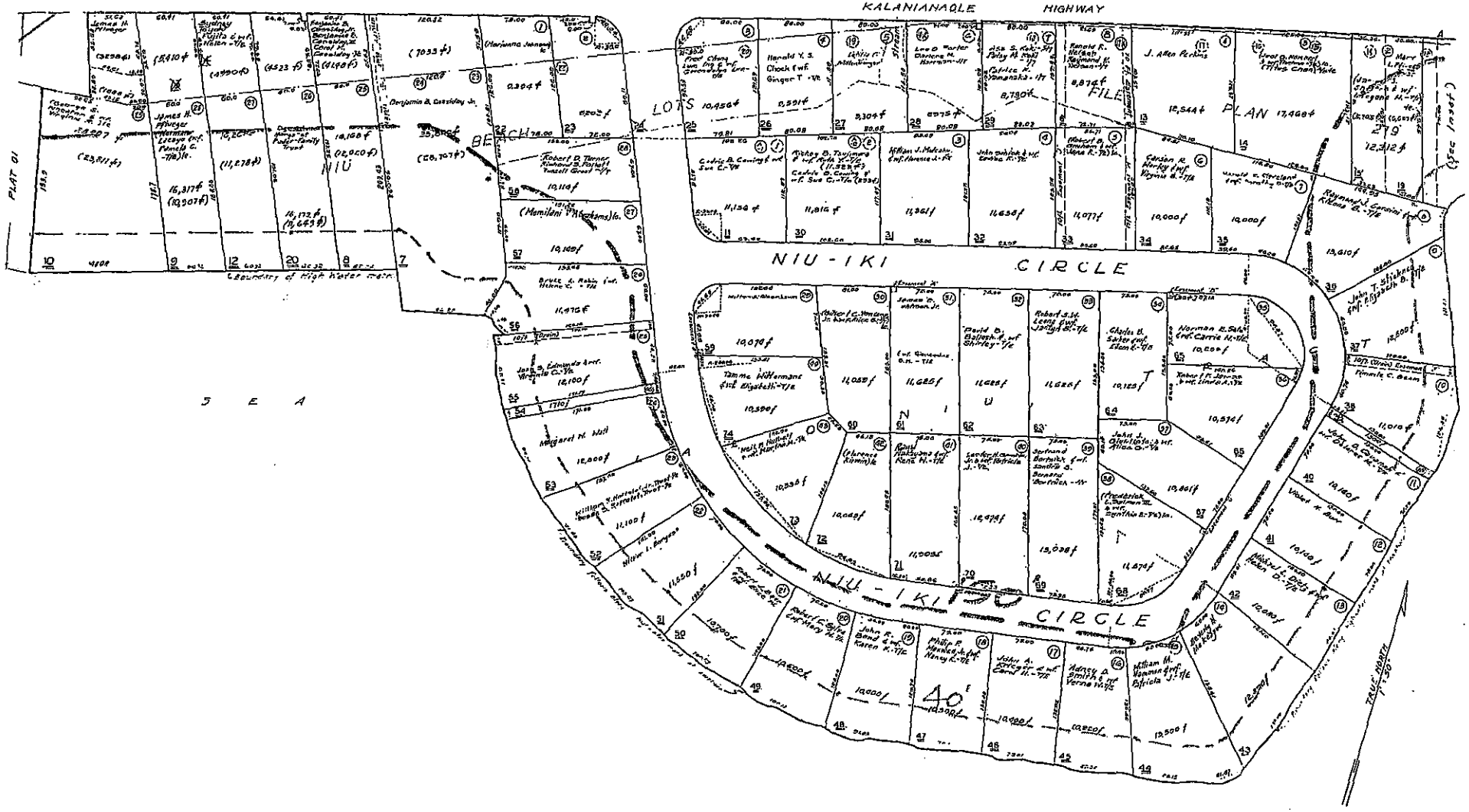

4 6 01
TRUE NORTH
KANEOHE BAY
LD. CT. APP. 1134
NOTE: Ownership & areas of Parcels 1 & 51 to be found in Supplementary Map "A".
INSET "A"
"MOKU O LOE" ISLAND ("COCONUT ISLAND")
SEE SUPPLEMENTARY MAP "A"
KANEOHE BAY
KANEOHE BAY
PLAT 03
LILIPUNA
KOMANE
KONOHIKI
PLACE
STREET
ROAD
150'
KALOKOHANAHOU
Ld. Ct. App. 1002
SEC. 5 PLAT 01
SEC. 5 PLAT 02
"POHA KEA POINT, PHASE III, INCR 4"
"POHA KEA POINT, PHASE III, INCR 5"
"PUU PANU"
15.370 Ac. (8968 Ac.)
(2.716 Ac.)
(2400 Ac.)
(3.420 Ac.)
3.315 Ac.
2.006 Ac.
2.446 Ac.
2.481 Ac.
4.422 Ac.
1100 Ann
Note: All lots owned by B.P. Bishop Estate unless otherwise noted.
Parcels Dropped: 20, 21, 25, 28, 29, 30, 31, 32, 35, 50.
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FIRST DIVISION
ZONE 4
SEC. 6
PLAT 01
CONTAINING PARCELS
SCALE: 1in=100 ft.
HEEIA, KOOLAUPOKO, OAHU, HAWAII
SUBJECT TO CHANGE



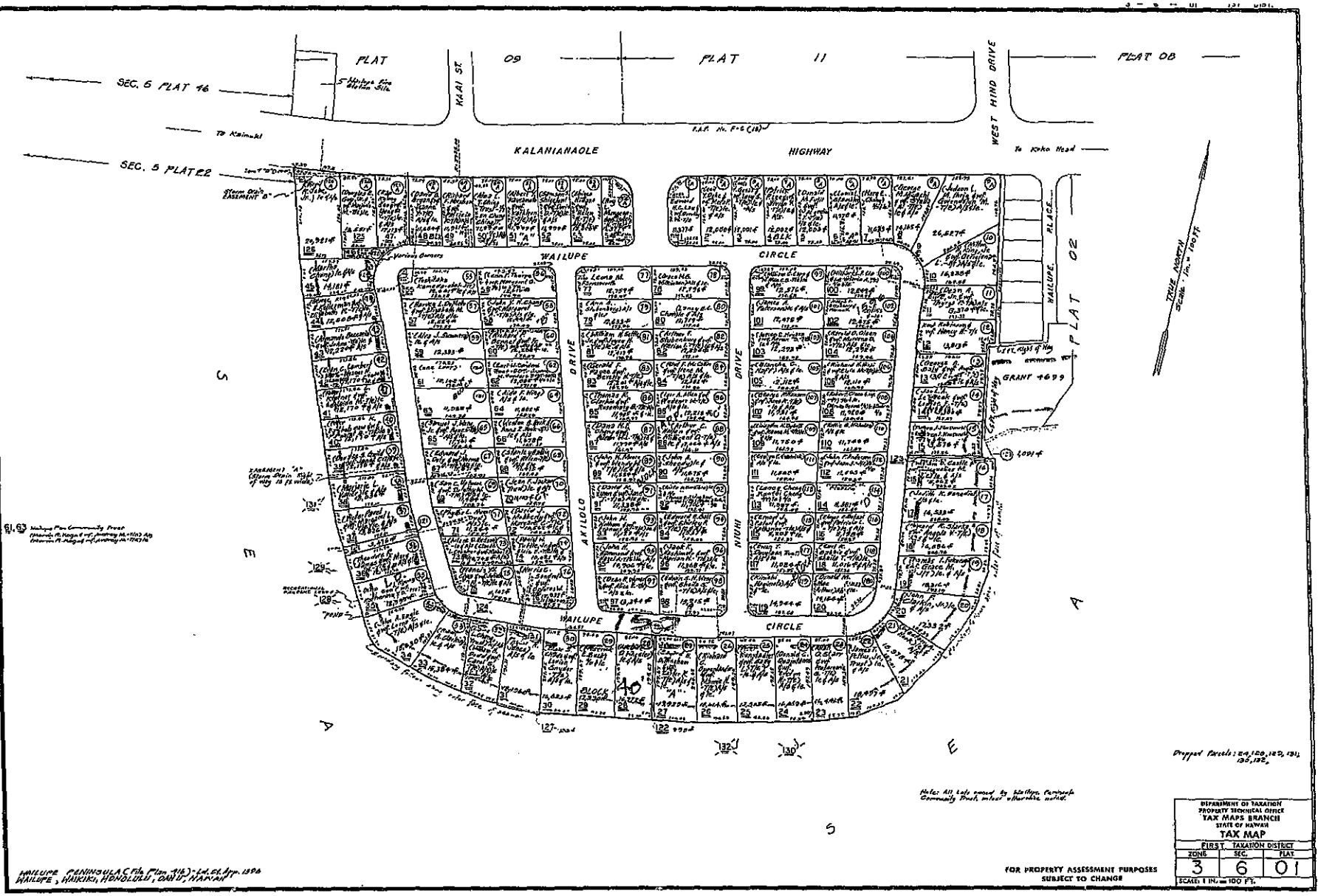
(Formerly Punaluu Fish Pond.)
Por. KANEOHE, KOOLAUPOKO, OAHU, T.H. (Por. 4-5-03). Ld. Ct. Cons. 51, Lots 1 to 96 incl., etc.

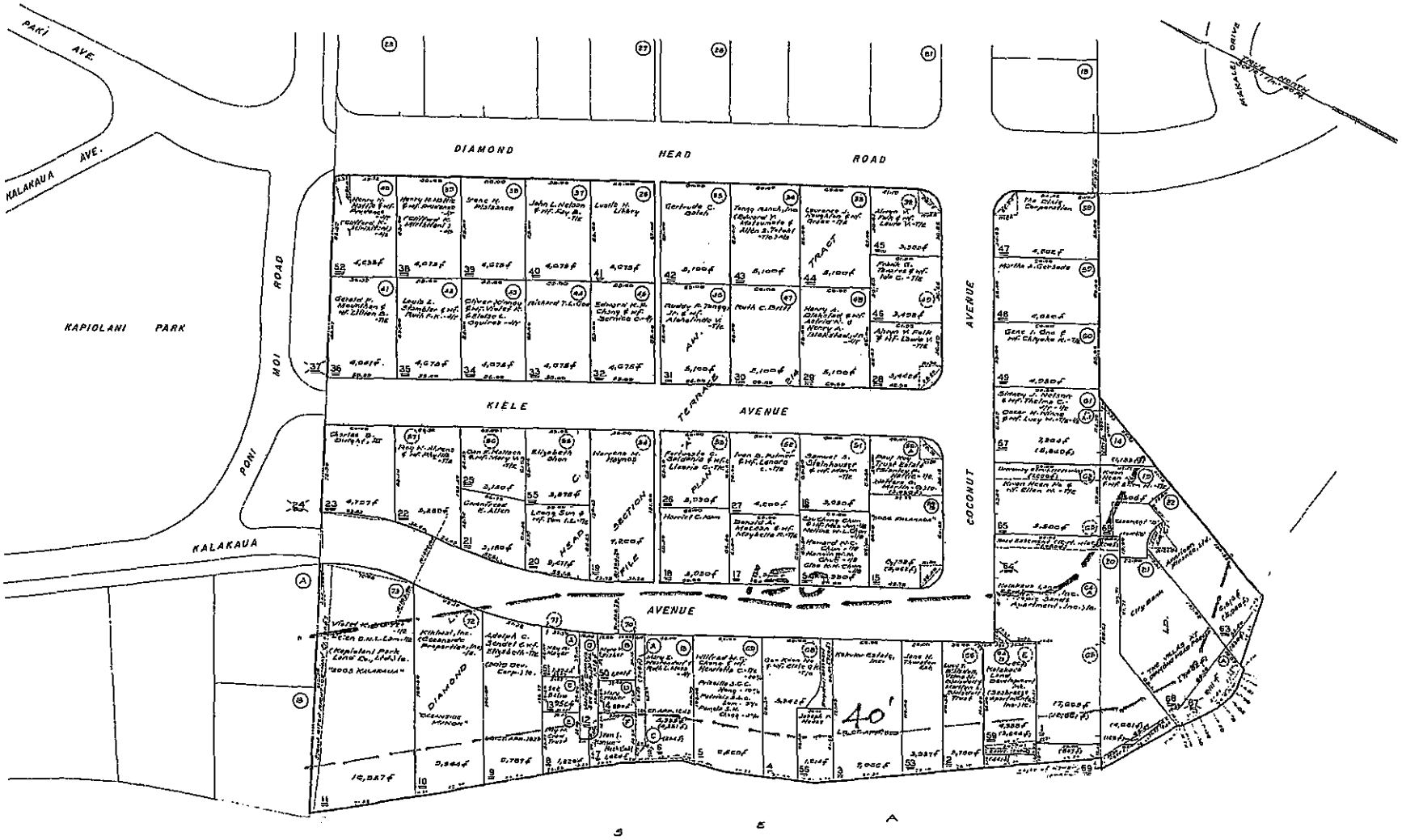

KANEOHE BAY
KA-HANAHOU CIRCLE
KA-HANAHOU CT.
KA-HANAHOU PLACE
SPINNER PLACE
TRUE NORTH
LILIPUNA ROAD
To Kamehameha Highway
KANEOHE, KOOLAUPOKO, OAHU
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FIRST DIVISION
ZONE 4
SEC. 5
PLAT 47
CONTAINING PARCELS
SCALE: 1 IN = 60 FT.

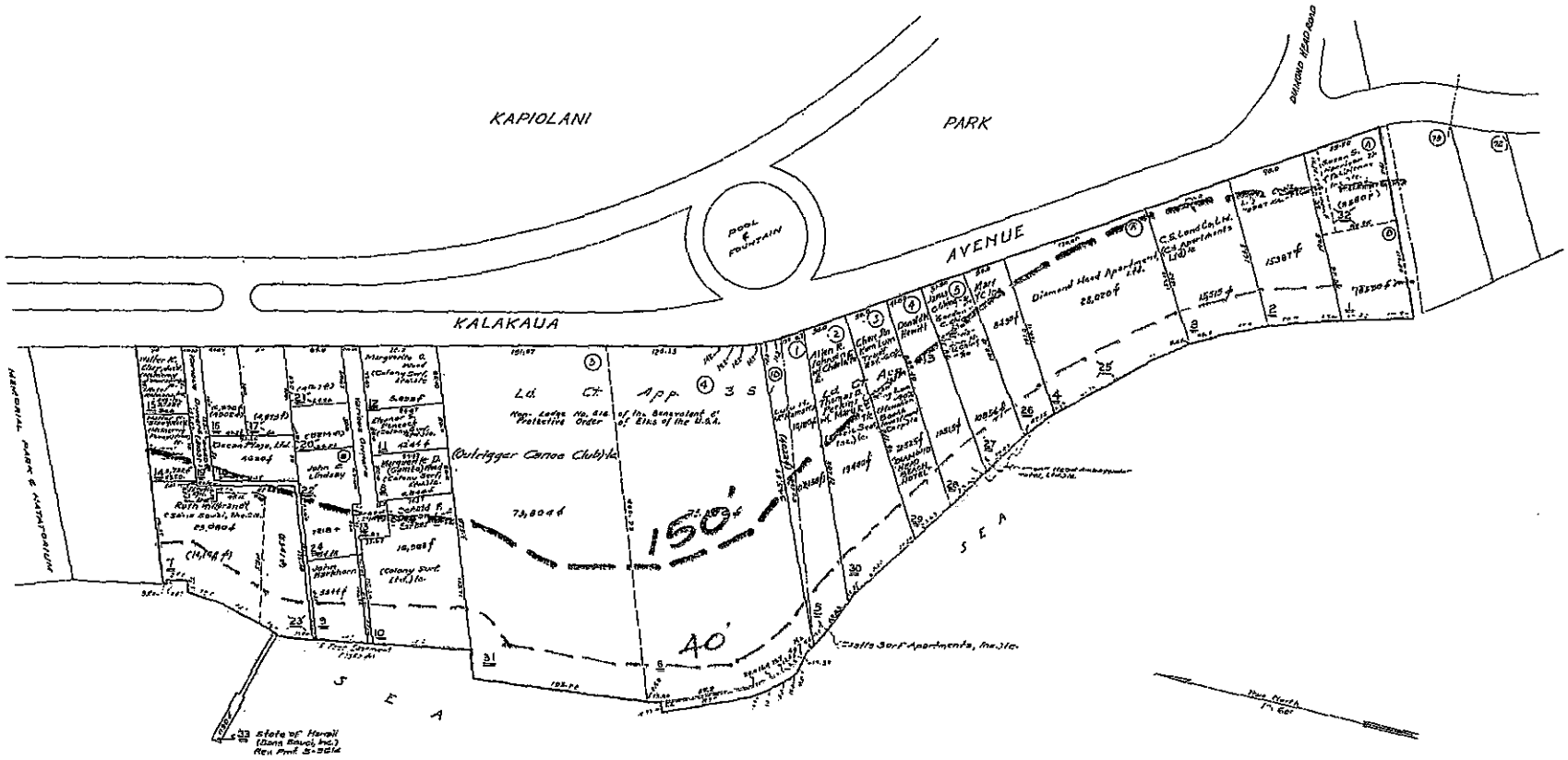

INSET
PAIKO
DRIVE
MAUNALUA BAY
KALANIANAOLE
HIGHWAY
PLAT 14
PLAT 02
150'
40'
LD. CT. APP. 578, KULIOUOU 1ST, HONOLULU, OAHU, HAWAII
Please refer to computer & history sheets for current owners.
FOR ASSESSMENT PURPOSES ONLY - SUBJECT TO CHANGE
COPYRIGHT CITY & COUNTY OF HONOLULU
ALL RIGHTS RESERVED 1996 - 1998
DEPARTMENT OF FINANCE
PROPERTY ASSESSMENT DIVISION
TAX MAP BRANCH
STATE OF HAWAII
TAX MAP
CITY & COUNTY OF HONOLULU
ZONE
SECTION
PLAT
3
8
01
SCALE: 1 IN. = AS SHOWN

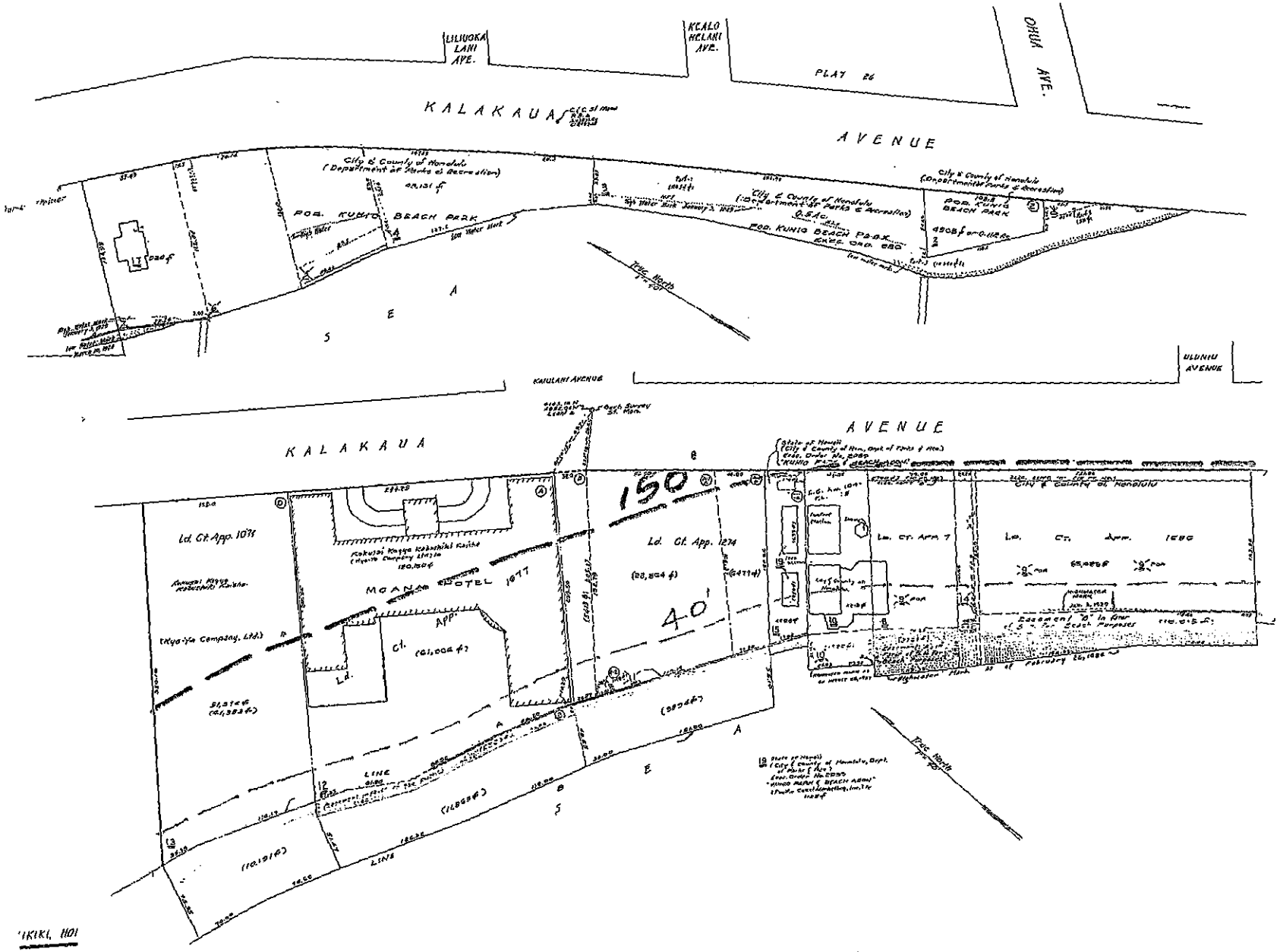

KALANIANAOLE HIGHWAY
NIU-IKI CIRCLE
NIU-IKI CIRCLE
LOTS
FILE PLAN
BEACH
NIU
SEA
PLAT 01
TRUE NORTH
40'

3-7-2


PLAT 09
PLAT 11
PLAT 08
SEC. 6 PLAT 46
SEC. 5 PLAT 22
KAAI ST.
WEST HIND DRIVE
KALANIANAOLE HIGHWAY
To Kaimuki
To Koko Head
WAILUPE CIRCLE
AKILOLO DRIVE
NIUHI DRIVE
WAILUPE PLACE
PLAT 02
GRANT 4699
TRUE NORTH
Dropped Parcels: 24, 120, 129, 131, 136, 132
Note: All Lots owned by Wailupe Peninsula Community Trust, unless otherwise noted.
WAILUPE PENINSULA (File Plan 416) - Ld. Ct. App. 1896
WAILUPE, WAIKIKI, HONOLULU, OAHU, HAWAII
FOR PROPERTY ASSESSMENT PURPOSES SUBJECT TO CHANGE
DEPARTMENT OF TAXATION
PROPERTY TECHNICAL OFFICE
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP
FIRST TAXATION DISTRICT
ZONE 3
SEC. 6
PLAT 01
SCALE: 1 IN. = 100 FT.


PAKI AVE.
KALAKAUA AVE.
KAPIOLANI PARK
MOI ROAD
PONI
KALAKAUA
DIAMOND HEAD ROAD
KIELE AVENUE
COCONUT AVENUE
AVENUE
DIAMOND
TRACT
TERRACE
HEAD SECTION
FILE PLAN
40'
S E A


KAPIOLANI
PARK
KALAKAUA
AVENUE
POOL & FOUNTAIN
DIAMOND HEAD ROAD
MEMORIAL PARK & NATATORIUM
Ld. Ct. App. 3 S
Non-Lodge No. 616 of the Benevolent & Protective Order of Elks of the U.S.A.
(Outrigger Canoe Club) Ic.
Diamond Head Apartments Ltd.
C.S. Land Co. Ltd.
Ruth Midranet
John E. Lindsay
John Markham
(Colony Surf Ltd.) Ic.
Castle Surf Apartments, Inc. Ic.
150'
40'
S E A
S E A
State of Hawaii
(Dana Souci, Inc.)
Rev. Prof. 5-3614


LILIUOKA LANI AVE.
KCALO HELANI AVE.
OHUA AVE.
PLAT 26
KALAKAUA AVENUE
City & County of Honolulu (Department of Parks & Recreation)
POR. KUHIO BEACH PARK
True North
KAIULANI AVENUE
ULUNIU AVENUE
KALAKAUA AVENUE
150
40'
Ld. Ct. App. 1074
Ld. Ct. App. 1274
MOANA HOTEL 1077
Ld. Ct. App. 7
Ld. Ct. App. 1680
City & County of Honolulu
Easement "B" in favor of S.C. for Beach Purposes
LINE
True North
'IKIKI, HOI

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

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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
SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
AND
SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL, AND INTERGOVERNMENTAL AFFAIRS
Monday, February 2, 2009
2:45 PM
State Capitol, Conference Room 229

in consideration of
SB 468
RELATING TO COASTAL ZONE MANAGEMENT.

Chairs Hee and English, Vice Chairs Tokuda and Gabbard, and Members of the Senate Committees on Water, Land, Agriculture, and Hawaiian Affairs and Transportation, International, and Intergovernmental Affairs.

We do not support SB 468 Relating to Coastal Zone Management. We prefer Administration Bill SB 867, which is an Administration bill.

The Office of Planning administers Chapter 205A, HRS, the Coastal Zone Management (CZM) law. SB 468 proposes various amendments to Chapter 205A, HRS. We have the following concerns with these amendments.

Pages 3, 9, 19 and 24 of SB 468 make various amendments pertaining to coastal hazards. We recommend use of a simplified coastal hazards objective as provided in SB 867. This bill also provides 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 3, lines 18-20 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 10: 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 4, line 14: We do not support the inclusion of the term "repair" in §205A-2(c)(1)(B). We prefer the language in SB 867 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 4, line 17: 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 9, line 8: 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.

6. Page 10, line 2: We agree with this housekeeping change.

7. Page 14, lines 1-3: We do not object to this amendment.

8. Page 17, lines 1-4: We do not object to this amendment.

9. Page 18, lines 14 and 22: 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.

10. Page 19, lines 12-18: 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."

11. Page 21, line 5: 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 SB 867 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.

12. Page 22, line 14: 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.

13. Page 22, lines 20-21; pages 23 and 24: There are several amendments pertaining to shoreline setbacks. We prefer the language in SB 867 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.

Sierra Club
Hawai'i Chapter
PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGROVERNMENTAL AFFAIRS

February 2, 2009, 2:45 P.M.

(Testimony is 3 pages long)

TESTIMONY IN SUPPORT OF SB 468 WITH AMENDMENT

Chairs Hee, English, and members of the committees:

The Sierra Club, Hawai`i Chapter, with 5500 dues paying members statewide, firmly supports SB 468, increasing the protection of Hawaii's coastlines from climate change and erosion, but we suggest one amendment. We recommend SB 468 be amended to ***require*** counties to adopt shoreline setbacks equal to at least 100 times the annual erosion rate plus 40 feet. Any other requirement would merely create the possibility of inaction.

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 the100-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.

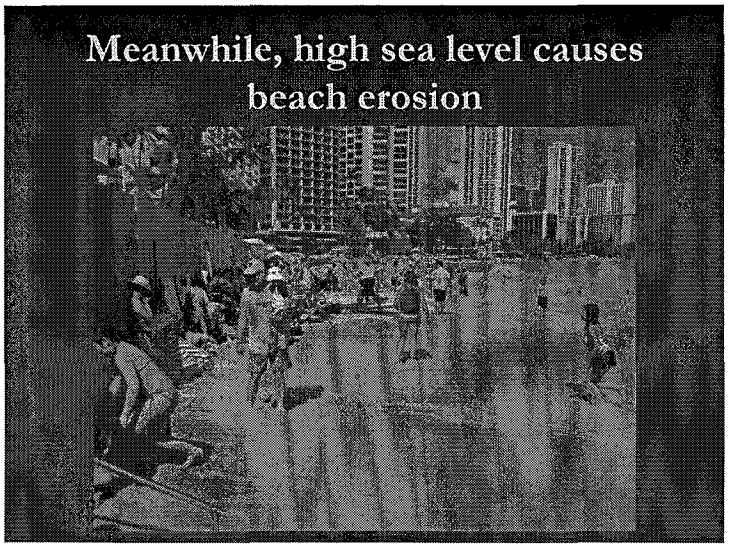
Ultimately, SB 468 would prevent inappropriate construction too close to the shoreline. When dwellings and buildings are built too close to the shore, beach-destroying seawalls are often requested when erosion threatens to undermine the structures.

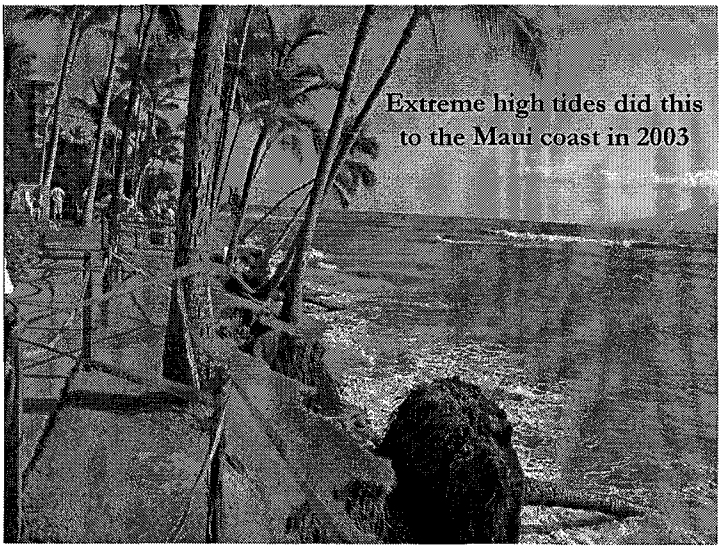
Suggested Amendment

The Sierra Club respectfully asks that SB 468 be amended in the following manner. We believe that in addition to the 40-foot minimum setback, the counties should be required to adopt ordinances that establish an additional setback 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, 2011). Page 23, lines 11 - 13 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...**

Thank you for the opportunity to testify.





Slides Courtesy of Dr. Chip Fletcher

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

February 2, 2009

Senator Clayton Hee, Chair
COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
Senator J. Kalani English, Chair
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
Conference Room 229
State Capitol
415 South Beretania Street

Chairs Hee and English, and members of the committee:

Subject: Senate Bill No. 468 RELATING TO COASTAL ZONE MANAGEMENT.

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii is opposed is opposed S.B. No. 468 as proposed.

We understand that the purpose of this bill is to require affected agencies to account for sea level rise and minimize risks from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis. It also attempts to preserves public access and public shoreline access; and extends shoreline setback to not less than forty feet from shoreline and requires counties to account for annual erosion rates.

The bill proposes to amend Chapters 46 and 205 HRS and, in general terms provide for:

1. Street Parking near public access areas;
2. Provide public access along public owned or used beaches;
3. Requires sea level rise to be considered when assessing coastal hazards;
4. Requires development to adequately plan for, among other things, sea level rise;
5. Establishes a minimum 40 foot setback from the shoreline or the average annual shoreline erosion rate, as determined by the county;
6. Requires counties to consider the average annual erosion rate when creating new parcels through the county subdivision process;
7. Removes the variance for shoreline improvements when the improvement is required to prevent hardship to the applicant;
8. Allows fixed structures only when there is a public interest being serviced even if the improvement is entirely within private property.

The bill expands the exactions on developments along the shoreline as it now attempts require public street parking and lateral shoreline access with the current requirement of a mauka-makai access.

Since most public beaches (*i.e.*, those lands makai of the shoreline) are considered unencumbered public lands and are open to the public, the proposed language still seems to require a developer to dedicate private lands along the shoreline for public access in addition to the current mauka-makai access.

We do not support legislation that would require private property owners to dedicate private lands along the shoreline for lateral shoreline access in exchange for final approval of a subdivision. If that is the intent, we believe the appropriate avenue to secure this lateral shoreline access would be through the use of eminent domain in which the owners would be justly compensated. It bears mentioning in this context that the United States Supreme Court has held in a similar context that a requirement of a lateral beachfront access was "an out-and-out plan of extortion," and that if government "wants an easement ... it must pay for it." *See Nollan v. California Coastal Comn'n*, 483 U.S. 825, 837, 842 (1987).

With respect to the issue of sea level rise, climate change and the resulting sea level rise has only recently gained wide spread discussion. While we agree that it is a concern, it is difficult to grasp how the proposed changes to Chapters 46 and 205 HRS could improve in this area. We believe more information will be required because it is difficult to predict with any certainty, the rate at which sea level rise and other climate change related impacts will occur. That being the case, it is difficult to identify mitigation measures that will be effective if the time frames cannot be predicted accurately.

Developing a proper and systematic response to sea level rise or all of the other potential "Disaster Management" issues resulting from worldwide climate change is a valid concern. While the focus of this legislation appears to be on individual shoreline developments or projects, it would appear that this issue should be pursued through a more comprehensive government action plans to respond to different disasters. Project disaster/emergency management plans would not address the larger regional issues which would be outside the scope of the EA/EIS. Furthermore, in the event of a disaster, we believe that the appropriate government agency (Civil Defense, FEMA, etc.) would supersede an individual project disaster/emergency management plan. Once a government plan is developed, it would be appropriate for Civil Defense or the appropriate government agency to request that the individual project incorporate the government plan into the projects disaster/emergency management plan and this information would be included in the EA/EIS as agency comments.

Finally, extending setbacks based on annual erosion rates or a fixed distance is fine as long as some provisions are made to allow private property owners some flexibility in protecting their property. The bill would establish a certain standard on a go-forward basis for new parcels being created; however, it appears to penalize existing shoreline property owners as it removes the any allowance for protection of private property, which in the past was viewed as a hardship. Under the proposed language, protection of existing property must meet a "public interest" test now. Meaning that a family must show a public interest for protecting their existing house or improvement. We believe that that would set an unreasonable standard for the many existing shoreline property owners.

For the reasons stated, we ask that this bill be held.

Thank you for the opportunity to express our views on this matter.

HAWAII
DEVELOPERS' COUNCIL

February 2, 2009

Senator Clayton Hee, Chair
COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
Senator J. Kalani English, Chair
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
Conference Room 229
State Capitol
415 South Beretania Street

Senators Hee and English:

Subject: Senate Bill No. 468 RELATING TO COASTAL ZONE MANAGEMENT.

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries.
The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC is opposed S.B. No. 468 as proposed.

We understand that the purpose of this bill is to require affected agencies to account for sea level rise and minimize risks from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis. It also attempts to preserves public access and public shoreline access; and extends shoreline setback to not less than forty feet from shoreline and requires counties to account for annual erosion rates.

The bill proposes to amend Chapters 46 and 205 HRS and, in general terms provide for:

1. Street Parking near public access areas;
2. Provide public access along public owned or used beaches;
3. Requires sea level rise to be considered when assessing coastal hazards;
4. Requires development to adequately plan for, among other things, sea level rise;
5. Establishes a minimum 40 foot setback from the shoreline or the average annual shoreline erosion rate, as determined by the county;
6. Requires counties to consider the average annual erosion rate when creating new parcels through the county subdivision process;
7. Removes the variance for shoreline improvements when the improvement is required to prevent hardship to the applicant;

8. Allows fixed structures only when there is a public interest being serviced even if the improvement is entirely within private property.

The bill expands the exactions on developments along the shoreline as it now attempts require public street parking and lateral shoreline access with the current requirement of a mauka-makai access.

Since most public beaches (*i.e.*, those lands makai of the shoreline) are considered unencumbered public lands and are open to the public, the proposed language still seems to require a developer to dedicate private lands along the shoreline for public access in addition to the current mauka-makai access.

We do not support legislation that would require private property owners to dedicate private lands along the shoreline for lateral shoreline access in exchange for final approval of a subdivision. If that is the intent, we believe the appropriate avenue to secure this lateral shoreline access would be through the use of eminent domain in which the owners would be justly compensated. It bears mentioning in this context that the United States Supreme Court has held in a similar context that a requirement of a lateral beachfront access was "an out-and-out plan of extortion," and that if government "wants an easement ... it must pay for it." *See Nollan v. California Coastal Comn'n*, 483 U.S. 825, 837, 842 (1987).

With respect to the issue of sea level rise, climate change and the resulting sea level rise has only recently gained wide spread discussion. While we agree that it is a concern, it is difficult to grasp how the proposed changes to Chapters 46 and 205 HRS could improve in this area. We believe more information will be required because it is difficult to predict with any certainty, the rate at which sea level rise and other climate change related impacts will occur. That being the case, it is difficult to identify mitigation measures that will be effective if the time frames cannot be predicted accurately.

Developing a proper and systematic response to sea level rise or all of the other potential "Disaster Management" issues resulting from worldwide climate change is a valid concern. While the focus of this legislation appears to be on individual shoreline developments or projects, it would appear that this issue should be pursued through a more comprehensive government action plans to respond to different disasters. Project disaster/emergency management plans would not address the larger regional issues which would be outside the scope of the EA/EIS. Furthermore, in the event of a disaster, we believe that the appropriate government agency (Civil Defense, FEMA, etc.) would supersede an individual project disaster/emergency management plan. Once a government plan is developed, it would be appropriate for Civil Defense or the appropriate government agency to request that the individual project incorporate the government plan into the projects disaster/emergency management plan and this information would be included in the EA/EIS as agency comments.

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For the reasons stated, we ask that this bill be held.

Thank you for the opportunity to express our views on this matter.

Sierra Club
Hawai`i Chapter
PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGROVERNMENTAL AFFAIRS

February 2, 2009, 2:45 P.M.
(Testimony is 2 pages)
TESTIMONY IN SUPPORT OF SB 468 WITH AMENDMENT

Chairs Hee, English, and members of the committees:

As stated in the testimony of the Director of the Sierra Club, Robert Harris, the Hawai`i Chapter firmly supports Senate Bill 153. However, one vital amendment should be considered. I am a volunteer for the Sierra Club Hawai'i Chapter and appreciate the opportunity to share with you my reasoning for backing the forward movement of this bill and the suggested amendment.

The intent of Senate Bill 468 is to improve coastal zone management in Hawaii. Although SB 468 pertains to various aspects of coastal zone management, I am most concerned with how the bill has the potential to prevent sea level rise and coastal erosion from negatively affecting the future of Hawaii's citizens. The reason I say "potential" is that the current language of the bill leaves room for inaction. The Sierra Club respectfully asks that SB 468 be amended to ***require*** counties to adopt shoreline setbacks equal to at least 100 times the annual erosion rate plus 40 feet. It should not be optional. Maui and Kaua'i have already adopted similar ordinances. The state should direct all the counties to adopt similar shoreline setback ordinances by a certain date (perhaps January 1, 2011).

Page 23, lines 11 - 13 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...

Our current statewide setback—minimum of 20 feet—is dated and dangerous. We need to prepare for the future, we need to take action now.

Given the rapidly expanding information base of coastal processes in the state, plus new scientific 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.

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 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.

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.

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 the100-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.

Please take this opportunity to prevent further inappropriate and detrimental coastal construction from taking place in Hawaii. Please move this measure forward. Mahalo for considering my testimony.

Sincerely,

Mele Coleman

Sierra Club, Hawai'i Chapter Volunteer
melecoleman@gmail.com
(808) 285-8581

TESTIMONY
SB 468
(END)