

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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
KAHO'OLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref: OCCL:LY

CORR: HA 17-128

Mr. Ken Church
P.O. Box 100014
Hakalau, HI 96710

JAN 27 2017

SUBJECT: Ken Church Properties Located in Wailea, South Hilo, Hawai'i
Tax Map Keys: (3) 2-9-003: 013, 029, and 060

Dear Mr. Church:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your latest five (5) correspondences.

Regarding your correspondence date December 16, 2016, you are requesting a permit determination for the removal of invasive species. Based on the information you have provided, the level of permitting required would be determined by the total area you are proposing to clear as it appears that the identified land use you would be applying for is "Landscaping" and not "Removal of Invasive Species." Pursuant to Hawai'i Administrative Rules (HAR) §13-5-22, the "Removal of Invasive Species" must be for the purpose of "protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions..."

By contrast, under HAR §13-5-23(L-2) landscaping in an area less than 2,000 square feet would require a Site Plan Approval (SPA), landscaping in an area more than 2,000 square feet but less than 10,000 square feet would require a Departmental Conservation District Use Permit, and Landscaping in an area of or more than 10,000 square feet would require a Board Conservation District Use Permit.

Regarding your correspondences dated December 17th and 19th, in regards to the former railroad right-of-way, we have acknowledged that the right-of-ways are a part of the subject parcels and that they are privately owned. This obviously supersedes earlier contradictory comments we made in regards to this matter.

I want to bring to your attention that our office has received approximately 130 emails and letters from you, comprised of hundreds of pages of text. Throughout this process, this office has been responsive and has made reasonable efforts to address your questions and concerns despite the volume and frequency of your inquiries. Moreover, we have cooperated with you to make reasonable use of your land. All of your requests to make use of your land have been approved either by the Department or the Board of Land and Natural Resources (Board). For example:

1. Approval of landscaping (planting of trees and a garden);
2. Approval of consolidation and re-subdivision of your properties;

3. Approval of construction of a 700 square foot storage shed;
4. Approval of construction of a 4,649 square foot single family residence (SFR); and
5. Agreement over the continuance of non-conforming agriculture uses.

With respect to the non-conforming agricultural use, we have asked that you submit a management plan to our Office for the Department's review prior to initiating work. The reason for this is that in addition to recognizing your right to continue an agricultural use, the Department must continue to ensure that the use is actually what you say it is, and is, furthermore, conducted in a judicious manner, and in a way that adheres to appropriate best management practices to reduce or prevent environmental damages. Since you would like to continue an agricultural use which would involve land disturbance and potential on-site and off-site impacts (e.g., water pollution), *we have indicated that you may do so*. However, we want you to demonstrate that the work will be conducted in an appropriate and safe manner and is in conformance with governing laws (e.g., Chapter 183C, HRS). Our December letter stated that a Management Plan must be prepared and submitted for the Department's *review and approval*. We wish to clarify that statement by stating that if the work proposed in your agricultural management plan is consistent with non-conforming agricultural use of the property, we would use the plan for informational purposes only.

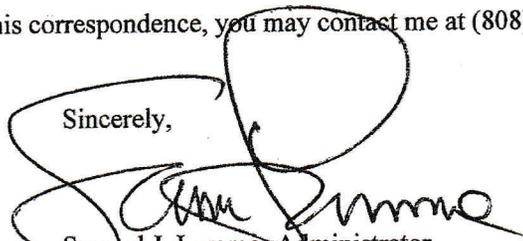
With respect to your request to go before the Board, this does not appear to be required or necessary at this time since you have no discretionary matters pending before the Department or Board.

You have also suggested that in lieu of a discussion with the Board, the Department may issue a supporting letter for your petition to the Land Use Commission for a boundary amendment to take your properties out of the Conservation District and put them in the Agricultural District. We are unable to accommodate this request as this would be inappropriate. However, if the Land Use Commission wished to seek our input on this matter, we would be happy to respond to an inquiry from them.

We also remind you that any work that you conduct on your land may be subject to other Federal, State or County laws, rules, and ordinances with which you may be required to comply.

Should you have any questions regarding this correspondence, you may contact me at (808) 587-0377.

Sincerely,



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

c: Chairperson