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November 12, 2025

Via email to blnr.testimony@hawaii.gov

Dawn Chang
Chair, Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai'i 96813

Re: BLNR Meeting November 14, 2025 - Testimony in Support of **Approving** Agenda Items K-1 (CDUA HA-3981) and K-2 (CDUA HA-3982)

Dear Chair Chang and Members of the Board of Land and Natural Resources ("**Board**"):

The Applicants, Mr. Ryan Pastorek, the sole member of Opunaha, LLC, and owner of Tax Map Key ("**TMK**") No. (3) 1-5-010: 026 ("**Parcel 026**") and Ryan's father, Mr. Paul Pastorek, owner of TMK No. (3) 1-5-010: 027 ("**Parcel 027**"), submit this testimony in support of **approving** the Conservation District Use Permit Applications ("**CDUAs**") that are the subject of Agenda Items K-1 and K-2.

The Applicants vehemently disagree with the Office of Conservation and Coastal Lands ("**OCCL**") staff's recommendation to deny CDUA Nos. HA-3981 and HA-3982 and the characterization of the actions requested by the respective Applicants, and respectfully request that the Board grant both CDUAs subject to the standard conditions in Hawai'i Administrative Rules ("**HAR**") § 13-5-42.

A. Background

Ryan Pastorek has been interested in the area of Puna since 2012. From 2012-2019, he consistently visited the Big Island a few times per year and stayed in Kalapana or Hawaiian Paradise Park, primarily to photograph the Kilauea lava flows. He fell in love with the Hawai'i way of life and resolved to eventually move full time to Puna and immerse himself in the Hawai'i culture. Ryan purchased the Properties in 2019 (Parcel 26 in March, and Parcel 27 in September) with the intent that Parcel 27 contain a single family residence for his parents.

Parcel 27 was subsequently transferred to his father, Paul Pastorek, who fell in love with Hawai'i as well.

Ryan and Paul support the protection of nature and its flora and fauna and respect the natural environment. Ryan is an avid nature photographer and has traveled the world to capture its landscapes and wildlife. He is a national and state park enthusiast and an animal lover and contributes to the Sierra Club and World Wildlife Fund. Paul is a member of the Greater New Orleans Iris Society and has been instrumental in preserving and reviving nearly extinct native Louisiana iris. He owns a 55 acre rural property in Louisiana on which he has been clearing invasive species and planting native Louisiana plants (including long leaf pine and rare nelsonii iris) to rebuild Louisiana native swampland.

Ryan was integral to the development of the local neighborhood watch which includes Parcel 026 and Parcel 027, facilitated by former Hawai'i County police officer Duane Waipa. Ryan has been and remains active in organizing and participating in Beach Road cleanup efforts, and he assists with numerous neighborhood projects. Despite not having a home on the island yet, Ryan has continued to invest in his life in Hawai'i and travels to Beach Road at least five times per year and stays with his neighbors. He has built and continues to build a wonderful community of adopted 'ohana all over Hawai'i.

There are two separate CDUAs before the Board for consideration, each for a single-family residence ("**SFR**") on neighboring lots, Parcel 026 and Parcel 027 (together the "**Properties**") owned by a father and son who also wish to adjust the lot line between their lots through a consolidation and resubdivision action.

The Properties are located in the Puna District on the Island of Hawai'i, and **are located between two large subdivisions**, Hawaiian Paradise Park ("**HPP**") which consist of approximately 8,800 lots and a population nearing 15,000,¹ and which is one of the largest subdivisions in Hawai'i, and Hawaiian Beaches, which consists of approximately 1,300 lots. The Properties are approximately one mile from the HPP subdivision, and two miles from the Hawaiian Beaches subdivision, and are located makai of Government Beach Road which runs between the two subdivisions. While this area may be considered "remote", "rural" and "rugged" to some from more populated islands, Puna is one of the fastest growing areas in State. This area is considered to be a well-established residential area. Thousands of people live in the area and the dwelling types and styles are varied.

There are improved lots with residences on either side of the Properties - also in the State Land Use Conservation District - pursuant to their own Conservation District Use Permits ("**CDUPs**"). For example, on March 14, 2025, the Board granted a second extension of time to build a single family residence on TMK No. (3) 1-5-010:009 (2 lots north of Parcel 026) (Item K-1 of the March 14, 2025 BLNR Agenda), and on September 12, 2025, the Board heard and granted a third request for an extension of time to build a single family residence on TMK No.

¹ COUNTY OF HAWAII RESEARCH AND DEVELOPMENT, *Census Community Profiles*, available at <https://www.rd.hawaiicounty.gov/data-information/community-profiles> (last visited Nov. 10, 2025).

(3) 1-5-010:031 (4 lots south of Parcel 027) (Item K-1 of the September 12, 2025 BLNR Agenda).

A Final Environmental Assessment and Finding of No Significant Impact Determination ("FEA/FONSI") was published in the March 8, 2024 edition of *The Environmental Notice*.² The FEA/FONSI analyzed the environmental impacts of the development of both proposed SFRs and the corresponding consolidation/resubdivision. FEA/FONSI § 2.1. The FEA/FONSI also explored the alternative of developing a single SFR on either Parcel 26 or Parcel 027.

The Properties are within the Resource subzone, and pursuant to HAR § 13-5-24 (R-7), a SFR that conforms to design standards as outlined in the HAR Title 13, Chapter 5 (the "Conservation District Rules") is permitted with a Board permit. The fact that CDUPs are being requested on neighboring lots does not turn these projects into an "estate" (as the Staff Recommendation opines). First, there is no prohibition in any Conservation District law, rule or regulation (or any other law, rule or regulation) on building single family residences on adjoining lots or living next door to your parents. In Hawai'i, it is common to live near or next to 'ohana. Second, the intent is that both residences are built at the same time to significantly reduce costs, take advantage of the same contractors to hopefully cut down on delays, and to reduce impacts (such as noise) to neighboring properties that would be caused by two separate construction periods.

The Staff Recommendation for CDUA: HA-3981 (Item K-1) and CDUA: HA-3982 (Item K-2) is disappointing in its characterization of the projects and seeming lack of understanding of the Puna area. It is the Applicants' opinion that the Staff Recommendation neglects to emphasize certain factual and important information, so the Applicants offer this testimony.

For the reasons discussed herein, as supported by the CDUAs and FEA/FONSI, the Board should find that the criteria established in HAR § 13-5-30(c) have been met, and CDUAs: HA-3981 and HA-3982 should be issued.

B. The CDUAs Satisfy the Criteria Established in HAR § 13-5-30(c).

1. The proposed use is consistent with the purpose of the Conservation District (HAR § 13-5-30(c)(1)).

The purpose of the Conservation District is "to conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare," of the area. HRS § 183C-1.

² The FEA/FONSI is available on the Environmental Law Program's website at https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-03-08-HA-FEA-Pastorek-Single-Family-Residences-in-Makuu,-Puna.pdf.

The Staff Recommendation agrees that the proposed uses, residential development, small-scale agriculture, removal of invasive species, and landscaping, are identified permitted uses within the Resource Subzone, yet objects to "the overall intensity and scope of the proposed actions". See page 15 of the Staff Recommendation for CDUA HA-3981, and page 17 of the Staff Recommendation for CDUA HA-3982. The Staff Recommendation indicates that the proposed uses will "contribute to the incremental loss of open space, visual integrity, and natural coastal character, along this portion of the Puna and Popoki coastlines, and are therefore inconsistent with the purpose of the Conservation District to conserve, protect, and preserve the State's natural and cultural resources[.]"

The Staff Recommendation seems to object to development of any residences on the Properties since they are now structure free, referring to the Properties as pristine pastures. However, the Properties are between two large subdivisions, resulting in the immediate area (much of it within the Conservation District) being used as a dumping ground for cars, mattresses, trash bags, furniture, dishwashers, etc. See Exhibit A. On the contrary, having people living on the Properties, planting native plants and managing landscaping, and being present to keep away illegal dumping helps the existing natural resources and protects the visual integrity of the Conservation District. In addition, the Applicants modified the proposed landscape plans in response to OCCL staff comments. For example, the number of trees have been significantly reduced, and tree specifics, including sizes and locations, have changed. See FEA/FONSI at 99, and *compare with* Figure 3 of the CDUA at 14-15.

As noted in the FEA/FONSI, while minor and temporary impacts may occur during construction, no long-term or significant adverse impacts are expected. The proposed SFRs are designed to conform to the SFR standards in Exhibit 4 to the Conservation District Rules, with the SFR (and related improvements) on Parcel 26 being approximately 4,738 s.f. (4,010 s.f. home under roof) and the SFR (and related improvements) on Parcel 27 being approximately 4,984 s.f. (2,750 s.f. under roof). There are existing SFRs on both sides of the Properties (TMK Nos. (3) 1-5-010: 025 and 028). Note also that the purpose of the consolidation and resubdivision is to plant more native plants (which will hopefully bring back native birds), have less impact on scenic views, and less noise impacts to the neighboring residences, amongst other matters.

Both Ryan and Paul have spent time on the Properties and have focused on the upkeep, maintenance and preservation of the Properties, always trying to do right by the land. Ryan has organized and participated in efforts to clean and fix the roadway fronting the Properties, building deep relationships with the neighbors, and helping to develop the community neighborhood watch. Ryan and Paul are pushing forward in their efforts to be good stewards of the land and hope to revitalize native species there.

The families that occupy the residences on both sides of the Properties **support** the proposals for the SFRs and are excited to have the Pastoreks as neighbors. See pages 13-14 of Staff Recommendation for CDUA HA-3981 and pages 14-15 of Staff Recommendation for CDUA HA-3982.

There is nothing in the record to support a finding that the permitted building of the SFRs would disrupt the "visual integrity" or "natural coastal character" of the area. While there will be an incremental loss of open space due to the development of the SFRs, as discussed in more detail below, the SFRs will conform to the required standards set forth in the Conservation District Rules and are in keeping with the character of the existing SFRs on either side of the Properties, and the large subdivisions within the surrounding area. The plans specifically situate the structures on the Properties to maintain visual viewpoints to the ocean from the roadway, which was done in concert with the neighbors. Furthermore, approximately 483 acres of the Department of Hawaiian Home Lands ("**DHHL**") parcel mauka of Government Beach Road, designated as Maku'u Makai in DHHL's 2025 Maku'u Regional Plan, is slated for kuleana homestead lots "where beneficiaries can lease un-improved, off-grid homestead lots[.]" Thus, more residential development is planned for this area and the SFRs proposed here will not be out of place.

Additionally, as reinforced by the letters of support provided by neighboring community members mentioned above, development of the SFRs on the Properties will positively support public health, safety, and welfare in the area through an increased presence on and ongoing stewardship of the Properties.

Water Source for the Properties. In support of its negative recommendation on the CDUAs and concern regarding long term viability and impacts on groundwater and coastal resources, the Staff Recommendation raises on multiple occasions the absence of a confirmed sustainable water source for the SFRs. While a well is being proposed, if the well does not produce adequate water or a well drilling permit is not issued, the Applicants are proposing, as an alternative source, a rainwater catchment system (one for each of Parcel 026 and Parcel 027). See CDUA HA-3981 at 17; CDUA HA-3982 at 16. Rainwater catchment systems are the primary water source for residences in Puna and many other areas throughout the Island of Hawai'i. The County of Hawai'i ("**County**") generally allows water catchment systems where a County system is not available³ and there is sufficient rainfall.⁴ The Staff Recommendation states that the area has historically received approximately 120 to 200 inches of rain per year. See Staff Recommendation at 2. This is almost 10 times the annual rainfall in Honolulu, and more than double what the County typically requires for a catchment system. For these reasons, the concerns regarding a water source and water waste (related to the proposed pool and hot tub) are exaggerated and misplaced. The proposed SFRs have two possible water sources.

2. The proposed land use is consistent with the objectives of the Resource Subzone (HAR § 13-5-30(c)(2)).

The purpose of the Resource Subzone is "to ensure, *with proper management*, the sustainable *use* of the natural resources" of the area. HAR § 13-5-13(a) (emphases added). The

³ The County also allows rain water catchment systems for accessory dwelling units even where served by a public or private water system. See Hawai'i County Code § 25-6-30.

⁴ The County has determined that a minimum of 60 inches of rainfall annually is sufficient to grant a variance from County water system requirements. Hawai'i County Planning Department Rule 22-4.

purpose of the Resource Subzone is not to prohibit any use that *may* have an adverse impact on natural resources.

The Staff Recommendation opines that the proposed uses "are not appropriate for this rural and rugged shoreline setting and would require ongoing resource input, maintenance and management" and are therefore inconsistent with the objectives of the Resource Subzone, however, no specific resources are identified. As noted above, however, SFRs are appropriate and allowed in the Resource Subzone with a Board permit. HAR § 13-5-24. The Applicants are committed to ongoing stewardship of the Properties.

The proposed SFRs under the CDUAs here allow for the sustainable use of the Conservation District resources in the area through development of SFRs that will conform with the standards and parameters of the Conservation District Rules. Development of the SFRs will also implement landscaping with more native species to replace the existing invasives. In the construction of the SFRs, the Applicants plan to use local and sustainably sourced materials as much as possible, including local hardwoods and stone. Each SFR would be equipped with solar power and battery systems to increase energy independence and reduce demand on the power grid.

Furthermore, there are very large developments within one to two miles of either side of these Properties, along with SFRs on at least 4 of the immediately adjacent properties, all with the same "rural and rugged shoreline" that is characteristic of the Puna area. As noted previously, allowing people to live on and steward these Properties actually helps to maintain the area by curbing illegal dumping and crime.

As discussed above, the Applicants have already been active in stewarding the Properties and the area through Government Beach Road clean ups and clearing of illegal dumping, increasing security via neighborhood watch, and fostering relationships with the community. Development of the SFRs is also expected to increase the native plantings on the Properties as the existing invasive vegetation is replaced over time.

The CDUAs therefore satisfy the second criterion of HAR § 13-5-30(c).

3. The proposed land use complies with the provisions and guidelines contained in HRS Chapter 205A (Coastal Zone Management), where applicable (HAR § 13-5-30(c)(3)).

As discussed in detail on pages 52-56 of CDUA HA-3981 and pages 51-55 of CDUA HA-3982, the proposed SFRs are supportive of the Coastal Zone Management policies, objectives and guidelines, as well as the State Planning Act (HRS Chapter 226). In particular, development of the SFRs will allow for a more regular presence on the Properties and will preserve clean, scenic views. In addition, development of the proposed SFRs would provide temporary employment for local construction workers and would support the local economy through the contracting of local labor and purchasing of local materials (where available).

Overall, the project would stimulate and support the general economic stability and development of Hawai'i Island and more specifically the Maku'u community.

The Staff Recommendation seems concerned that siting a home on a shoreline parcel does not reduce coastal hazards and that the SFRs will "introduce urban residential uses that may negatively impact a relatively open coastal view area." Staff Recommendation at 17 (CDUA HA-3981); Staff Recommendation at 18 (CDUA HA-3982). The Applicants respectfully disagree with the Staff Recommendation. As discussed above, there are already urban residential uses immediately to the north and south of the Properties along the shoreline, with more intense urban residential uses within 1 to 2 miles in either direction of the Properties (i.e., the HPP and Hawaiian Beaches subdivisions). The County Planning Department in its recommendation to approve the Special Management Area ("SMA") permit for the SFRs on Parcels 026 and 027 indicated that "[t]he subject parcels are within an *established* residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site."⁵ Further urban residential uses are planned for approximately 483 acres of the DHHL parcel that is directly mauka of Government Beach Road across the street from the Properties, designated as Maku'u Makai in DHHL's 2025 Maku'u Regional Plan, which is slated for kuleana homestead lots. Thus, more residential development is planned for this area and the SFRs proposed here will not be out of place.

According to the Staff Recommendation, the purpose of the CZM program is to direct development away from the shoreline and "hazardous areas". The FEA/FONSI contained a coastal erosion study, and analyzed sea level rise, and found that although wave action could contribute to more coastal erosion over time, any significant impact will occur outside of the expected lifespan of the homes (40 - 70 years) and well outside of the development area, which is set back no less than 130 feet from the shoreline. See FEA/FONSI at 67; CDUA HA-3981 at 37 (Figure 16 3.2 Foot Sea Level Rise Exposure Map); CDUA HA-3982 at 36 (Figure 15).

To mitigate the impacts from the proposed SFRs, the proposed structures will be setback a minimum of 130 feet from the certified shoreline - more than double what the rules promulgated by this Board require based on the average annual erosion rate for the Properties. See page 54 of the CDUA for Parcel 026, and page 53 of the CDUA for Parcel 027.

The Staff Recommendation also criticizes "large dwellings" with "luxury accessory structures," as being inconsistent with the objective and policies of the HRS Chapter 205A. There is no cost ceiling on materials used for structures in the CZM area. The proposed SFRs and accessory structures are within the guidelines and rules propounded by this Board. There is no prohibition against furo baths or any other perceived "urban" or "luxury" amenities in the Conservation district. The Applicants appreciate staff's concern regarding the availability of water in the area for certain accessory uses and understand that if sufficient water is not available, some or all of the accessory uses may not ultimately be developed or used on a regular

⁵ County Planning Department Recommendation - Ryan & Paul Pastorek Special Management Area Use Permit Application (PL-SMA-2024-000055) at 4 (May 2024), available at <https://records.hawaiicounty.gov/weblink/1/doc/135597/Page1.aspx> (emphasis added).

basis. The comparison to the moratorium on pools on Maui is, however, misplaced. The water availability (including natural rainwater) and climate conditions for the Properties, which OCCL staff indicates averages 120 to 200 inches of rain per year and are located on the windward side of the island, are very different from the dry, leeward side of Maui that averages 13.54 inches of rain per year.

On June 6, 2024, the County Windward Planning Commission approved a Special Management Area ("SMA") permit for the proposed SFRs (the "SMA Permit"). See Exhibit E to CDUA for Parcel 026 and Exhibit E to CDUA for Parcel 027. In determining whether to issue a SMA permit, the County must also assess whether a project complies with the HRS Chapter 205A guidelines, which the County did here. The SMA Permit was approved subject to 15 conditions of approval, most of which will directly address and/or ensure that coastal resources are protected. For example, the SMA Permit prohibits the construction of any wood, metal, or rope ladder, platform, steps, concrete pads, or other constructed appurtenances from the top of the pali (sea cliff) to access the ocean along the entire length of the shoreline of each parcel. This condition addresses both shoreline erosion concerns and public health, safety, and welfare concerns raised by OCCL staff. Accordingly, the County has analyzed and determined that the proposed SFRs are consistent with the HRS Chapter 205A policies and guidelines.

The Applicants understand that OCCL staff also have concerns with some of the vegetation proposed as part of the landscaping for the Properties. The Applicants are willing to work with OCCL to identify vegetation that would be appropriate for the Properties through the site plan approval process.

4. The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region (HAR § 13-5-30(c)(4)).

The Conservation District Rules define "natural resource" as "resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals." The Staff Recommendation does not show that the proposed SFRs would have a substantial adverse impact to existing natural resources in the area, community, or region, but instead takes the position that because staff cannot "conclusively agree that the proposed land uses will not cause substantial adverse" impacts, the CDUAs do not satisfy this criterion. Staff Recommendation at 18 (CDUA Parcel 026); Staff Recommendation at 19 (CDUA Parcel 027).

OCCL staff indicated that they find "that the project raises concerns regarding its long term compatibility with the surrounding natural and visual environment." *Id.* Yet, it does not provide any detail about what specific concerns it has with long term compatibility. Again, these proposed SFRs are between 2 other existing residences - the owners of which submitted letters of support for the proposed projects. One of those residences was built more than twenty years ago, and there seems to be no issues with the surrounding natural and visual environment. Having people living on these properties, planting native plants, and being present, helps the existing natural resources, surrounding area and community.

The Staff Recommendation also inexplicably states in recommendation "d" that "*The proposed uses are likely to result in substantial adverse impacts to existing natural resources and the surrounding coastal environmental, given the site's proximity to the shoreline, porous geology, and well-drained soils, and exposure to multiple natural hazards*" even though OCCL staff admitted that they could not "conclusively agree that the proposed land uses will not" or conversely will, "cause substantial adverse" impacts. See Staff Recommendation at 17, 28 (CDUA HA-3981); Staff Recommendation at 19 (CDUA HA-3982). As discussed in detail in Section 4.2 of the FEA/FONSI and Section III(4) of the CDUAs, the proposed SFRs are not anticipated to result in significant adverse impacts to natural resources in the Conservation District.

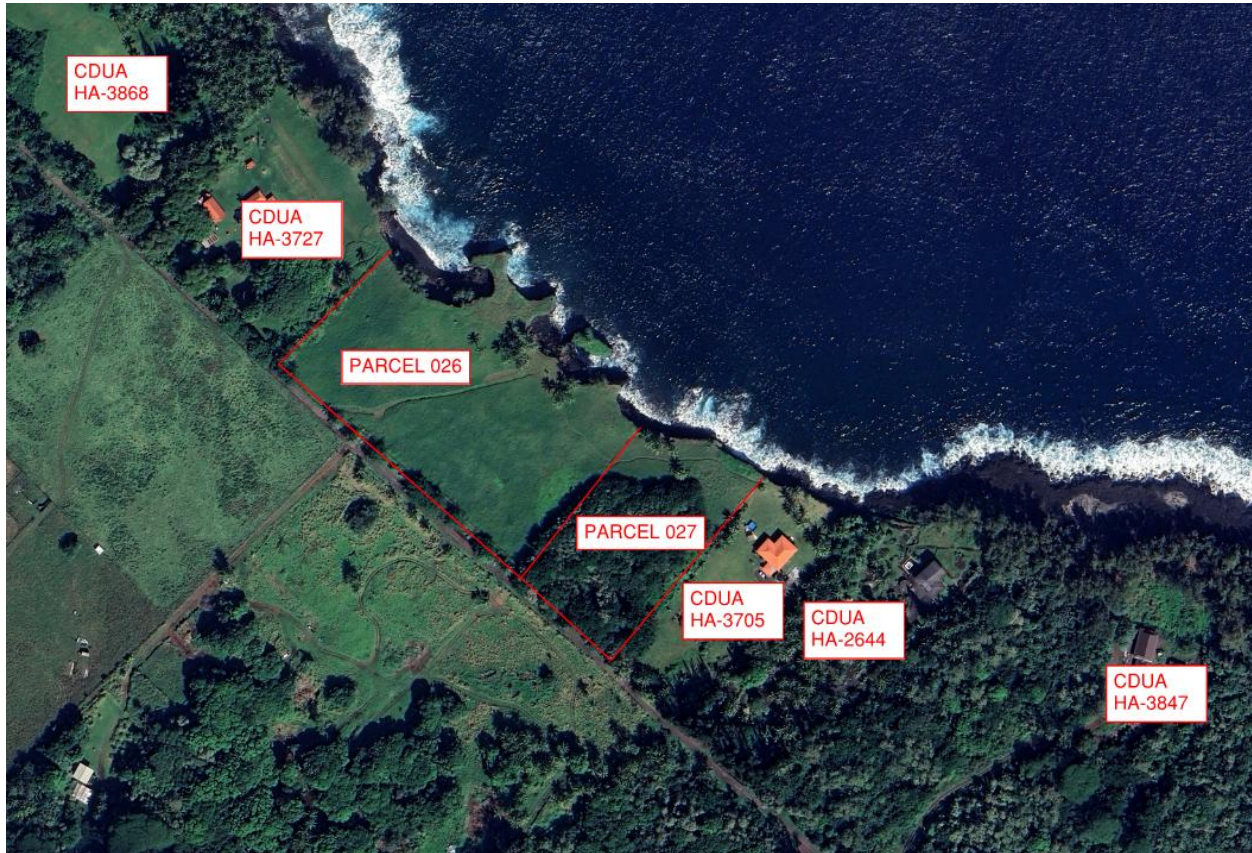
Furthermore, the FEA/FONSI found any impacts could be mitigated through proposed measures and conditions incorporated into the Conservation District Use Permits (e.g., the 130 foot setback, landscaping plans, preserving existing vegetation on Parcel 027 by consolidating and resubdividing the lots to move the lot line between Parcel 026 and 027, and orienting the SFRs to maximize natural light and ventilation to conserve energy, etc.). See Exhibit B for a description of proposed mitigation measures. It does not appear that the Staff Recommendations considered the proposed mitigation measures for the project, but the Board should take them into account when considering whether the CDUAs satisfy the HAR § 13-5-30(c) criteria. See In *Matter of Conservation District Use Permit Application HA-3568*, 143 Hawai'i 379, 404-05, 431 P.3d 752, 777-78 (2018) ("*Matter of CDUA*") (holding that the Board properly considered measures designed to address environmental impacts generated by the proposed project in approving a CDUA).

5. The proposed land use is compatible and consistent with the character of the existing area and appropriate to the physical conditions of the Properties (HAR § 13-5-30(c)(5)).

The fifth criterion set forth in HAR § 13-5-30(c)(5) requires that the proposed use, "including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels[.]"

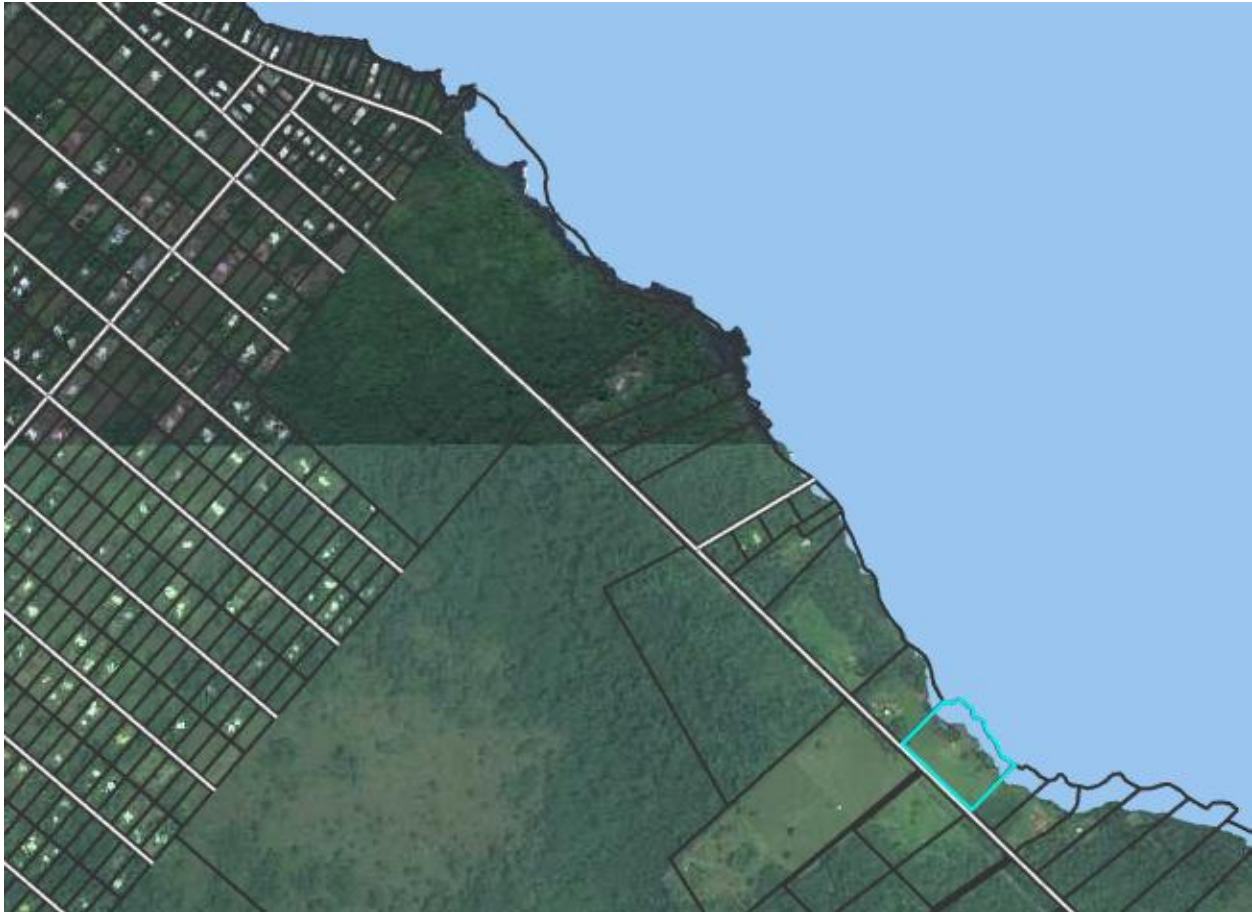
The Staff Recommendation states that the proposed uses "have the potential to change the character of the existing surrounding community of modest rural dwellings and open coastal space to a multi-residential large estate, and therefore are not consistent with the locality, surrounding areas, and purpose of the Conservation District." Staff Recommendation at 18 (CDUA Parcel 026); Staff Recommendation at 29 (CDUA Parcel 027). Staff also describes the general area as "undeveloped and isolated". *Id.* As discussed, the Applicants disagree with staff's characterization of the general area. While these specific parcels and some areas mauka may be described in that manner, the Properties are located between two very large subdivisions and there are existing residences on either side of the Properties, as shown below and Exhibits 1 and 3 to the Staff Recommendations. Those areas should be included in considering whether the proposed SFRs are compatible and consistent with the existing area. See *Matter of CDUA*, 143

Hawai'i at 405-06, 431 P.3d at 778-79 (finding that there "must be a sound and rational basis for defining the relevant locale").



The photograph above is a satellite image of the Properties and neighboring lots on either side taken from Google Maps with the associated CDUPs noted on the neighboring parcels. Below are a satellite image from Google Maps and County GIS map showing some of the residences in Hawaiian Paradise Park, approximately one mile away from the Properties:





As demonstrated by the area maps, the area is surrounded by a variety of rural and urban dwellings, some modest, some not. As such, the proposed SFRs are certainly consistent with the surrounding area both in design and function - as single family residences. Again, these dwellings are designed in accordance with the Conservation District Rules for single family residences.

6. The existing physical and environmental aspects of the land will be preserved or improved upon (HAR § 13-5-30(c)(6)).

The Applicants acknowledge that there will be some visual impacts by the addition of the SFRs on the now-vacant properties, however, the proposed design and siting of the SFRs, and landscaping are intended to preserve as much of the existing environmental aspects of the Properties. Again, the plans specifically situate the structures on the Properties to maintain visual viewpoints to the ocean from the roadway, which was done in consultation with the neighbors. If the proposed consolidation and resubdivision is not approved, the only realistic opportunity for Mr. Paul Pastorek to develop a SFR on Parcel 027 would result in greater environmental impacts than what is being proposed now because he would be required to remove

much more (approximately 50%) of the existing vegetation on that parcel, which in turn would not be planted with native vegetation. In contrast, the consolidation and resubdivision will preserve nearly all of that existing vegetation in the short term, which will eventually be revitalized to the extent possible to include native species in accordance with Paul Pastorek's plans and allow for greater view and air corridors between the SFR on Parcel 027 and the existing residence on Parcel 028.

Development of the SFRs will ultimately improve stewardship of the Properties by having a regular presence on the Properties. As detailed above, Ryan and Paul have cleared areas of Conservation District property and the roadway of prior illegally dumped materials and they continue to maintain the Properties. *See Matter of CDUA*, 143 Hawai'i at 406, 431 P.3d at 779 (affirming the Board's decision to consider other measures, such as the removal of prior structures, to satisfy this criterion).

The Staff Recommendation mentions a few other reasons why this criterion has not been met, in staff's opinion, including concerns with proposed landscaping that may reduce the existing open space characteristics, particularly for landscaping planted along Government Beach Road. As mentioned previously, the Applicants have already worked with their neighbors to address this, and they are willing to work with OCCL to adjust landscaping plans through the site plan approval process.

Staff also identify natural hazards, such as the conditions of the existing shoreline, trade winds, seismic activity, and potential for vog in the area as reasons why the existing physical characteristics of the Properties will not seemingly be preserved or improved upon, stating that: "*The subject property and project area are exposed to multiple overlapping natural hazards - including land subsidence, tsunami, storms, sea level rise, seismic and volcanic activity - that pose substantial risks to the proposed improvements and to life, property, and the environment.*" Staff Recommendation at 25-28 (CDUA HA-3981); Staff Recommendation at 26-29 (CDUA HA 3982). It is noted that these common characteristics of Hawai'i island are what they are - but they do not support a finding that the proposed CDUAs do not meet this criterion. Natural hazards are the natural condition and way of life on Hawai'i island and Applicants have no control over these natural conditions. If proposed projects were denied because of the potential for tsunami, seismic, and volcanic activity, there would be few housing options in Hawai'i and certainly further housing shortages in this State.

As described in Sections 3.1 and 3.2 of the FEA/FONSI and Section III (3) of the CDUAs, the proposed SFRs are not anticipated to exacerbate environmental impacts resulting from natural hazards.

7. Subdivision of land is not being utilized to increase the intensity of land uses in the Conservation District (HAR § 13-5-30(c)(7)).

The Applicants take issue with staff's statement that the proposed consolidation and resubdivision is "irrelevant" because the Applicants "*will treat the property or properties as an approximately 10.45-acres multi-dwelling estate irrespective of property boundaries. In this*

regard, staff finds that the proposed consolidation and re-subdivision and the proposed uses to construct two large residential dwellings and accessory uses or structures in close proximity will increase density and the intensity of land uses in the Conservation District." Staff Recommendation at 21 (CDUA HA-3981); Staff Recommendation at 21 (CDUA HA-3982). This statement directly contradicts staff's factual statement 3 paragraphs prior that the Applicants could proceed with building SFRs of the same size on the existing parcels *without* consolidating and resubdividing. As detailed above, the primary reason for requesting the consolidation and resubdivision is to avoid greater environmental impacts that are anticipated if the consolidation and resubdivision is not approved.

Parcels 026 and 027 are two separate existing legal lots of record. The Staff Recommendation acknowledges that the parcels are, without the consolidation and resubdivision, each of sufficient size to allow for a CDUA to construct an SFR of the same size proposed by the CDUAs (5,000 s.f. or less). Staff Recommendation at 19-20 (CDUA Parcel 026); Staff Recommendation at 20 (CDUA Parcel 027). Therefore, the proposed CDUAs to consolidate and resubdivide and develop the SFRs will not increase the intensity of land uses in the Conservation District.

As discussed in more detail in Section 2.1.1 of the FEA/FONSI and Section I, pages 7-8 of CDUA HA-3982 (Parcel 027), the proposed consolidation and resubdivision is expected to result in less adverse impacts than proceeding with an SFR without the consolidation and resubdivision because it will allow for siting the home on Parcel 027 in an area that would require less site work (i.e., clearing of existing vegetation and grading). Additionally, the proposed project allows for more natural/open space and less density between the proposed SFR on Parcel 027 and the existing residence on Parcel 028.

8. The proposed land use will not be materially detrimental to the public health, safety and welfare (HAR § 13-5-30(c)(8)).

The proposed SFRs will not be materially detrimental to the public health, safety, and welfare. The Staff Recommendation posits that the proposed SFRs will create unacceptable risks for residents, the surrounding community, and emergency responders due to the remote location which lacks public infrastructure, limited emergency services, and reliably maintained access, but does not identify what those risks might be. The Applicants acknowledge and understand the inherent risks with living on the Properties. The Applicants are aware that Fedex and UPS deliver to homes along Government Beach Road and they have regularly observed the presence of fire trucks (the HPP fire station is located approximately 5 miles away), rescue crews, and police patrols in the area. The County Department of Public Works grades Government Beach road at least twice a year. Some of the Applicants' neighbors are also in the kupuna age range so it would be helpful to have the Applicants around to offer assistance.

As detailed previously, the Properties are between and in relatively close proximity to two large subdivisions. It is anticipated that having regular residents on the Properties will, as it already has, keep the area, including the Government Beach Road, clean and maintained which would help the community in the event of a natural disaster.

C. Other Points Raised in the Staff Recommendation

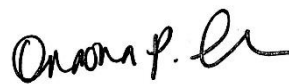
It is noted that the "art studio" space referenced in the Staff Recommendation is intended to be a multiuse space for non-commercial photography work, woodworking, pottery, and planting. Most of the time it will likely function as storage (e.g., for the lawnmower).

Although the Properties are not currently serviced with electrical power, HELCO has lines servicing Government Beach Road and all of the neighbors are hooked up to HELCO's grid. There is at least one electric pole fronting the Properties. (The County Planning Department's Background Report on the Applicants' SMA permit notes that there is an electrical easement along Government Beach Road covering 12 parcels, including the Properties.) Telephone and cable services are also available to the Properties. The Applicants anticipate that they will likewise be able to obtain HELCO and other services for the Properties, along with solar panels.

D. Conclusion

The Applicants appreciate the opportunity to submit this testimony in support of approving the CDUAs that are Agenda Items K-1 and K-2 and request that the Board approve CDUA HA-3981 and CDUA HA-3982 subject to the standard conditions set forth in HAR § 13-5-42. Applicant is also agreeable to the conditions suggested by the Staff Recommendation on pages 8, 21, and 23 that would prevent future shoreline hardening, prohibiting the use of the SFRs as transient vacation rentals, or impeding lateral shoreline access.

Sincerely,



Onaona P. Thoene

EXHIBIT A
**Photographs of illegal dumping fronting the Properties
along Government Beach Road**





EXHIBIT B

	Mitigation Measures
Erosion and Coastal Hazards	<ul style="list-style-type: none"> - 130 ft + setback exceeds the recommendation of the coastal erosion study. - Building sites outside of areas affected by most coastal hazards/sea level rise area. - No work, activities, storage, or staging of materials will occur within the minimum shoreline setback, including fencing, animal husbandry, or minor construction. - Proposed condition to restrict future shoreline hardening/ require movement or dismantling of the house if threatened by hazards. - Construction would comply with all provisions of Hawai‘i County Building Code including wind and seismic resilience criteria. - The residences will not be impacted by storm surge based on the elevation and distance from the shoreline. - The proposed development will not contribute to further erosion of the shoreline and is not expected to be impacted significantly by erosion events during the lifespan of the residences.
Flora and Fauna	<ul style="list-style-type: none"> - Minimal ground disturbance is proposed. - Mitigations for the prevention of ROD and Coconut beetles will be implemented. - Best Management Practices created by the University of Hawai‘i-Manoa, College of Tropical Agriculture and Human Resource’s Best Management Practices to Manage Non-Point Pollution in Agriculture will be used for landscaping practices - Replanting will be appropriate to the site location and will utilize flora designated as “Pono Plants.” - Mitigation measures to prevent impacts to endangered birds will be implemented. - Project construction will adhere to Hawai‘i County Code Chapter 14-50 to minimize the potential for disorientation of seabirds. - Any clearing could be timed to avoid impacts to native Hawaiian Hawks and Hoary Bats according to DOFAW recommendations.
Land Clearing	<ul style="list-style-type: none"> - Consolidation and resubdivision allows the preservation of forest area on Parcel 27, reduces grading area by 2-acres - Buildings sited with consideration of previously cleared land - County Grading and Grubbing regulations will be followed, and a list of Best Management Practices will be established to properly manage storm water runoff.
Noise, Air Quality, and Scenic Resources	<ul style="list-style-type: none"> - All County noise restriction guidelines will be followed. - The project will take reasonable measures to control airborne, visible fugitive dust from roadways as outlined in the Department of Health’s Clean Air Branch Standard Comments for Land Use Reviews.

	<ul style="list-style-type: none"> - Landscaping has been planned to minimize potential impacts to scenic resources, ocean views from Government Beach Road, and the natural flow of the tradewinds. - A landscaping schedule will be followed to ensure conformity with HAR Chapter 13-5 guidelines
Hazardous Substances, Toxic Waste, and Hazardous Conditions	<ul style="list-style-type: none"> - Construction activities with the potential to produce polluted runoff will be limited to periods of low rainfall. - During construction, emergency spill treatment, storage, and disposal of all hazardous materials, will be explicitly required to meet all State and County requirements, and the contractor will adhere to “Good Housekeeping” for all appropriate substances. - Unused materials and excess fill (if any) will be properly disposed of at an authorized waste disposal site.
Public Shoreline Access	<ul style="list-style-type: none"> - Given the likely presence of the historic trail on property, lateral access will be allowed. - SMA Condition 4 requires that the Applicants shall not construct any wood, metal, or rope ladder, platform, steps, concrete pads, or other constructed appurtenances from the top of the pali to access the ocean along the entire length of shoreline of each parcel.
Roads and Access	<ul style="list-style-type: none"> - Government Beach Road will be accessible to local traffic and will never be blocked by machinery.
Water Resources	<ul style="list-style-type: none"> - Rainwater catchment proposed as backup to well if the water source is inadequate or well permit is not granted. - Historic rainfall in the area is over double the required amount for catchment allowance per County guidelines. Even in dryer years, the area has sufficient rainfall to support catchment systems. - If sufficient water is not available, some or all of the accessory uses may not ultimately be developed or used on a regular basis.