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HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY

Testimony of
Michael W Macdonald, Vice President
Macdonald & Porter Inc.
Before the
Honolulu Community Development Authority
Executive Director, Anthony Ching
Wednesday, May 27, 2015

**Regarding disputed ownership of the roadways in Central Kakaako and recommended course of
action by the appropriate State agency**

Members of the Hawaii Community Development Authority

I am here to submit testimony regarding the ownership dispute of roadways in central Kakaako. There has been an ongoing issue as to the ownership of many of the main thoroughfares in the central Kakaako area. Countless hours and thousands of dollars have been spent by local tax-paying businesses and land owners in this area to defend the open and free usage of these roadways. With the ongoing luxury development as well as the upcoming rail construction in this area, this issue needs to be investigated and resolved by the appropriate State agency. Included with this testimony is a map of the roadways in central Kakaako that are in dispute (fig. 1)

These roads were initially constructed and platted in the late 1800's and were part of a larger development by Charles Desky. In 1903, Charles Desky expressly dedicated many of these roads to the Territory of Hawaii in front of the House and Senate (fig. 2). These roadways have been used continuously and freely by the public for over 100 years.

As recently as 2004, the HCDA had put forth plans to improve and re-design some of these roadways. One of these projects, ID11, proposed to widen Queen St, add sidewalks and curbs and improve drainage. All of the businesses in the immediate area were assessed for a portion of the project. At that point in time, HCDA had asserted their ownership of the roadway and nowhere in the proposal was Kakaako Land Company listed as a landowner or assessed any portion of the project. (fig. 3)

With Kakaako Land Company allowed to operate without any oversight, businesses are being forced to pay for parking along the roadways and in some cases for the parking fronting their own business under threat of towing. Their aggressive leasing of any available roadway land has caused tremendous hardship for many businesses located in this area. They have recently painted stalls on Ilaniwai St, put up signs and painted curbs on City/State built and maintained sidewalks to mark their "parking stalls for rent". They have even leased parking and are currently attempting to lease parking on verified HCDA owned land. (fig. 4-10)

We are reaching out to the HCDA for assistance as the initial construction of these roads dates back to the days of the Territory of Hawaii, making this a State issue. These roadways fall within the geographical boundaries of the HCDA's jurisdiction. Because of these circumstances, this issue needs to be investigated and resolved by the HCDA.

There is a precedent for HCDA to seek a judicial resolution to this issue. In 1995 HCDA filed suit against the heirs of Charles Desky, the officers of the Kakaako Land Company and any other owners and claimants (Civil Case # 95-2439-07). With the Attorney General of the State of Hawaii acting as counsel for the HCDA, they successfully filed a complaint in Eminent Domain to condemn a portion of the intersection of Kamake'e and Kawaihao St.

Our research into this issue has uncovered many material facts that dispute the ownership of these roadways by Kakaako Land Company:

With the original plat of the land in 1897, there is a documented implied dedication of the roadways,

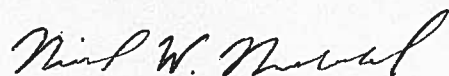
The expressed dedication by Charles Desky as evidenced by the adoption of Resolution 9 by the House and Senate in 1903.

The Hawaii Revised Statute regarding the surrendering of private roadways if no act of ownership is exercised for five years (HRS 264-1(c)(2))

Establishment of a prescriptive easement in favor of the general public due to the open and continuous use of these roadways as public thoroughfares over many decades.

Questions as to the validity of the quitclaim deed that the Kakaako Land Company has used to establish their ownership rights. Quitclaim deeds have no title covenant and there has been no definitive proof showing that the Grantor of the deed had any documented ownership of the disputed roadways.

Due to HCDA's vested interest in the aforementioned roadways, and the documented judicial channel to pursue a resolution to this issue, we humbly ask that the HCDA, in conjunction with the State of Hawaii Attorney General's office to begin proceedings to condemn these disputed roadways for the continuous and open use by the general public. Thank you for your time.



Michael W Macdonald

Figure 2

Resolved that a Joint Committee consisting of three members from each branch of the Territorial Legislature be appointed by the presiding officer of each House of the Territorial Legislature to go to the Laper Settlement to carry out the object and purposes of this Resolution; and

Resolved, that said Committee have full authority and power to select one or two medical experts on leprosy to accompany them to the said Laper Settlement, and with the assistance of the President of the Board of Health or any person appointed by him, to examine the said alleged leprous persons at said Laper settlement, and to discharge and release all persons who have not the bacilli lepra in their systems, or in a condition which will not spread the disease of leprosy by being at large, and he it farther

Resolved, that the sum of Two Thousand Dollars be and is hereby appropriated to defray the expenses of the said Committee.

J. K. PABLE,

Representative 5th District

Honolulu, April 26, 1903.

JOINT RESOLUTION NO. 3.

Whereas, Charles S. Deaky is ready and willing to convey to the Territory certain streets in Kowale, Honolulu, Island of Oahu, without cost or charge to the Territory, and

Whereas, it would be a benefit to the public to have such streets owned and controlled by the Government; Therefore,

Be it resolved by the Legislature of the Territory of Hawaii:

That the Superintendent of Public Works be, and he is hereby authorized and directed to accept from said Charles S. Deaky a deed conveying to the Territory (without charge to the Territory) all the lots of said Charles S. Deaky in and to the following named streets situated in Kowale aforesaid, to wit:

- Street No. 1, extension South of South St.
- Street No. 2, extension South of South St.
- Street No. 3, extension South of South St.
- Street No. 4, extension South of South St.
- Street No. 5, extension South of South St.
- Street No. 6, extension South of South St.
- Street No. 7, extension South of South St.
- Street No. 8, extension South of South St.
- Street No. 9, extension South of South St.
- Street No. 10, extension South of South St.
- Street No. 11, extension South of South St.
- Street No. 12, extension South of South St.
- Street No. 13, extension South of South St.
- Street No. 14, extension South of South St.
- Street No. 15, extension South of South St.
- Street No. 16, extension South of South St.
- Street No. 17, extension South of South St.
- Street No. 18, extension South of South St.
- Street No. 19, extension South of South St.
- Street No. 20, extension South of South St.

Approved and that after such acceptance said streets shall be owned, controlled and used by the Government of the Territory of Hawaii.

Senator A. Brown moved that the Joint Resolutions be placed on the order of the day for tomorrow. Seconded by Senator A. Brown and carried.

Figure 2

Senator Achi moved that the bill pass second reading. Seconded by Senator Kalaupokalani and carried.

Second Reading of House Bill No. 66, entitled "An Act to provide for the payment of claims of damages by persons imprisoned in the year 1895."

Senator Dickey moved that the bill be laid on the table. Seconded by Senator Woods and carried.

The consideration of House Joint Resolution No. 8, relating to the appointment of a committee to examine the Lepers at Molokai, was now taken up.

Senator Kalaupokalani moved that the resolution be adopted. Seconded by Senator J. T. Brown.

Senator Dickey moved that the resolution be laid on the table. Seconded by Senator McCandless and carried on the following showing of ayes and noes.

Ayes: Senators Achi, Baldwin, Crabbe, Dickey, McCandless, Paris, Wilcox and Woods—8.

Noes: Senators J. T. Brown, Kaiue, Kalaupokalani, Kachi and Nakapeahu—5.

Not Present: Senators C. Brown and Itenberg—2.

House Joint Resolution No. 9, relating to the Government taking over certain streets in Kewalo, Honolulu, was now taken up for consideration.

Senator Dickey moved that the resolution be referred to the Committee on Public Lands, Internal Improvements, Agriculture, etc. Seconded by Senator Baldwin.

The President here called the Vice President to the chair.

Senator Crabbe moved that the resolution be adopted. Seconded by Senator Kalaupokalani.

The motion to refer to the committee was then put and lost. The motion to adopt the resolution carried.

Senator Crabbe introduced the following Joint Resolution:

JOINT RESOLUTION

That it be resolved by the Legislature of the Territory of Hawaii, in the County of Eschscholtz, in the District of Honolulu, that the territory hereinafter known as the District of Honolulu, and containing a population of over 100,000, and containing the principal business and manufacturing interests;

That it is the wish of the Legislature of this district to be incorporated under a municipal form of government.

Therefore, be it Resolved, That the Governor of Hawaii be authorized to appoint and commission a board of commissioners to prepare and propose a charter for the proposed

AFTERNOON SESSION.

The House reconvened at the hour of 2 o'clock p. m., Honorable E. W. Beckley, Speaker, presiding.

The following

JOINT RESOLUTION

was introduced by Mr. Harris, and marked:

House Jnt. Res. No. 9. Reading as follows:

Whereas, Charles S. Desky is ready and willing to convey to the Territory certain streets in Kewalo, Honolulu, Islet of Oahu, without cost or charge to the Territory; and

Whereas, it would be a benefit to the public to have streets owned and controlled by the Government; Therefore,

Be it Resolved by the Legislature of the Territory of Hawaii:

That the Superintendent of Public Works be, and he is hereby authorized and directed to accept from said Charles Desky a deed conveying to the Territory (without charge to Government) all the title of said Charles S. Desky in and to the following named streets, situated in Kewalo aforesaid, *to-wit*:

Queen Street, extension South of South St.
Kawaihae Street,
Mustoe Avenue,
Crane Pier,
Wood Street,
Cummings Street,
Lanikai Street.

Resolved also, that after such conveyance said named streets be maintained, repaired and cared for by the Government as public highways.

On motion of Mr. Harris, the foregoing resolution was adopted, by the following yeas and no votes:

Yeas: Ayles, Chillingworth, Damien, Randall, Green, Hale, Harris, Jaeger, Kahi, Kalama, Kamilo, Keating, Kimo, Kou, Kuniho, Kuniho, Kupihua, Lewis, Looe, Mahala, Olli, Paala, Pahi, Puka, Purdy, Vian, Wright, Speaker—total 23.

Absent and not voting: Andrade, Fernandez—total 2.

Absent and not voting: Aylett, Kaniho, Fernandez, P. Purdy, Wright—total 5.

No. 105. Reading as follows:

Honolulu, T. H., April 28, 1900.

To the Honorable Speaker and
House of Representatives of the
Territory of Hawaii.

I have the honor to herewith return House Joint Resolution No. 9, which was this day adopted in the Senate of the Territory of Hawaii.

Respectfully yours,

(Sgd.) WILLIAM SAVIDGE,
Clerk of the Senate.

Approved:

(Sgd.) CLARENCE L. CRABBE,
President of the Senate.

No. 106. Reading as follows:

Honolulu, T. H., April 28, 1900.

To the Honorable Speaker and
House of Representatives of the
Territory of Hawaii.

I have the honor to herewith return House Joint Resolution No. 1, which has this day been adopted in the Senate of the Territory of Hawaii.

Respectfully yours,

(Sgd.) WILLIAM SAVIDGE,
Clerk of the Senate.

Approved:

(Sgd.) CLARENCE L. CRABBE,
President of the Senate.

No. 107. Reading as follows:

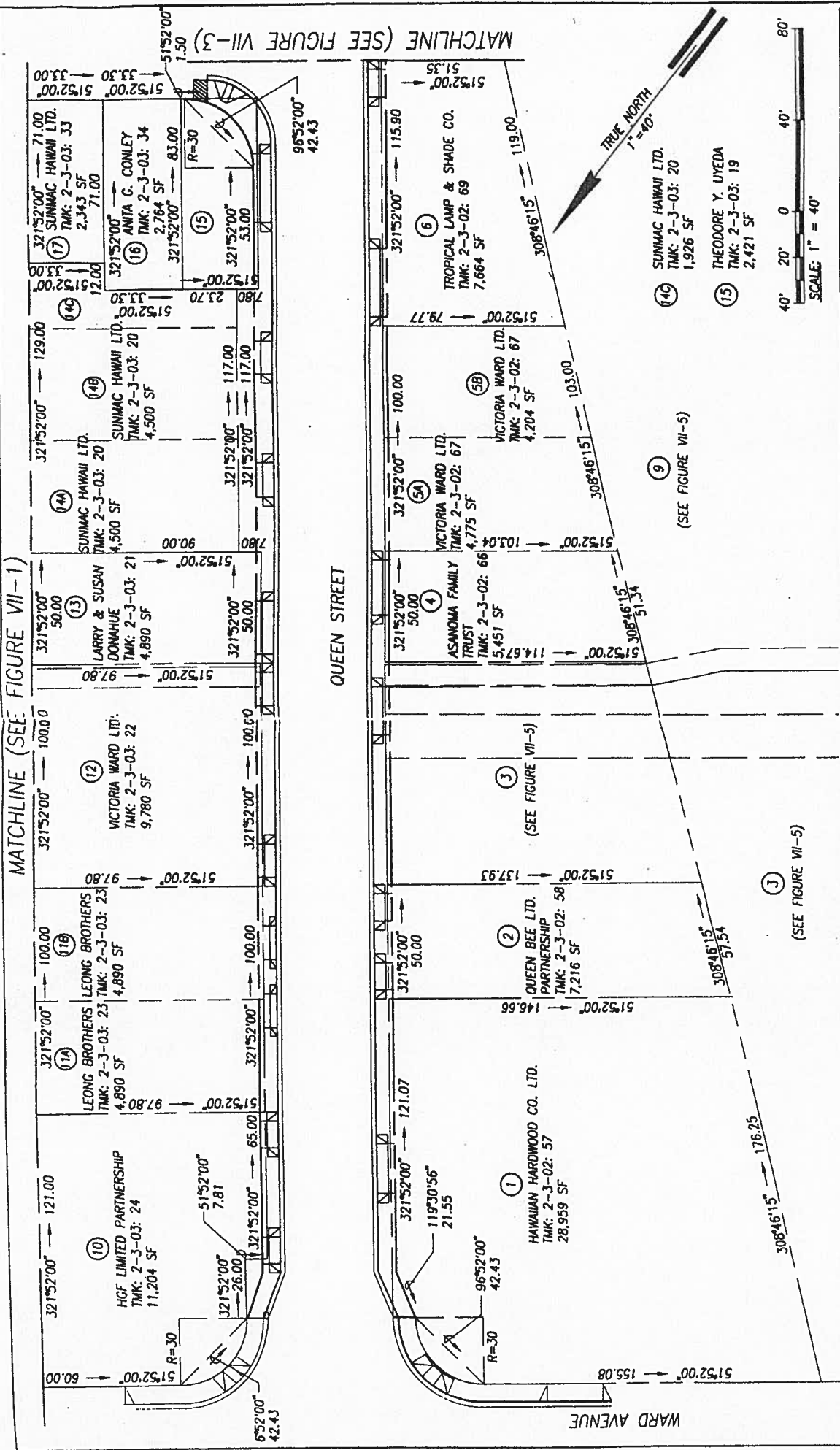
Honolulu, T. H., April 28th, 1900.

To the Honorable Speaker and
House of Representatives of the
Territory of Hawaii.

I have the honor to herewith transmit a duly certified copy of the Joint Resolution relating to the Incorporation of the

MATCHLINE (SEE FIGURE VII-1)

MATCHLINE (SEE FIGURE VII-3)



Kakaako Community Development District Improvement District 11
Hawaii Community Development Authority
State of Hawaii

Final Assessment Report

Assessment Map - 2

Figure VII-2

R. M. TOWILL CORPORATION
608 842 1133 420 Makalapa Road Suite 411 Honolulu Hawaii 96817-4941

Agency - Engineering - Environmental Services - Photography - Surveying - Construction Management

Figure 3



Figure 4

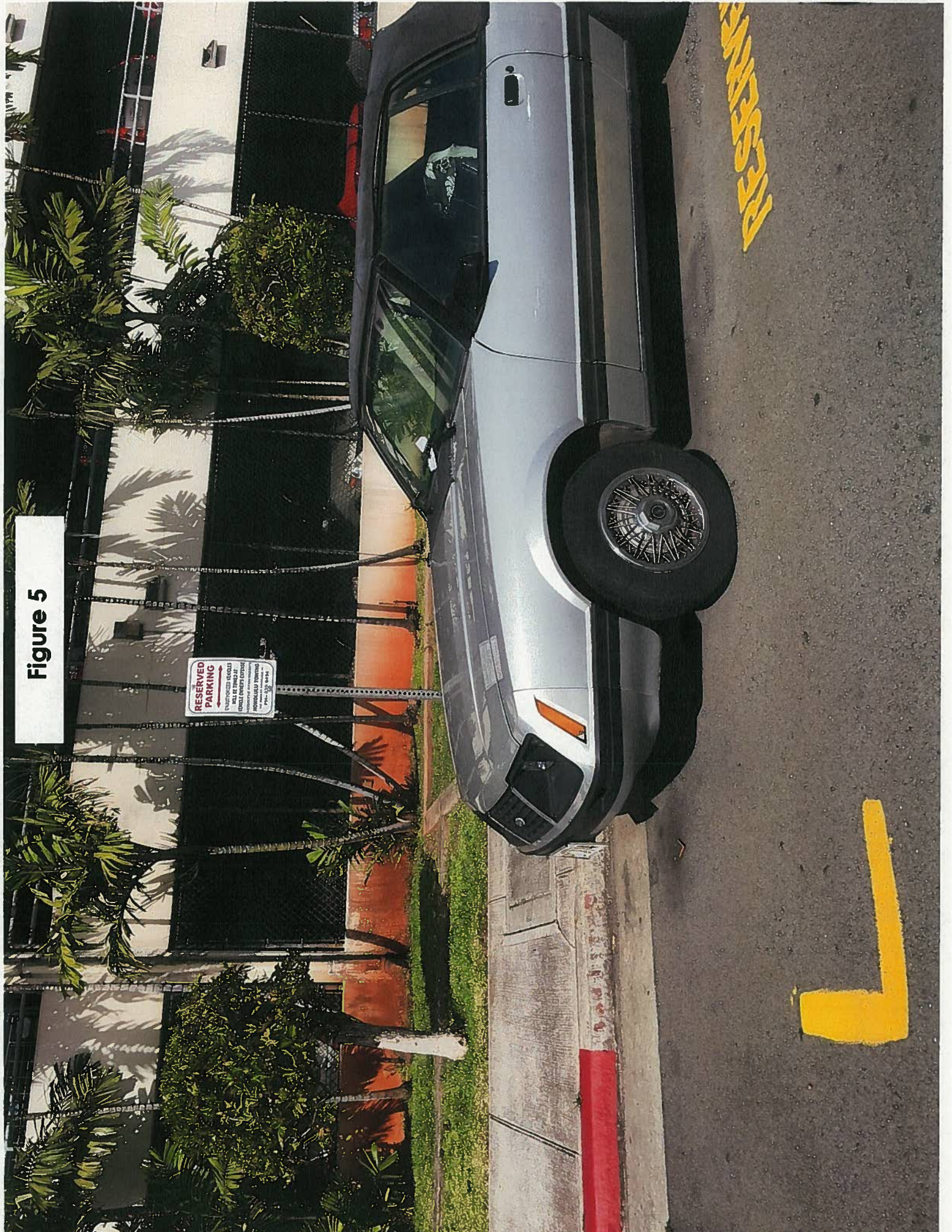


Figure 5

Figure 6



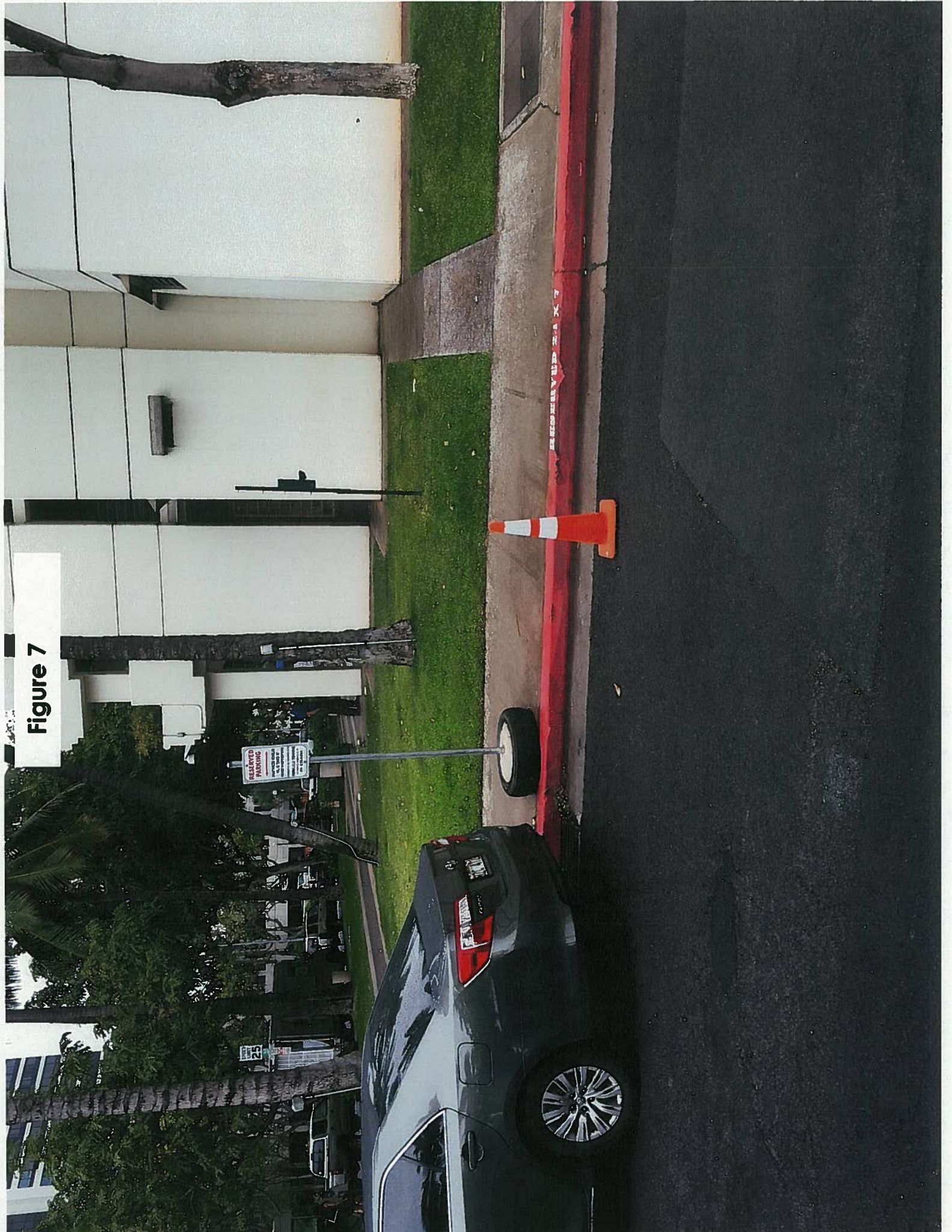
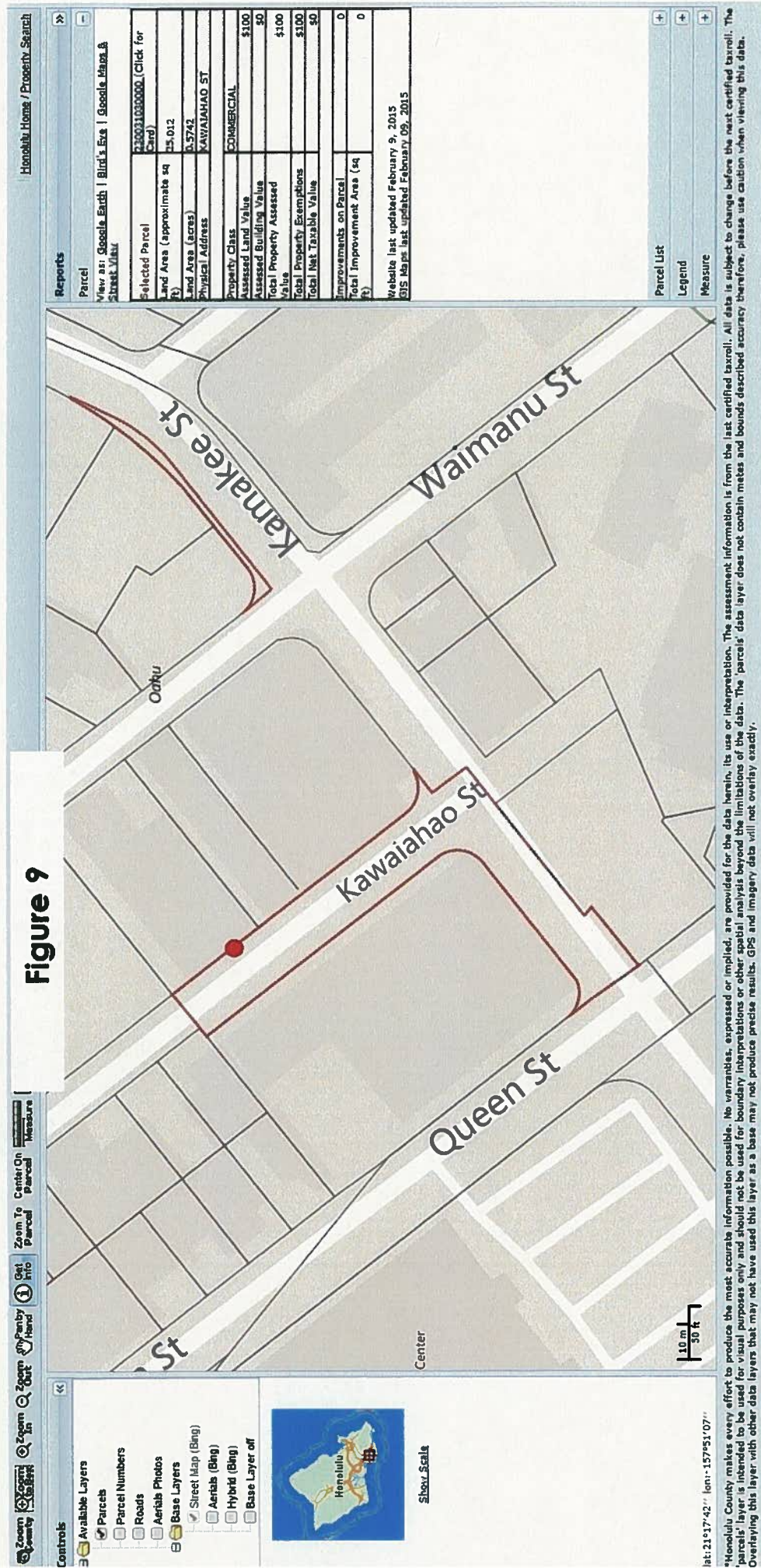


Figure 7

Figure 8



Figure 9



Red Dots represent "Reserved Parking" and "Parking for Rent" signs placed by the Kakaako Land Company within the HCDA owned portion of Kawaihau Street according to Honolulu Property Tax records



Previous Parcel	Next Parcel	Return to Main Search Page	Honohiki Home	Real Property Home
Parcel Number 230031030000	Owner Name HAWAII COMM DEV AUTHORITY Fee Owner	Owner and Parcel Information Print Owner Info	Data current as of February 9, 2015	
Location Address KAWAJAHAO ST	Property Class COMMERCIAL	Assessed Building Value \$ 0	Project Name Plat Map	Plat Map PDF
Land Area (approximate sq ft) 25,012	Dedicated Use Value \$ 0	Net Taxable Land Value \$ 0	Parcel Map	GIS Parcel Map
Land Area (acres) 0.5742	Assessed Land Value \$ 100	Land Exemption \$ 100	Legal Information	

Assessment Year	Property Class	Assessed Land Value	Dedicated Use Value	Net Taxable Land Value	Assessed Building Value	Building Exemption	Net Taxable Building Value	Total Property Assessed Value	Total Exemption	Total Net Taxable Value
2015	COMMERCIAL	\$ 100	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 100	\$ 100	\$ 0

Appraisal Information Print Appeal Info
No appraisal information on parcel.

Land Information Land Print
Square Footage: 25,010
Acreage: 0.5742
Agricultural Use Indicator

Improvement Information
No improvement information available for this parcel.

Other Building and Yard Improvements
Quantity: No information associated with this parcel.
Year Built: Area

Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Date of Recording	Land Court Document Number	Cert #	Book/Page
11/12/1996					04/06/1999	234067	366913	
02/19/1997			FEE CONVEYANCE		05/03/1999	2340911	530917	
06/13/1996					08/28/1996	2332529	440650	
06/18/1996		9600142606	FEE CONVEYANCE		10/04/1996	2340082	481583	
06/18/1996		9600116957	FEE CONVEYANCE		08/14/1996			

Property Tax Record for HCDA owned portion of Kawaihao St.

Figure 10