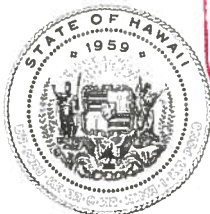


DAVID Y. IGE  
GOVERNOR OF HAWAII



**FILE COPY**

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

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON  
DEPUTY DIRECTOR - WATER

**JUL 08 2016**

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCE  
COMMISSION ON WATER RESOURCES 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

Ref: OCCL:LY

CDUA: HA-3767

To: Scott Glenn, Director  
Office of Environmental Quality Control

**JUN 22 2016**

From: Suzanne D. Case, Chairperson *[Signature]*  
Department of Land and Natural Resources

Subject: Final Environmental Assessment (FEA) for Conservation District Use Application (CDUA) HA-3767 for the Church Single Family Residence (SFR), located at Wailea, South Hilo, Hawaii'i  
Tax Map Keys (TMK): (3) 2-9-003: 060 and portions of 013 and 029

The Department of Land and Natural Resources has reviewed the FEA for the subject project and has determined a Finding of No Significant Impact (FONSI). Please be advised, however, that this finding does not constitute approval of the proposal.

The Draft EA was published in the April 23, 2016 edition of *The Environmental Notice*. Comments on the Draft EA were sought from relevant agencies and the public, and were included in the Final EA. The FEA has been prepared pursuant to Chapter 343, Hawaii'i Revised Statutes and Chapter 11-200, Hawaii'i Administrative Rules. Please public this notice in OEQC's upcoming July 8, 2016 edition of *The Environmental Notice*.

We have enclosed one (1) hard copy of the DEA and OEQC publication form, as well as one (1) CD with a pdf file of the Final EA/FONSI. A separate e-mail shall be sent with the OEQC publication form in word document format for publication purposes.

Please contact Lauren Yasaka of the Office of Conservation and Coastal Lands staff at 587-0386 should you have any questions.

Attachments: FEA, OEQC Pub Form, 1 CD

**RECEIVED**  
**JUN 23 4:16**  
**OFFICE OF ENVIRONMENTAL QUALITY CONTROL**

**APPLICANT  
PUBLICATION FORM**

JUL 08 2016

Project Name:	Church Single Family Residence
Project Short Name:	same
HRS §343-5 Trigger(s):	HAR 343-5 (2) <i>Propose any use within any land classified as conservation district by the state land use commission under chapter 205;</i>
Island(s):	Hawai'i
Judicial District(s):	Wailea, South Hilo District, Island of Hawai'i
TMK(s):	TMK's : (3) 2-9-003: 060, 029, 013
Permit(s)/Approval(s):	<ul style="list-style-type: none"> <li>• Federal: None</li> <li>• State of Hawai'i: Department of Land and Natural Resources – Conservation District Use Permit Department of Health - Approval of individual Waste-water system; and Building Permit</li> <li>• County of Hawai'i: Planning Department – Special Management Area (SMA) Assessment Application Building Permit Electrical permit Plumbing permit Occupancy permit</li> </ul>
Approving Agency:	Department of Land and Natural Resources
Contact Name, Email, Telephone, Address	Lauren Yasaka; <a href="mailto:lauren.e.yasaka@hawaii.gov">lauren.e.yasaka@hawaii.gov</a> ; (808) 587-0386; 151 Punchbowl Street, Room 131 Honolulu, HI 96813
Applicant:	Ken Church
Contact Name, Email, Telephone, Address	Ken Church; <a href="mailto:dockline3@yahoo.ca">dockline3@yahoo.ca</a> ; (954) 261-2788, no land address
Consultant:	N/A
Contact Name, Email, Telephone, Address	N/A

**Status (select one)** DEA-AFNSI**Submittal Requirements**

Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the DEA, and 4) a searchable PDF of the DEA; a 30-day comment period follows from the date of publication in the Notice.

 FEA-FONSI

Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEA, and 4) a searchable PDF of the FEA; no comment period follows from publication in the Notice.

 FEA-EISPN

Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEA, and 4) a searchable PDF of the FEA; a 30-day comment period follows from the date of publication in the Notice.

 Act 172-12 EISPN  
("Direct to EIS")

Submit 1) the approving agency notice of determination letter on agency letterhead and 2) this completed OEQC publication form as a Word file; no EA is required and a 30-day comment period follows from the date of publication in the Notice.

 DEIS

Submit 1) a transmittal letter to the OEQC and to the approving agency, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the DEIS, 4) a searchable PDF of the DEIS, and 5) a searchable PDF of the distribution list; a 45-day comment period follows from the date of publication in the Notice.

 FEIS

Submit 1) a transmittal letter to the OEQC and to the approving agency, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEIS, 4) a searchable PDF of the FEIS, and 5) a

searchable PDF of the distribution list; no comment period follows from publication in the Notice.

- FEIS Acceptance Determination The approving agency simultaneously transmits to both the OEQC and the applicant a letter of its determination of acceptance or nonacceptance (pursuant to Section 11-200-23, HAR) of the FEIS; no comment period ensues upon publication in the Notice.
- FEIS Statutory Acceptance The approving agency simultaneously transmits to both the OEQC and the applicant a notice that it did not make a timely determination on the acceptance or nonacceptance of the applicant's FEIS under Section 343-5(c), HRS, and therefore the applicant's FEIS is deemed accepted as a matter of law.
- Supplemental EIS Determination The approving agency simultaneously transmits its notice to both the applicant and the OEQC that it has reviewed (pursuant to Section 11-200-27, HAR) the previously accepted FEIS and determines that a supplemental EIS is or is not required; no EA is required and no comment period ensues upon publication in the Notice.
- Withdrawal Identify the specific document(s) to withdraw and explain in the project summary section.
- Other Contact the OEQC if your action is not one of the above items.

### Project Summary

Provide a description of the proposed action and purpose and need in 200 words or less.

#### The applicant is applying to:

- Construct a single family '*single family residence*', carport, bale, swimming pool, hot tub and outdoor cooking structure on Lot 060, the North Lot

For reference the term '*bale*' found herein is described as a 'gazebo like open air' structure under a roof supported by columns often with seating and in this case also a hot tub.

- Site leveling
- Repair of an existing access road up to the applied for residence site and a 900 sq. ft. outside car parking area. The repaired road and other vehicle areas will have a crushed rock surface generally 4-6" deep. The open sided garage adjoining the residence will have a concrete pad there under. The existing access road will lead from lot 029, the middle lot to the planned residence location on lot 060, the North lot.
- Septic system for the '*single family residence*'
- Solar panel array on the roof top of the planned single-family '*single family residence*'
- Restoring former grass cover and/or allowed non-conforming agricultural plantings to unused disturbed soil areas resulting from the Project
- A utility corridor in which a water line and a possible telephone line under the repaired road leading across lot 029 to the planned residence site on lot 060

## Final Environmental Assessment

### Church New Single-Family Residence in the Conservation District at South Hilo, Hawaii

June 2016

TMK's : (3) 2-9-003: 060 (herein also referred to as the North lot) and contiguous  
TMK's 029 (herein also referred to as the Middle lot) and (also related TMK # 013  
also referred to as the South lot)

#### **Applicant**

Name / Agency: Ken Church herein after referred to as 'the Applicant'

Street Address: 400 Hualani St.

Hilo, Hawaii

*(note as the Applicant is currently 'off island' it is requested by the Applicant that all hard copies of correspondence be held at source, on behalf of the Applicant, and rather copies of documents be emailed to the Applicant until further notice). The Applicant will subsequently make arrangements for the forwarding of hard copies of such correspondence if required).*

Note: No consultant was utilized in the preparation of this EA and CDUA HA 3767. It was prepared by the Applicant.

Contact Person & Title: same as above

Phone:

Fax:

Email: dockline3@yahoo.ca

Interest in Property: owner

#### **Approving Agency:**

State of Hawaii

Department of Land and Natural Resources

Office of Conservation and Coastal Lands

1151 Punchbowl Street, Room 131

Honolulu, Hawaii 96813

#### Note to reader:

1. The index page to the Final Environmental Assessment is located on the last pages of this document.
2. The index to the Exhibits is found around page 76.
3. Permits and Approvals that are believed to be required is located at the back of this document.

**The Applicant does not have a residence in Hawaii nor a land based mailing address. The Applicant resides on a boat which is located in various locations. Please address all correspondence to the Applicant's email address at**

**[dockline3@yahoo.ca](mailto:dockline3@yahoo.ca)**

**In the event that hard copies and the like are mailed the Applicant will provide a suitable time-dependant hard copy mailing address if requested to the above email address.**

**Brief project description:**

**The applicant is applying to:**

- Construct a single family '*single family residence*', carport, bale, swimming pool, hot tub and outdoor cooking structure on Lot 060, the North Lot

For reference the term '*bale*' found herein is described as a 'gazebo like open air' structure under a roof supported by columns often with seating and in this case also a hot tub.

- Site leveling
- Repair of an existing access road up to the applied for residence site and a 900 sq. ft. outside car parking area which will also serve as a car turn-around area adjacent to the existing road and planned residence. The repaired road and other vehicle areas will have a crushed rock surface generally 4-6" deep. The open sided garage adjoining the residence will have a concrete pad there under. The existing access road will lead from lot 029, the middle lot to the planned residence location on lot 060, the North lot.
- Septic system for the '*single family residence*'
- Solar panel array on the roof top of the planned single-family '*single family residence*'
- Restoring former grass cover and/or allowed non-conforming agricultural plantings to unused disturbed soil areas resulting from the Project
- A utility corridor in which a water line and a possible telephone line under the repaired road leading across lot 029 to the planned residence site on lot 060

**Background and History:**

The Applicant does not have a residence in Hawaii. As such the Applicant has not met with the various authorities and agencies which will consider this Final Environmental Assessment and their early comments are not included in this application. However the Applicant will demonstrate that all of these agencies were already invited to comment on the very similar 2008

McCully(s) FONSI for a residence on lot 029, the Property, and their comments were addressed in that FONSI and similarly are reflected in this Final Environmental Assessment.

- The applicant has applied to build a single family residence on the North lot 060
- The subject 3 contiguous ocean-side lots, the Property, were Historically (for over 100 years) used for intensive agricultural production and a field road at the time the property was zoned Conservation in the 1960's *ref. exhibits 7,8,9*. There currently exists legal non-conforming agricultural uses in various areas on all 3 of the subject lots and a field road continues to be the primary access route leading across Lot 029 to the planned residence site on lot 060. Lot 029 currently has an access eased paved driveway and utilities easement (including an existing County water line) to it leading from the Coastal Highway. Generally 3.2 acres of the 4.6 acre total area of the 3 lots qualify for 'non-conforming agricultural use' according to HAR 13-5-7 & 22 as the property was Historically utilized for intensive agricultural purposes **for over 100 years** up to 1992, *ref. Brewer field maps exhibit 7 and 8 and John Cross letter exhibit 9*.
- Such agricultural use is being conducted by the Applicant on the Property as allowed 'non-conforming use' according to HAR 13-5-7 & 22; the areas of all 3 lots (generally 3.2 acres in total) have been extensively planted to various fruit trees and agricultural plantings *ref. exhibits 7, 8 & 9*.
- The applied for single family residence and related structures and uses applied for herein (the areas of intended soil disturbance resulting from the applied for land uses) are to be located on a portion of Lot 060 historically used for intense agricultural production. It is noteworthy therefore that the area of the planned residence location on Lot 060 currently qualifies to be cultivated for crop production (an allowed non-conforming agricultural use of the lot according to HAR 13-5-7 & 22) suggesting therefore that soil disturbance need not be a primary concern of the reviewer(s) of this CDUA/EA. The land was Historically cultivated and cropped for over 100 years.

Lot 60 currently has extensive agricultural plantings (currently bananas, fruit and nut trees and a pineapple growing area interspersed with mowed lawn) on it generally located on most of the grassed areas of the lot. The current agricultural uses exceed approx. 1 acre of Lot 60.

There are no agricultural plantings other than grass on the hill top however where the residence is planned and on the roadway leading to the planned residence site. **The intended access road including a utility corridor** is located on both lots 029 and 060 and is located on a former roadway (a former railroad road bed which subsequently became a field road around 1952 and continued until around 1992) *ref. exhibit 7*, **the area of the field road** on the former **two** TMK parcels 029 and 060 (former railroad right of way lots) occupied an area of .856 acres of the two former parcels which in total (former parcels 029 & 060) occupied approx. 3.4 acres.

*note: exhibit 7 was amended by the applicant. (Arrows and notes to the arrows have been added),*

a **turn around and parking area** located adjacent to the applied for residence will be mostly on an area that is currently maintained in grass that was Historically the lot comprising the referenced field road on lot 60 *ref. exhibit 7*. All areas of planned soil disturbance for the applied for uses herein are currently maintained in grass including the former road way that has grass growing above it presently.

- The applied for single family residence is similar in size and scope to a 2008 CDUP HA 3445, submitted by the McCully(s), for the construction of a residence on the Property which included a FONSI which found ‘*no significant impact*’ *ref. exhibit 6*. The planned site of that residence was approx. 200 ft. to the South of the applied for Church residence *ref. exhibits 12 & 2*. That residence was never built and in 2014 the McCully(s) sold the Property to the Applicant.

Regarding the 2008 McCully(s) FONSI. As the requirement for an EA was a discretionary requirement of either the Chair of the BLNR or the BLNR it was requested by the Applicant in submitted CDUA HA 3764 in Jan. of 2016 that the CDUA for a residence be considered/allowed as ‘EA exempt’ without another EA/FONSI as the existing 2008 McCully(s) FONSI, *exhibit 6*, was believed by The Applicant to sufficiently equally apply to this application for the following reasons.....

In 2008 the previous property owners, the McCully(s), applied for and received CDUP HA-3445 (now expired) to allow the construction of a residence on Tax Map Key (“TMK”) No.: (3) 2-9-003: 029 (the middle of the 3 lots), Wailea, South Hilo District, Island, County and State of Hawai‘i .

In support of that permit the McCully(s) submitted a 2004 Botanical and Archaeological study, *ref. exhibit 6 (therein appendix D’ botanical starting around page 121 there in’ and appendix F ‘archaeological starting around page 134 there in)’*, of the Property and a 2008 EA/FONSI, *ref. exhibit 6*. The 2008 FONSI and earlier conducted archaeological and botanical studies considered all 3 lots of the Property. Several, if not all, of the FONSI’s findings applied to all 3 of the TMK lots and the McCully(s) planned residence on Lot 029, which Property is presently owned by the Applicant and not just lot 029.

As the McCully(s) prior planned use was for a residence on the same 3 lots which is what is applied for in this application and is similar in size and scope to this current application the McCully(s) FONSI is also submitted hereto in support of this CDUA/EA for background information. The Applicant updated the 2004 Botanical Study in 2014 *ref. exhibit 1*. The presently applied for ‘*single family residence*’ is located approx. 200 ft directly to the North of the previously approved McCully(s) residence and on the contiguous lot 060 and on land formerly partially also in the former land area of Lot 029 which was the planned location of the McCully(s) residence.....

*it is to be noted that the McCully(s) planned ‘residence’ was located on Lot 029. Since that time a portion of Lot 029 has been incorporated into Lot 060, ref. CDUP 3725 dated April 30, 2015 ‘combine and subdivision of lots’. The combining and subdivision of lots has been accepted by the County and is currently in its final stages of documentation completion. The location of the presently proposed Church ‘single family residence’ is partially on the*

*land area of the former Lot 029 with the remainder of the proposed 'single family residence' on the former lot 060.*

The proposed Church 'single family residence' is similar in size and general characteristics to the McCully(s) former planned residence, *ref. exhibit 2, overlay Church res. vs McCully(s) res and exhibits 16 and 17 (topographical survey documents)*. Exhibit 2 to this CDUA/EA utilizes a survey document which was part of the 2008 referenced McCully(s)'s CDUP HA 3445 (now expired) issued by the BLNR and was also part of the McCully(s) SMA exemption requested/determination (also now expired) issued by the County evidenced as an exhibit to the 2008 McCully(s) CDUP HA 3445 on page 16.

The Applicant has sketched on to *exhibit 2*, for location comparison purposes, the planned location of this applied for 'single family residence' herein vs. the formerly planned McCully(s) residence. *Exhibits 16* is a current survey document that specifically shows the planned location of the applied for Church 'single family residence' and the new property lines. *Exhibit 17* is similar to *exhibit 16* generally showing the former property lines for reference purposes.

The existing McCully(s) 2008 FONSI referred to herein is 'on file' as a government document. The Applicant has included a link to it as part of this CDUA/EA *exhibit 6*. By reference herein it is intended that the 2008 McCully(s) FONSI be linked and become a fundamental part of this CDUA/EA. The Applicant particularly draws to the attention of the reviewer(s) of the Applicant's CDUA/EA - the 'FINDINGS' section of the 2008 McCully(s) FONSI which supported the McCully(s) CDUA/P for a 'single family residence' on lot 029.

This is the link to the electronic version of the McCully(s) FONSI (Final EA).....

[http://oeqc.doh.hawaii.gov/Shared%20Documents/EA\\_and\\_EIS\\_Online\\_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully\(s\)-Residence.pdf](http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully(s)-Residence.pdf)

While the Applicant will submit a few pictures herein in support of this Application the Applicant also refers the reviewer(s) of this Application to

*exhibit 6, 2008 McCully(s) FONSI and*

*exhibit 1, and updated botanical study of the property in 2014 before the Applicant began extensive allowed non-conforming agricultural use of the Property,*

which documents have numerous pictures therein. The FONSI, also exists in an on-line government file and which was intended to be located on the same Property. The Applicant therefore directs the reviewer(s) of this application to that document also for general **and** specific reference and supporting information and pictures that are also submitted in support of this application and is intended to be a fundamental part of this CDUA and EA. The index section therein include a regional, location and site maps and topographical maps. Specific site topographical maps are included with this application as *exhibits 16 and 17*.

## **OWNERSHIP HISTORY**

From 1992 to 2014 the McCully(s) owned all three of these contiguous TMK parcels, "the Property", that are presently owned by the Applicant. In July of 2014 the McCully(s) sold these three (3) TMK parcels to



the Applicant.

#### **PRIOR APPLICATIONS**

Note: As electronic versions of the following files (permits etc.) are 'on file' as government documents the Applicant is referencing them herein by their respective identifying numbers. None-the-less by reference to these documents herein it is intended that they be linked and become part of this CDUA and EA as supporting evidence hereto where applicable .

**SPA: HA 15-04** dated Aug 28, 2014, Site Plan Approval for Planting of Fruit Trees and Blueberry Bushes

**SPA: HA 15-04** dated Oct. 31, 2014, Site Plan approval for Planting of Fruit Trees.

**SPA: HA 15-19** a 2,000 sq. ft. garden area approved in 2014

Note: the Applicant has recently substantially expanded agricultural uses of the Property without seeking further permits from the OCCL/BLNR. In 2015 the Applicant was directed by the OCCL to evidence such prior Non-Conforming Agricultural use of the Property. On Sept. 17, 2015 the Applicant submitted that evidence, by letter, to the OCCL *ref. exhibits 7, 8 & 9*. It is now a matter of record that the Historic use of the identified 3.2 acres of the Property was for intensive agricultural use.

**CDUP 3725** dated April 30, 2015

Combine and subdivision of lots 013, 029, 060, including.....

*conducting borings (soil sampling) on lots 029 and 060 to identify the area of the former rail road road bed/field road and.....*

*the posting of 'no trespassing' signs.*

The combining and re-subdividing of the 3 TMK parcels effectively eliminated the 3 former railroad right of way lots on the 3 TMK parcels, the Property, and reconfigured the lot borders and areas of the 3 lots to a more suitable configuration. Another effect of the combine and re-subdivide was that the 3 TMK **parcels** which were comprised of 2 lots each became 3 TMK **lots**. Particularly Lot 60 (the site of the current applied for Church residence) was enlarged substantially and now encompasses a substantial portion of lot 029 (the former planned site of the McCully(s) residence) effectively placing the Church residence on both a former portion of lot 029 and on a portion of the former lot 060 (now entirely on lot 060 as the combine and subdivide is in the final stages of proper registration).

**SPA: HA 16-4** Dated Sept 16, 2015 Structure Accessory to Agricultural use of Lot 029 was requested by the Applicant in order to support existing agricultural uses of the Property (including permitted conforming and unpermitted non-conforming agricultural uses according to HAR 13-5). The SPA was allowed by the BLNR to be supported by the 2008 McCully(s) FONSI, wherein it is stated.....

*On August 28, 2015, the Board of Land and Natural Resources (Board) determined that the Office of Conservation and Coastal Lands (OCCL) shall process and approve a Site Plan Approval (SPA) for a 750 square foot accessory structure located on the subject TMK. In addition, the Final Environmental Assessment (FEA) and Finding of No Significant Impacts (FONSI) prepared in January 2008 for a single family residence on the same subject property has been found to be applicable for the current project and thus The Project is in conformance with Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and Hawai'i Administrative Rules (HAR) 11-200, Environmental Impact Statement Rules. The FEA/FONSI was published in the February 8, 2008 edition of The Environmental Notice.*

- This Project is similar in size and scope to the 2008 McCully(s) planned residence which was located on Lot 029 and approved by the BLNR in CDUP HA 3445.

The Project area is composed of 3 TMK lots (3) 2-9-003: 013, 029, 060 however the applied for 'single family residence' is on lot 060 and the access road and utilities corridor are located on both lots 029 and 060.

TaxMapKey parcel 013 = 1.291 acres, the South Lot

TaxMapKey parcel 029 = 1.116 acre, the middle lot

TaxMapKey parcel 060: 2.252 acres, the North lot

Total = 4.659 acres

Herein referred to variously as 'The Subject lots and/or The Property'

The Subject lots were Historically intensively cultivated for agricultural use at the time of their inclusion into the Conservation District on or around 1964 which continued until around 1992. Today there exists legal non-conforming agricultural uses on substantial portions of The Property. Generally 3.2 acres of the 4.6 acre total area of the 3 TMK lots qualify for 'non-conforming agricultural use' according to HAR 13-5-7&22 as The Property was utilized for intensive agriculture for over 100 years up to 1992, *ref. field maps exhibit 7, 8 and John Cross letter exhibit 9*. Interspersed in the agricultural plantings today are areas of maintained grass. A small portion of North lot (060) is a portion of a wooded gulch. The center of the stream in the gulch is the Northern boundary of Lot 060. There remains a narrow area, varying in width, of undeveloped generally wooded land along the Pali on the Eastern, Oceanside, boundary of the 3 Lots above the ocean. The cliff descending from the bluff down to the ocean is very steep (generally 100 ft.high) and is owned by the state.

The proposed 'single family residence' will be located on lot 060 on a Historically cultivated area used for intensive agricultural production that is currently maintained as lawn interspersed with allowed non-conforming agricultural plantings. All of the property is in the Conservation/Resource zone, *ref. boundary determination 92 48 exhibit 6, page 16*. See also.....

a regional location map, TMK map, and various other supporting documents can also be found in the 2008 McCully(s) FONSI *ref. exhibit 6 hereto*. For reference the Applicant points the reviewer(s) of this CDUA/EA to the index of exhibit 6 for ease of accessing various exhibits therein. Exhibited hereto also is a site plan ‘*single family residence*’ location map, *ref. exhibits 2 and 16, 17*, and a photo showing the planned ‘*single family residence*’ site, *exhibit 12 and exhibit 5, pictures*, of the planned improved (repaired) road leading to it and an approximate line showing the area of the intended cut and fill.

### **Land Use Designations**

The House Site and the rest of the combined Property are situated within the State Land Use Conservation District **Resource** zone, *ref. exhibit 6 pp 16*. The County General Plan Land Use Pattern Allocation Guide Map (“LUPAG”), *ref Exhibit 6, page 15 thereof*. Designation for the Combined Property is Open. The Northeast Hawaii Community Development Plan recommendation for the area is Open.

The County zoning designation for the property is Agricultural (“A-20-a”). The Project Area is entirely situated within the County’s Special Management Area (“SMA”). Pursuant to Chapter 205A, HRS, and Planning Commission Rule 9, an SMAA relating to the 2008 McCully(s) Project was submitted to the County Planning Department for processing. By letter dated June 19, 2007, the Planning Director found that the proposed Project was exempt from the definition of “development”, as contained in both Chapter 205A-22, HRS, and Planning Commission Rule 9. The Planning Director’s determination also waved the requirement for a shoreline certification survey in light of the 70-foot setback from the top of the pali.

The Applicant for this CDUA/EA has similarly submitted this CDUA/EA to the Planning Director requesting an SMA exempt status for the applied for ‘*single family residence and related land uses*’. The Applicant believes that this application to build similarly on the property will also be approved by the Planning Director. Upon such SMA exempt approval being received it will be submitted to the regulating authorities. It is not presently available as the County has informed the Applicant that the SMAA will not be processed until a FONSI for this project is filed.

The Northeast Hawaii Community Development Plan and the County General Plan LUPAG Map ‘*Open*’ designations, *ref. exhibit 6, approx. page 17, figure 5*, relate to the State Land Use Conservation District designation for The Project Area. As stated earlier the ‘*Open*’ designation, which appears to be the reasoning for why the Property was subsequently taken into the Conservation District over 50 years ago, appears to have a purpose that has effectively been lost in time and record. This is unlike similar ocean-side agricultural properties immediately to the North of the Quadrangle in which the Property is found. For reference ocean-side agricultural properties in the Papaaloa Quadrangle remained in agricultural zoning with only the pali being zoned Conservation.

- In 2004-5 the McCully(s) petitioned that the Property be zoned out of the Conservation District and into the Agricultural District. During the McCully(s) LUC A05-757 petition hearings to rezone the property to Agriculture it was evidenced by testimony that there *‘may have been a plan at County level to develop a ‘guided path/corridor along the former railroad from Hilo to Hamakua’*. This plan appears, if in fact it ever existed, to have been subsequently abandoned as the County supported the McCully(s) LUC Petition A05-757 to re-zone the Property to Agriculture from Conservation.
- It was further discussed in the McCully(s) 2008 FONSI supporting CDUA HA 3445 *exhibit 6, page 13 thereof* that the ‘open’ designation appears to reflect the County of Hawaii’s policy advocating that open space between the Hawaii Belt Road and the shoreline should be preserved *‘in order to provide scenic views of the ocean from the road’*. In the case of the subject Property however there are no views of the Property or the ocean from the Hawai`i Belt Road because the road is cut deeply below grade along an embankment mauka of the Property resulting in no views to the East and the Ocean (the direction to the subject property) what-so-ever from the Belt Road. Therefore, such policy is not anticipated to be adversely affected by the applied for CDUA/EA.
- The Resource designation of the Property requires that the Property encompasses one of the following areas.....

HAR §13-5-13 Resource (R) subzone. (a) The objective of this subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas.

(b) The (R) subzone shall encompass:

(1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;

*The Applicant notes that the Property is privately owned and completely surrounded by private lands with no public access whatsoever. The Applicant has pointed to the McCully(s) LUC petition wherein the County supported their request to re-zone the Property from Conservation to Agriculture. As such the County has indicated no interest in the use of the land for public use. It was further evidenced in the McCully(s) LUC petition that there exists no plan at any level to use the Property for parkland or public use.*

(2) Lands suitable for growing and harvesting of commercial timber or other forest products;

*The soils are designated ‘prime agricultural lands’ which are not the sort of lands particularly suitable for timber or forest product production*

(3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;

*The Applicant notes that the Property is completely surrounded by private lands with no public access whatsoever.*

(4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;

*This is not relevant to the Property*

(5) Lands and state marine waters seaward of the shoreline to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone. *This is not relevant to the Property*

- The natural slope of the Property is relatively modest and comparable to similar agricultural properties in the area that are **not** similarly zoned Conservation. The potential for erosion is minimal.

There appears to be no specific record of why the property was taken into the Conservation District other than because it was zoned 'other' by the County at the time that the Conservation district lands were identified, seemingly without recorded reasoning, approx. 50 years ago. More specifically, as demonstrated above, none of the characteristics of the Property appear to be identified in HAR 13-5-13. There exists no public views of the ocean from the coastal highway as the highway is cut deeply through a hillside along the subdivision in which the Property is located.

It seems that its current use for agriculture and a residence thereon is more appropriate to its physical characteristics and Historical agricultural use. Also LUC guidelines emphatically state ***“agricultural land shall remain agricultural”*** and *“shall means must”*! The Historic use of the Property was for intensive cultivation for commercial agricultural crops. A *‘single family residence’*, as applied for herein, is believed by the Applicant to be an appropriate land use today both in support of the existing allowed agricultural activities on the Property and/or as provided for in HAR 13-5 as an allowable Conservation District land use.

The Applicant has struggled throughout the CDUA application to properly identify and qualify the proposed land use for a residence thereon within its designated Resource subzone and particularly in the “Evaluation Criteria” section of the CDUA as The Property does not appear to have the above mentioned criteria of lands described for the (R) subzone to encompass. The section regarding Evaluation Criteria states.....

*The Department or Board will evaluate the merits of a proposed land use based upon the following eight criteria (ref 13-5-30 (c)): wherein the question is asked “How is the proposed use consistent with the objectives of the subzone of the land on which the land use will occur? (ref 13-5-11 through 13-5-15)*

None-the-less the Applicant describes the Applied for residential use on The Property as follows.....

**The following land uses are specifically being applied for.....**

**(1) Construct a single-family residence according to HAR 13-5-23 L-3 (and subsequently 13-5-24)**

- Construct a single-family, two bedroom, 2 ½ bath *‘single family residence’* on TMK No.: (3) 2-9-003:060. *Ref. exhibits 5, 14, 15(a)(b), 16, 17* including lanai areas and a bale (with hot tub) and carport all under one roof. An area of 4’X4’ under the bale and hot tub area will serve as a general mechanical room with electrical, plumbing and the like in support of the residence, pool and bale/hot tub. The 16 sq. ft. has been added to the MDA calculation for the Project *ref. exhibit 14 for the floor spaces and total calculation of MDA.* The

mechanical room will not be below ground as the hillside drops off away from the residence in this location. The floor of the bale will be approx. 6 ft. above the hillside at this location (yet level with the lanai at this location) yielding a 16 sq. ft. area below it suitable for the mechanical room (as the ground is sloping in this area only a limited amount of the space below the bale will be suitable in height for this room). The balance of the area below the bale does not have sufficient head room clearance to be utilized for any other use (the area slopes upward steeply and the hot tub above projects downward into this space also) so the additional enclosed area under the bale is not calculated into the MDA of the project.

*Exhibit 15 (a) (b)* shows 2 outside walls enclosing the area under the bale.

A 50 ft. X 10 ft. wide swimming pool (outside dimensions including concrete) will be located along the South side of the residence. It is not yet clear whether the County will require the swimming pool to be fenced. In the event that a fence is required the pool area will be fenced along its Western and Southern edges with a fence *ref. exhibit 14* and this CDUA is intended to also apply for such a fence if required. Further fencing will also be provided on the remaining 2 sides of the pool if required with suitable gating therein. The Southern side of the pool will be above ground level at varying grades as the natural slope of the hillside is variable at this location. The actual grade profile will be shown in the final architectural plans submitted to and to be approved by the Chair of the BLNR proposed herein as a condition of the CDUP.

There will be no patio/paving of the area surrounding the swimming pool but rather small pebble-like rounded river stones will surround the swimming pool at a depth of several inches with landscape fabric there-under to prevent weed growth *ref. exhibit 14 wherein the stone area is identified on the North and East sides of the pool*. There will be two stairways leading from the residence lanai and bale areas down to the edge of the swimming pool *ref. exhibit 14..* The areas of the stairways is included in the MDA calculation.

- An outdoor cooking structure of approx. 40 sq. ft. is also applied for which will be separated by distance from the dwelling (*ref. exhibits 14 & 16*). The outdoor cooking structure will comprise a mortared stone construction with an appearance similar to an indoor fireplace and chimney with the open face of the fireplace facing West toward the applied for residence and away from the ocean. The chimney will be in the order of 12 ft. tall (maximum extent above the grade) and be approx. 3 ft. sq in order to provide sufficient updraft for the proper function of vertical smoke movement in the fire place. The fireplace will be approx. 3.5 ft. X 6 ft. deep and wide X approx. 6 ft. in height with the chimney portion there above. The chimney top will have a spark arrester screen thereon. When in use the open face of the fire place will also have a portable spark arrester screen placed in its open front portion facing the fire. Inside the fire-box appropriate hanging hooks and a rod will be provided suitable for the suspension of cooking pots and the like above the fire. In order for fire safety a crushed rock area will be maintained in the front of and surrounding the entire structure.

Immediately on the South side of the fireplace and continuing with the mortared stone construction a 4 ft. square X 3-4 ft. high additional cooking area with a metal grill covered top and a spark arrester screen there under is applied for . With the exception of a small vent and ash removal port at its base this unit will have 4 enclosed sides, a concrete bottom and a grilled open top. This portion of the stone mortared structure will provide for a wood fire within it and support grilling food and the support of cooking related pots and the like on the upper grill.

The entire structure, fireplace and grill area, will be located on a concrete pad on grade of a dimension of approx. 4 ft. X 10 ft. (40 sq. ft. 'developed area'). A 4" deep crushed rock area surrounding the concrete pad in dimension 8 ft. X 10 ft. will be provided in order to provide a non-combustible border surrounding the outdoor cooking structure. There will be no roof area associated with the outdoor cooking structure.

The outdoor cooking structure is removed from the '*single family residence*' as a safety feature and may be considered a structure accessory to a use **OR** part of the '*single family residence*'. The outdoor cooking structure will be located approx. 20 ft. to the East of the North East corner of the '*single family residence*'. It is believed by the Applicant that an outdoor cooking structure is a "structure accessory to a use" according to HAR 13-5-22 P9 and its area is not necessarily part of the MDA calculation. None-the-less whether the cooking structure is exempt from the MDA calculation as a '*structure accessory to a use*' or included in the MDA calculation the Applicant has included the 40 sq. ft. area of the outdoor cooking structure in the total MDA of the applied for land use calculated to be 4,649 sq. ft. *ref. exhibit 14*. No patio is contemplated in the area in front of the outdoor cooking structure and no roof will be provided over the structure. This structure will not require site leveling and is located 101 ft. from the bluff/pali to the East *ref. exhibit 16*.

The combined area of the structure(s) proposed herein utilize a combined MDA of 4,649 sq. ft. (excluding the area under the 42" eaves on the dwelling structure which do not have floor area there under with the exception of 2 stair areas noted earlier that lead down to the swimming pool whose areas are calculated into the MDA). While the MDA may imply a large '*single family residence*' the Applicant points that a substantial portion is covered lanai, bale, swimming pool, covered walkway from the car port and mechanical room. The actual enclosed residence will occupy approx. 2,500 sq. ft. The covered lanai area will provide shade protection from heat gain into the '*single family residence*' on hot sunny days and an outdoor living space and further add to the general Hawaiian design character of the home.

The '*single family residence*' is planned to have glass doors comprising a substantial portion of the outside wall areas of the '*single family residence*' and roof-top venting such to encourage air flow in order to keep the '*single family residence*' naturally cool during the day. The glass areas being deeply recessed under the roof will thus provide low reflectivity to the residence's outward appearance. For reference the roof top ventilation area on the roof is shown in *exhibits 15 A and B* as a pointed extension area of the roof. The planned maximum height of the roof including the roof

vent is estimated to be 22 ft. 3 in. (subject to final architectural drawings but in any event the roof will be under 25 ft. in height).

The area above the 'living space' noted in *exhibit 14* is intended to be an open ceiling design to promote air flow into the home and out through the roof. As an environmental consideration the ceiling areas above the rest of the home's inner space will have closed ceilings around 8 – 10 ft. above the floor. This closed space is intended to serve as a solar heated space suitable for drawing hot air on sunny days for utilization in the mechanical clothes dryer for the drying of clothes and the like negating the need for gas heating of the air for clothes drying.

Particular design elements such as deep, shaded lanai's and roof-top ventilation of the living space have been incorporated into the home's design to eliminate the need for any mechanical air-conditioning of the residence. The '*single family residence*' is up-slope from the prevailing trade winds off of the ocean which are generally cooler than land temperatures year around. The effect of the trade winds has the additional benefit of virtually eliminating biting insects on the property as the Property and its air space is regularly cleansed of their presence by the trade winds.

- The repaired existing access road leading to the car port, outdoor parking and turn around area will have a crushed rock topping applied thereon.

Grading of the hill top location planned for the residence is described later herein.

- Access to the Property from the coastal highway is via an existing access easement with a paved roadway and utility corridor across lot 048 to the West of the Property that locates on to the Western side of Lot 029 which is contiguous to the Project site on Lot 060 to the North *ref exhibit 12, photo of subdivision*. Utility lines, including water transmission lines already exist under the existing access easement from Lot 048. Extensions of those lines will be necessary in order to bring utility service to the proposed '*single family residence*'. from Lot 048. The described access road across Lot 048 exits on to the Coastal Highway.

Single Family Residence construction is an allowable use according to HAR 13-5-24 L-3 with a Board permit. TMK No.: (3) 2-9-003:060 is 2.252 acres in size and qualifies for an MDA up to 5,000 sq. ft. according to HAR 13-5-24. The applied for single family residence will have a MDA of 4649 sq. ft. See *exhibit 16* showing the intended location of the '*single family residence*' as described above and the '*structure accessory to agricultural use*' *ref. SPA HA 16-4* on the adjacent lot 029 that was permitted in 2015 by the OCCL and the connecting road and parking/turn around area which road is also shown on *exhibits 7 & 8*.

The planned '*single family residence*' location is such that it cannot be seen from the other residences in the subdivision or surrounding area. The closest other residence is on TMK No.: (3) 2-9-003:048 immediately to the West of the planned '*single family residence*'. This lot has a residence and a large orchid nursery greenhouse on it. The view of the planned '*single family residence*' is blocked from the residence and greenhouse on Lot 48 by several large trees.





The two structures will be separated by an approx. distance of 200 ft. The only other residence in the sub-division is on TMK No.: (3) 2-9-003: 051 which is South-West of TMK No.: (3) 2-9-003:013. The distance between the planned 'single family residence' and this existing residence on Lot 051 is approx. 1000 ft. The view plane between them is blocked by numerous trees.



Aerial photo of subdivision lots 013, 029, 060, 048, 049, 050, 051

The above picture is also shown as *exhibit 12 herein*.

The setbacks for single-Family Residential Standards for lots over one acre, as contained in Chapter 13-5, Hawaii Administrative Rules are 25 feet from the front, and 25 ft. on the sides and rear of the property line. The setbacks for the proposed single-family '*single family residence*' conform to the standard. They are.....

Sides: (West) 26 feet, East: over 125 ft. feet (thereafter bluff and pali) and 189 ft from the estimated high water mark of the ocean below. Rear: North: 70 feet; Front: South over 100 feet (thereafter lot 029 also owned by The Applicant).

All outdoor lighting will be located such as not to be seen from the ocean (East). All permanent outdoor lighting will be shielded in strict conformance with the Hawai'i County Outdoor Lighting Ordinance (Hawai'i County Code Chapter 14, Article 9), which requires shielding of exterior lights so as to lower the ambient glare caused by unshielded lights further described herein. For a discussion regarding waste-water and septic systems see page 20 herein.

The proposed '*single family residence*' is planned to be located with a 125 foot set-back from the high sea pali that form the Eastern boundary of lot 060 and estimated to be 189 ft. from the high water mark. The outdoor cooking structure will be located approx. 101 ft. from the property's Eastern border, bluff and pali and is estimated to be, in total, 189 ft. from the high water mark of the ocean below.

**There is a history of set back considerations** regarding a potential residence on the property.

1. **In 2005** the McCully(s) filed a Petition with the LUC A05-757 to have the property re-zoned Agricultural from Conservation (ref. A05-757 LUC Petition/not appended hereto). As part of that petition in Jan. of 2006 the Administrator of the OCCL, Sam Lemmo, did a site inspection of the subject property including lot 060. During the hearings for that LUC A05-757 petition hearing in Hilo on May 4<sup>th</sup>, 2006 the Administrator of the OCCL, Sam Lemmo, testified that the OCCL had agreed that an 80 ft. pali/bluff set-back was sufficient on the Property for any planned residence on any of the 3 lots. Any reduction from that would have to be supported by a shoreline erosion study. *Ref. exhibit 3, portion of LUC A05-757 2005-6 McCully(s) hearings/Sam Lemmo testimony* regarding McCully(s) LUC petition to have the subject Property re-zoned to Agriculture from Conservation.
2. **In 2008** the set back requirement was further considered by James Kwong, PhD, PE of Yogi Kwong Engineers, LLC *ref exhibit 4, letter*, on behalf of the McCully(s) regarding a subsequent 2008 CDUA 3445 for the McCully(s) residence. CDUP 3445 was granted for the construction of a residence for the McCully(s) on lot 029 a contiguous lot to lot 060 with a 70 ft. pali setback agreed to. Subsequent to that the McCully(s) CDUA-P application-permit was withdrawn and no residence was built. As a part of that CDUA/EA evaluation the noted professional was consulted regarding erosion and set-back requirements. **Dr. Kwong concluded that the 70-foot setback was adequate** based on a helicopter and site reconnaissance, review of various historical aerial and topographic photos and maps and the height of the sea pali.

In the case of the present CDUA/EA the residence is planned to be located 125 ft. inland of the Oceanside property line which is inland of the bluff, pali and high water mark. This location is (125 ft. vs. 70 ft.) than what was already approved for the previous property owner McCully(s) planned residence *ref. exhibit 16*. In the 2008 McCully(s) FONSI, *ref. exhibit 6*, it is also stated.....

*All of the lots are situate such that there is no view of the lots and the proposed residence site from the Hawaii belt road as the highway cuts deeply through a hillside to the West of the lots adjacent to Lots 013, 029, 060. There exists no public access or views from public lands. The only existing public views would be from the air or from passing boats/ships to the East. As the pali is already heavily treed views from the ocean are substantially screened by the trees lining the bluff and pali. Thus even passing boats/ships would not get much of a view of the proposed residence.*

County water is currently supplied to the Western boundary of lot 029. It is proposed that this water will be supplied along the repaired access road across Lot 029 to the proposed 'single family residence' on lot 060. It is the intention of the Applicant to use solar electrical and solar hot water and solar hot air supply as the primary source of energy supply for the proposed 'single family residence' (see section (5) herein). The Applicant has lived off grid for the past 8 years and is quite familiar with solar as a sole source of energy. LPG will be used for the stove, oven, and supplemental clothes dryer and supplemental water heating if required.

It is further proposed that the 'single family residence' will have exterior finishes such as to minimize their appearance. The 'single family residence' will also be of similar appearance to the 2 existing residences in the 7 lot subdivision on lots 048 and 051 immediately to the West of the subject Lots *ref. exhibit 12*.

The dwelling is sited in a manner that is sensitive to the existing conditions of the planned residence site, and the design has taken into consideration such items as.....

views to and from neighboring residences, maintenance of existing scenic views, wind exposure, salt exposure, rainfall, drainage, sun exposure, locating in an area requiring the least amount of ground disturbance, among others.

The design objectives will be to identify and utilize those materials which will weather well over time, require only moderate maintenance and blend into the subject and surrounding lands.

The Applicant believes that the proposed residential use is appropriate in light of the present residential and agricultural uses on much of the surrounding lands. Moreover, single-family residential use is allowed in Agriculturally-zoned areas in order that the land owner can support his agricultural activities. The historical use of the Property was for intensive commercial cultivation of agricultural crops that spanned nearly a hundred years before being terminated by the closure of the Hilo Coast Processing Company. Such historical use has virtually destroyed substantial natural resources that may have previously existed on the property.

A detailed analysis of the site for foundation requirements for The Property was considered by Wedig Engineering, *ref. exhibit 6, starting on page 85*. The foundation recommendations in that study will be incorporated into the Applicant's floor/foundation design. Drainage improvements are anticipated in order to mitigate any additional runoff that may be generated by development of the Project and will comply with County standards.

- **Site Leveling (cut and fill) for the 'single family residence'** Like the 2008 McCully(s) CDUP HA 3445 the Applicant chooses to use a concrete slab foundation for the proposed structure. Alternatively a post and pier structure would present the planned 'single family residence' at a higher elevation making its appearance more apparent to the neighboring residences. In effect the structure will present a 3 ft. lower roof top appearance.

In order to minimize cut and fill of soil on the hill top to accommodate the proposed 'single family residence' the South and Eastern lanai and bale areas will generally be located on pier supported concrete posts above the former sloping hill side. A portion of the cut soil from the hill top comprising under the inside area of the residence will fill the formerly sloped areas of the hill side under the lanai areas East and South but will not support the lanai above as that area of the lanai and bale will be supported on post and piers above the fill. The inside floor area of the residence is intended to rest on cut-flattened cut areas of the hill top. This identified fill area under the lanai will be protected from rain fall erosion by the roof area above the lanai and will drop steeply in that area to join the natural slope of the hill leading down-slope from the identified lanai area. The total volume of cut soil will be in the order of 650 cubic yards. The cut soil will be placed as per the denoted areas shown *on exhibit 2 and 5*. The bale that projects S.E. from this corner will extend outward over the sloping topography of the hill side (unfilled) yielding a small 4'X4' utility room area there under that is described herein as a mechanical room *ref. exhibits 14, 15& 16*.

The proposed 'single family residence' will be situated on a previously cultivated, relatively flat hill top at the North-Western boundary of lot 060 which is presently maintained generally as mowed lawn. It will be located beginning 26 ft. to the East of the Western boundary of lot 060. As such the only soil disturbance will be to soil that has previously been cultivated/disturbed during agricultural crop production on the property and the Property's former railroad/field road uses described herein.

Generally the cut soil will be placed along the Eastern side of the Northern end of the access road and along/under the Eastern and Southern lanai sides of the applied for single family residence *ref. exhibit 5*. No land alteration activities, including cut or placement of fill material, will be conducted within 100 ft. of the top of the pali. All fill material will be re-planted quickly with native and/or endemic grasses and or allowed non-conforming agricultural plantings in order to minimize the potential of erosion of the disturbed soil. Suitable temporary erosion control structures will be placed seaward of all disturbed soil areas until they are regressed or have a structure placed upon them.

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the property described herein already allow disturbed soil areas (cultivation) on all of the areas of the proposed Project. As such it is believed by the Applicant that cut and fill and bare soil areas of the Project site will have minimal effect on the *‘existing allowed conditions’* of the site. Having stated that the Applicant has no intention of leaving undisturbed soil areas without suitable ground cover and/or crop cover that may be subject to erosion in rainfall events. The Applicant intends to be a good steward of the Property and use reasonable effort to mitigate erosion possibilities resulting from both his agricultural operations and the proposed Project. Please refer to the “Best Management Practices” section near the end of this application for specific practices that will be undertaken during construction and implementation of the proposed land use.

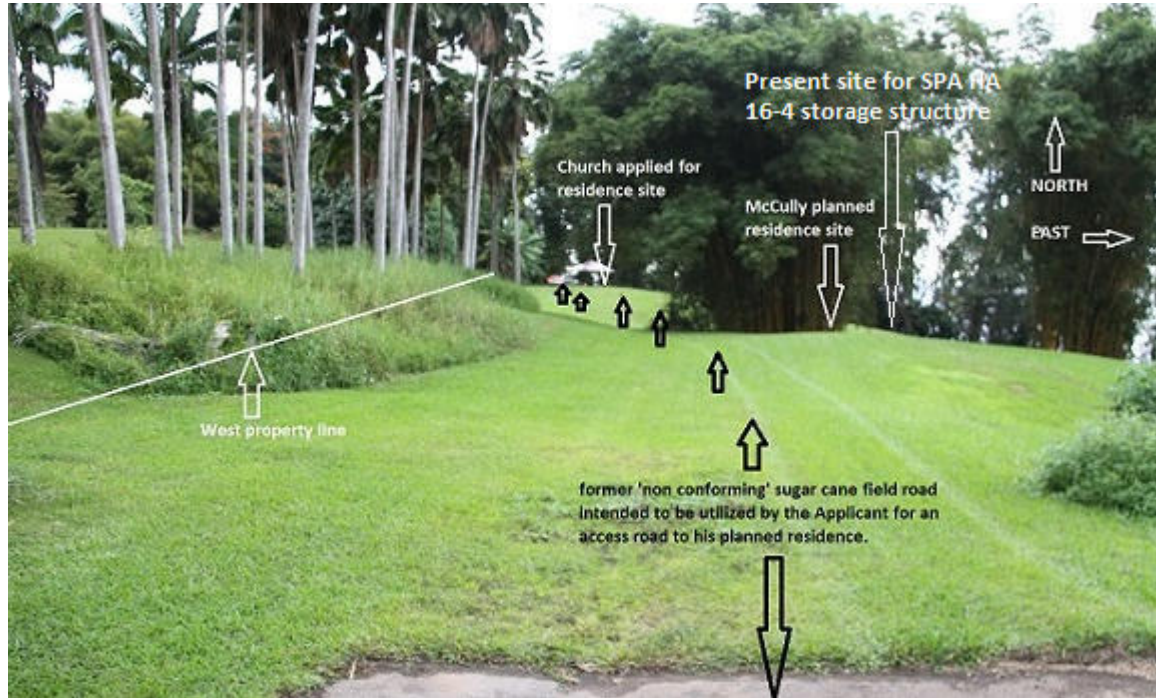
Before any site work/cut and fill a county grading permit will be obtained.

It is noted by the Applicant that considerable loose field stone exists on the property below the maintained grassy surface. It is proposed that such field stone, when encountered both during the Project and subsequently during ongoing agricultural operations, will be generally placed at various suitable locations on the Property where field stone from the allowable agricultural uses of the Property may also be reasonably allowed to be placed.

- **REPAIR OF AN ACCESS ROAD and establishment of a utilities corridor there-along on TMK (3) 2-9-003: 029 and 060**

The proposed *‘single family residence’* will be situated on a hill top at the North-Western boundary of lot 060. **It is the only suitable relatively flat area on the lot located sufficiently distant from the bluff to be suitable for a residence.** The location selection for the residence is most suitable for topographical reasons and is at a reasonable distance from the ocean-side property line, bluff and pali. The hill top location will require the least amount of soil disturbance and leveling of any other site that may reasonably be contemplated on lot 60.

The Western 50 ft. wide boundary area of lot 060 was Historically a railway road bed that crossed the 3 lots from South to North (see attached document titled *‘survey doc field F 31 B 3.2 ACRES’* ref. exhibit 7. The field map *‘F 31 survey document’* shows the former railway road bed being utilized as a **field road** which continued from after the time that the iron and supports were removed leaving a road bed before 1964. During the period leading to 1992 the previous ‘allowed’ Historical relatively intensive agricultural use of The Property paused between 1992 and 2015. The road has since become overgrown with grass and has been maintained as mowed grass. The proposed improved access road will be approx. 300 ft. long leading from the existing paved entrance on lot 029 to the proposed residence on lot 060 above the former field road.



Regarding the ‘Non-Conforming land use “road”’ according to HAR 13-5.....

*"Nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.*

*§13-5-7 Nonconforming uses and structures. (a) This chapter shall not prohibit the continuance, or repair and maintenance, of nonconforming land uses and structures as defined in this chapter.*

*(d) If a nonconforming structure is damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter, except as provided under section 13-5-22(P-8).*

**P-8 STRUCTURES AND LAND USES, EXISTING**

*(A-1) Minor repair, maintenance, and operation to an existing structure, facility, use, land, and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource. Any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with section 183-44 and 183B-2, HRS.*

*From HAR 13-5-2 .....*

*"Repair, maintenance, operation" means land uses and activities necessary and incidental for the continued conduct of a use, whether nonconforming or permitted, including repairs not exceeding fifty per cent of the replacement value of the structure or use*

*"Minor repair" means routine work done to an existing structure, facility, use, land, and equipment, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource.*

The planned addition of crushed rock topping, *repair of the road*, will not exceed fifty per cent of the replacement value of the existing road.

The Applicant conducted borings *ref CDUP 3725 dated April 30, 2015* along the existing road and discovered that the grass had generally overgrown above the former road. Therefore according to section (d) cited above there was no destruction of the road. Therefore it is submitted by the Applicant that the proposed addition of crushed rock overlay represents a '*minor repair*' to the existing road according to HAR 13-5.

The Applicant is conducting allowed 'non-conforming agricultural uses of the property'. The '*single family residence*' will be utilized by the Applicant as the primary residence on the property. The crushed rock overlay repair to the existing road will lead up to the Western side of the planned '*single family residence*' where a car port attached to the '*single family residence*' is proposed. Also a car turn-around area will be provided in this area generally shown in *exhibit 16* comprising an additional area of 700 sq. ft. (excluding areas on the former field road) wherein crushed rock will also be applied over the existing grass and fill areas.

As there currently exists county water supplied to the property at the driveway provided on to Lot 029 pipe conduit(s) **are applied for** which will be located under the crushed rock along the driveway to the proposed '*single family residence*' in order to provide utility services to the '*single family residence*'. A more detailed description of the road is found in *Exhibit 30*.

- **Septic system**

The planned sanitary waste disposal system is similar to the previously approved, 2008 CDUP HA 3445 McCully(s) planned system. In the case of this CDUA/EA, however this proposed septic system is located considerably further inland than the McCully(s) septic system (approx. 206 ft. inland from the bluff/pali). All sanitary uses will have disposals in conformance with State and County requirements to be specified during the review process and will be located in an area below the planned '*single family residence*' to the South in order to maximize the distance from the Ocean. Construction of a self-contained waste water system (lines, a septic tank and leeching bed) which will process all waste water in a below ground tank and convert it into water suitable for disposal in a leeching bed is proposed. The entire septic system from the '*single family residence*' all the way through the septic system *will be a gravity fed system*, without the need for electric pumping of waste water, as the natural slope of the land will easily accommodate such use. All

proposed septic and reclamation systems will be coordinated/permitted with/by the State Department of health and the appropriate County agency.

*Ref. exhibit 16* for planned location of septic tank and leeching bed. Note...the septic system will be located in excess of 200 ft. inland (West) of the pali and approx. 40' to the North of the Southern most boundary of lot 60.

After installation of the self-contained septic system, the contours of the property will be returned to their pre-existing state and are planned at present to be re-planted to grass (note the area is presently allowed according to HAR 13-5 to be legally used also for 'non-conforming' agricultural uses). Any remaining excavated soil will be placed in the designated fill areas described in (2) above. The estimated additional volume created is under 6 cubic yards of fill.

- **Landscaping** in an area under 2,000 sq. ft. around the proposed '*single family residence*' **was earlier proposed** in the original Jan. 2016 CDUA submission to the OCCL. The applicant has since amended the previous Jan. 2016 CDUA and now simply plans to re-plant allowable botanical and/or agricultural plant species on all unused disturbed soil areas. More specifically stated the disturbed soil areas surrounding the residence were most recently grass and Historically intensively used for allowed 'non-conforming agricultural uses' according to HAR 13-5. As replanting to grass and/or non conforming agricultural plantings is believed by the applicant to be allowable according to HAR 13-5-22 P-8 A-1 and generally HAR 13-5 as allowed '*non-conforming*' agricultural uses no landscaping permit is being applied for the re-planting of the disturbed soil areas. The Applicant therefore proposes to re-plant disturbed soil areas to previous existing grasses and/or allowed non-conforming agricultural crops/plantings.

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the property described herein already allow disturbed soil areas (cultivation) on all of the areas of the proposed Project area. As such it is believed by the Applicant that cut and fill and bare soil areas of the Project site will have minimal effect on the '**existing allowed conditions**' of the site. Having stated that the Applicant has no intention of leaving undisturbed soil areas without suitable ground cover and/or crop cover that may be subject to erosion in rainfall events. The Applicant intends to be a good steward of the Property and use reasonable effort to mitigate erosion possibilities resulting from both his agricultural operations and the proposed Project.

- **Solar electric and water heating panels.** It is proposed that the '*single family residence*' will be off-grid and rely on solar energy, batteries and a stand-by generator for solar supplemental electricity. The solar energy panels will be provided on the East, South and West sides of the roof of the '*single family residence*' in order to capture morning, afternoon and early evening solar power. No more than a maximum of 30 solar panels will be utilized in the Project. The panel dimensions will be approx. 36-42" X 65-76" long.



- A utility corridor in which a water line and a possible telephone line under the repaired road leading across lot 029 to the planned residence site on lot 060

## EXISTING CONDITIONS

**Please describe existing conditions on the parcel (geology, ecology, cultural and recreational resources, historic resources, structures, landscaping, etc). Attach maps, site plans, topo maps, biological or archaeological surveys as appropriate.**

*[NOTE: Also find for reference to existing conditions Exhibit 6 (2008 McCully FONSI) and to its appendices for archaeological and biological reports and exhibit 1 (an updated 2014 biological report)]*

There are no structures currently on Lot 060 other than a field road which is an Allowed Non-Conforming structure/use.

The Property is bounded on its Eastern border by a bluff-high pali-and ocean below. There exists no beach areas Oceanside. The area is inaccessible and the waterline is comprised of occasional large boulders interspersed along a coastline of steep-near-vertical cliffs. No beach areas exist and there is no public access due to the steep terrain interspersed with partially emerged and submerged rocks and boulders and the general rugged cliff-side ocean terrain and aquatic presentation of the coast line.

For further descriptions of existing conditions, maps, site plans, topographical maps *ref. exhibits 2, 12, 14, 15, 16 and various supporting evidence in exhibit 6, McCully(s) FONSI and exhibits 7, 8 and 9.*

Finally the Applicant is conducting extensive allowed 'non-conforming' agricultural use on 3.2 acres of the Property as noted herein and particularly defined within the areas shown within the area shown as topographical lines in *exhibit 16 and further described in exhibits 7, 8 and 9.* Such uses include the present plantings of various fruit trees, nut trees, pineapple plantings and the like and is likely to include further agricultural crops and uses within the allowed general open field 'non-conforming' use areas described in *exhibits 7, 8 and 9.*

### **Geology.....**

The Property is located on the lower eastern slopes of Mauna Kea and consists of the Hāmākua volcanic series. These lava flows are chiefly basaltic with layers of Pahala ash. (Stems and Macdonald, 1946.)

The Island of Hawai`i is susceptible to four main types of natural hazards including tsunami, volcanism, seismic activity and hurricanes. Volcanic hazard, as assessed by the United States Geological Survey, is "8" on a scale of ascending risk 9 to 1. The zone "8" designation includes the lower slopes of Mauna Kea, most of which have not been affected by lava flows for the past 10,000 years. (Heliker, 1990.)

The Island of Hawai`i is one of the most seismically active areas in the world and has experienced more than twenty large earthquakes (magnitude 6 or larger) over the past 166 years, the most recent occurring in October of 2006. (Wyss and Koyanagi, 1992.) Magnitude 6 earthquakes can be expected to cause structural damage to non-reinforced buildings. The Building Code rating for the entire Island of Hawai`i is seismic Zone 4, which has the highest risk for seismic activity.

Three significant hurricanes have affected the Island of Hawai`i over the past 50 years. Damage from hurricanes results from coastal waves/surge and high winds. The Project site is not within a

coastal hazard area for hurricanes or tsunami inundation. The hazards from hurricane winds are far more extensive and unpredictable than the water hazard. Winds may blow from variable directions and may be amplified by topographic conditions. (County of Hawai`i, 2003.) Shoreline areas in Hawai`i, particularly those on the northeast side exposed to the prevailing winds and heaviest wave attack, are subject to shoreline retreat. The rate of retreat in Hawaii has been estimated at an average rate of a couple of inches a year. (Macdonald and Abbott, 1977.) Some locations may experience sudden and rapid retreat due to land slides which may be associated with sea cliff collapse.

Helicopter and physical site reconnaissance was conducted by Yogi Kwong Engineers (“YKE”) in November of 2005. Based on the reconnaissance, a review of various historical and topographic photos and maps and the height of the pali, YKE has concluded that a 70-foot setback from the top of the pali appears sufficient to protect the proposed improvements from potential coastal hazards caused by intensive or storm wave action, tsunami, and related coastal flooding, *ref. exhibit 4, letter.*

## **Soils**

### *Environmental Setting*

The soils of The Project area are classified as Hilo silty clay loam with 0 to 10 percent slopes (“HoC”) by the U.S. Department of Agriculture Soil Conservation Service (“SCS”) Soil Survey. (U.S. Soil Conservation Service, 1973.)

Under the Agricultural Lands of Importance to the State of Hawaii (“ALISH”) classification system, there are four categories: prime, unique, other important agricultural lands and unrated. The Property is designated prime agricultural lands under the ALISH system, as are other similar properties along the Hilo - Hāmākua Coast that were Historically utilized for intensive cultivation of agricultural crops *ref. exhibit 6, Figure 6 – Agricultural Lands of Importance to the State of Hawai`i, ALISH Map around page 18.*

In 1965, the Land Study Bureau assigned land in the State into one of five master productivity ratings: A – Very good; B – Good; C – Fair; D – Poor; and E – Very poor. The Land Study Bureau’s overall master productivity rating of the Property for agricultural use is class C or Fair. (Land Study Bureau, 1965.) *ref. exhibit 6, Figure 7, around page 24 – Detailed Land Classification Island of Hawai`i, Map No. 605.)*

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the property, which is a **Historical Use** dating back over 100 years, described herein already allow disturbed soil areas (cultivation) of all of the areas of the proposed soil disturbance in the proposed Project area. As such it is believed by the Applicant that cut and fill and bare soil areas of the Project site will have minimal effect on the ‘**existing allowed conditions**’ of the site during the construction phase of the project as they will be temporary and the Applicant will provide erosion barriers and the like during the construction phase. Having stated that the Applicant has no intention of leaving undisturbed soil areas without suitable ground cover and/or crop cover that

may be subject to erosion in rainfall events. As a direct result of this CDUA being approved the Applicant intends to provide a full time residence on the Property which will enable the Applicant to be a good steward of the Property and use reasonable effort to mitigate erosion possibilities, maintain the efficient agricultural uses of the Property and to maintain the natural scenic views of the Property resulting from the agricultural operations and the proposed Project.

Short term impacts may result from construction activity relating to the proposed single-family residence respecting the Soils will occur during the construction phase of the project. Given the temporary or intermittent nature of these activities, the potential impacts should be minimal and will dissipate after the residence has been completed. The resulting minor potential impacts resulting from the proposed single-family residential use are expected to be minimal.

A geotechnical study of the Property was conducted in April of 2007 by PaulC. Weidig, P.E., of Weidig Geoanalysts, *ref exhibit 6, Appendix C for the Geotechnical Report*. The study included a field reconnaissance of the area and mapping of the locations of five test borings which were drilled and sampled to a maximum depth of approximately 15 feet below the existing ground surface. Samples of earth materials drawn from selected vertical intervals in each boring were logged, classified and recovered by a field engineer. The samples were then tested and further classified at Weidig's laboratory. The principal conclusions and recommendations of the study are as follows:

- The borings indicate that the property is underlain by soft, weathered ash and semi-compact, pumiceous cinders to a maximum depth of about 14 feet, below which is very dense, weathered basalt lava. The ash deposits can shrink irreversibly as they dry, but are not indicated to be expansive with moisture increases. The soils can be compacted satisfactorily, provided that the minimum 20 degree of compaction is lowered and moisture conditioning is elevated, as recommended in the report.

## **Climate**

### *Environmental Setting*

Hawai`i's climate is generally characterized as mild with uniform temperatures, moderate humidity, and two identifiable seasons. The "summer" season, between May and October, is generally warmer and drier. The "winter" season, between October and April, is cooler and wetter. The Property is situated along the "windward" side of the Island of Hawai`i, which is exposed to northeasterly trade winds that cause relatively high rainfall (approximately 150 inches annually). The average monthly minimum temperature in this area of the Hilo - Hāmākua Coast ranges from the low to high 60s (degrees Fahrenheit) while the average monthly maximum temperature ranges from the high 70s to the high 80s. (University of Hawai` Press, 1983.)

### *Potential Impacts and Mitigation Measures*

The proposed Project will not have any impact on the climatic conditions of The Project.

## Hydrology and Drainage

### *Environmental Setting*

The Island of Hawai`i is generally characterized as having basal groundwater floating on salt water. The aquifer system underlying The Project area has a sustainable yield of approximately 150 million gallons per day. (County of Hawai`i Department of Water Supply, 1991.)

According to the Flood Insurance Rate Map ("FIRM") prepared by the Federal Emergency Management Agency dated September 16, 1988, the Project Area is situated within Flood Zone "X" (areas determined to be outside the 500 year flood plain). The center of Puahanui Stream serves as the northern boundary of the Property and is encumbered with a watercourse easement.

### *Potential Impacts and Mitigation Measures*

The proposed Residence is not anticipated to have any significant adverse impact on hydrology and drainage. However, due to the necessity of a certain amount of grading in order to prepare the house pad, the existing contour of the land will be altered somewhat. This alteration will undoubtedly have some effect on the drainage patterns of the Property.

The geotechnical study (see Appendix C in the 2008 McCully(s) EA and FONSI for the Geotechnical Report) prepared for the McCully(s), *ref. exhibit 6, starting on or around page 85.*

The report included the following recommendation in regard to surface drainage:

- Discharge from the building roof systems as well as runoff from the pavement and exterior flatwork areas should be directed away from the building lines. The new roof systems should be provided with flashing, gutters and downspouts to collect and divert runoff away from the foundations. The roof drains must remain independent of any retaining wall drains or subdrains. All drainage systems should be maintained on a routine basis. Runoff onto areas where soils remain exposed should be dispersed to avoid points of concentrated flow and subsequent erosion.

The Applicant intends to incorporate the consultant's recommendations into the planned '*single family residence*'. *Note there are no paved areas applied for in the Project area.*

In addition to the recommendations of the geotechnical study, any potential impacts may be mitigated by complying with State and County regulations which mandate that any increase in runoff due to development of the Project site must be disposed of on-site and may not be directed toward adjacent properties.

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the property described herein already allow disturbed soil areas (cultivation) on identified areas of the proposed Project site. As such it is believed by the Applicant that cut and fill and bare soil areas of the Project site during the construction phase of the project will have minimal effect on the '**existing allowed conditions**' of the hydrology and drainage site. Having stated that the Applicant has no intention of leaving undisturbed soil areas without suitable ground cover and/or crop cover

that may be subject to erosion in rainfall events. The Applicant intends to be a good steward of the Property and use reasonable effort to mitigate erosion possibilities resulting from both his agricultural operations and the proposed Project.

No additional site drainage, other than what presently exists, in the direction of the Puahanui Stream to the North of the Project site, will occur as a result of the project. In particular the Applicant will provide a suitable erosion and rain water run-off barrier described in the “Best Management Practices” section on page 78 of the Project site particularly to avoid any run off to the North and into the gulch and stream below during construction activities. The barrier will be removed after completion of the Project. No rainwater from roof drainage from the proposed residence will be directed to the North of the planned residence.

## **Water Quality**

### *Environmental Setting*

The center of Puahanui Stream serves as the Northern boundary of TMK No.: (3) 2-9-003:060. The Pacific Ocean lies immediately below the high pali, which serves as the Eastern boundary of the Property. Puahanui Stream appears to be an unnamed intermittent stream on U.S. Geological Survey Maps and was not included in the Hawai`i Stream Assessment conducted from 1988-1990, which inventoried and assessed available information on Hawai`i’s streams in four resource categories: aquatic resources, riparian resources, cultural resources and recreational resources. The coastal waters fronting the subject property are classified “A” by the State of Hawai`i. These waters are to be protected for recreational purposes and aesthetic enjoyment.

### *Potential Impacts and Mitigation Measures*

The proposed Project is not expected to have any direct impact on Puahanui Stream or marine waters in-as-much as any additional runoff generated will be disposed of on site in compliance with State and County regulations. No development is planned in the vicinity of Puahanui Stream associated with it.

No additional site drainage, other than what presently exists, in the direction of the Puahanui Stream to the North of the Project site, will occur as a result of the project. In particular the Applicant will provide a suitable erosion and rain water run-off barrier described in the “Best Management Practices” section on page 78 of the Project site particularly to avoid any run off to the North and into the gulch and stream below during construction activities. The barrier will be removed after completion of the Project. No rainwater from roof drainage from the proposed residence will be directed to the North of the planned residence.

The proposed single-family use will be serviced by an individual wastewater system approved by the Department of Health, which will limit the potential for the discharge of any wastewater into near-shore marine waters. Finally the residence will be occupied by a retired couple of 2 persons. As such wastewater from the residence will be minimal.

Less than 40 gallons per day of effluent from the septic system of the applied for residence is anticipated to be disposed of in a shallow leeching field. The Applicant intends to place the leeching field directly adjacent to a large stand of bamboo on the Property and re-grass the area above the leeching field. The site was selected as bamboo and grass are particularly effective in water and nutrient uptake. This location is approx. 226 ft. from the bluff at the top of the pali which is heavily vegetated with large trees and grasses. The pali slopes downward to the ocean below, a distance of approx. another 72 ft. which is also heavily vegetated with various plant species.

The Island of Hawai'i is generally characterized as having basal groundwater floating on salt water. The aquifer system underlying The Project area has a sustainable yield of approximately 150 million gallons per day. (County of Hawai'i Department of Water Supply, 1991.) *ref. exhibit 6*

In effect the Applicant believes that the existing plant species(s) located above and between the septic leeching field and the ocean will virtually eliminate nutrients from the septic system from reaching the ocean.

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the Property described herein already allow disturbed soil areas (cultivation) on all of the areas of the proposed Project. As such it is believed by the Applicant that cut and fill and bare soil areas of the Project site will have minimal effect on the '*existing water quality*' of the site during the construction phase of the Project as the construction phase is temporary. Having stated that the Applicant will erect suitable erosion barriers (described herein) during the construction phase. The Applicant has no intention of leaving undisturbed soil areas without suitable ground cover and/or crop cover that may be subject to erosion in rainfall events. The Applicant intends to be a good steward of the Property and the water quality of the surrounding area and will use reasonable effort to mitigate effects to the water quality that may result from both his agricultural operations and the proposed Project both during and after the construction phase.

## **Flora and Fauna**

### *Environmental Setting*

The entire Property, with the exception of the steep gulch leading to Puahanui Stream, has been extensively utilized for intensive cultivation of agricultural crops for a period of approximately 100 years. This property has remained substantially fallow since 1992 when the last intensively farmed crop was harvested and has since been maintained substantially as a grassed lawn with numerous agricultural plantings. It has been noted, and reported to OCCL by the Applicant that since 1992 certain non-conforming agricultural crops continued to be grown on smaller areas of the Property. Finally, as noted herein, the Applicant has recently extensively planted the Property to various agricultural plantings.

A botanical survey of the Project area was conducted in June of 2004, by Evangeline J. Funk, Ph.D. Botanical Consultants. It is enclosed as a component of the 2008 McCully(s) EA and FONSI for their planned residence on Lot 029. The botanical survey identified two vegetation types on the Property. The open, occasionally mowed grassed area included a mix of introduced grasses. The seaward edge of the grassed area includes scattered planting of green hala trees and a variety of hala with green and yellow striped leaves. The areas along the slopes of the pali were predominantly introduced ironwood trees. A variety of landscape plantings also found in the grassed area include several species of palm trees, some bamboo varieties, kukui trees, golden pothos and banana-type plantings. The stream bank vegetation included large introduced trees such as African tulip, ironwood, coconut, and hala as well as banana, oak leaf fern and sword fern.

In conclusion, the botanical survey report states the following:

*“Aside from the Kuku and hala trees, which may be early Polynesian introductions, the only native plants found on this site were some popolo berry bushes (Solanum 26 americanum Mill). Otherwise, the vegetation of this site is all introduced plants and is found in many places in the Hawaiian Islands and will quickly regenerate if it is disturbed.”*

*“No candidate, proposed, or listed threatened or endangered species as set forth in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543) are known from this site and none were found during this survey.”*

The complete botanical survey report for the Project site is included as an addendum to the 2008 McCully(s) EA and FONSI, *ref. exhibit 6, Appendix D* . Although a faunal survey was not conducted in 2004, it is highly unlikely that any candidate, proposed, or listed threatened or endangered species would be found on the Property. This is due to the past extensive cultivation of the soils for intensive agricultural crop production on the Project site for approximately 100 years and now the presently maintained lawn areas interspersed with agricultural plantings that predominate the Property.

In effect, with the exception of the recently planted fruit and nut trees throughout the Property, the gulch to the extreme North of the Project site and the bluff at the top of the pali there exists very few large trees as the general area of the Property is substantially open (mowed lawn) bordered by a few palm and bamboo providing little cover for any faunal species. There also presently exists a recently planted area of pineapples on Lot 60.

The referenced botanical survey of the Property that was conducted in June of 2004, by Evangelin J. Funk, Ph.D. Botanical Consultants has recently been updated, *ref. exhibit 1* herein *“General Botanical Survey and Vertebrate Fauna Assessment, TMKs (3<sup>rd</sup>.) 2-9-003:013, 029 & 060 Wailea, South Hilo District, Island of Hawaii”* authored by Ron Terry, Ph.D. And Patrick J. Hart, Ph.D. Geometrician Associates, LLC, November 2014” which describes No Significant Findings and predated the substantial more recent planting by the Applicant of agricultural plantings (legal non-conforming agricultural plantings).



The proposed 'single family residence' will be located on a regularly maintained grassy area that was Historically used for intensive cultivated agricultural production and a portion of the former Historical field road.

*Potential Impacts and Mitigation Measures*

The proposed Project will have very little impact on the Project area. Exhibit 1 is a 2014 updated biological assessment update to the original biological assessment in Exhibit 6 conducted on behalf of the McCully(s). Therein it is recommended.....

*We offer the following recommendations in order to avoid impacts to endangered but Widespread native birds and the Hawaiian hoary bat:*

- *To minimize impacts to the endangered Hawaiian hoary bat, we recommend that trees taller than 15 feet should not be removed or trimmed during the bat birthing and pup rearing season (June 1 through September 15), to the extent practical.*
- *To minimize impacts to Hawaiian Hawks, we recommend avoiding earthmoving within 100 meters of tall trees or tree cutting during the breeding season for Hawaiian Hawks (March through the end of September). If this time period cannot be avoided, arrange for a hawk nest search to be conducted by a UH Hilo biologist or other qualified biologist. If hawk nests are present in or near the project site, all land clearing activity should cease until the expiration of the breeding season.*

The applicant has no specific plans for tree removal. None-the-less the Applicant will specifically refrain from any tree removal or trimming between June 1 through September 15<sup>th</sup> during the years of the Project.

The construction period is anticipated to extend for a period greater than a year. Therefore a hawk nest search will be conducted by a UH Hilo biologist or other qualified biologist in March of the first year during when land clearing is (as recommended by the biologist in Exhibit 1) conducted for the project applied for. As recommended if hawk nest(s) are present near the project site, all land clearing activity will cease until the expiration of the breeding season.

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the property described herein already allow disturbed soil areas (cultivation) on all of the areas of the proposed Project. As such it is believed by the Applicant that cut and fill and bare soil areas of the Project site during the construction phase of the Project and the resulting proposed residence will have minimal effect on the '**existing allowed flora and fauna conditions**' of the site other than temporary disturbed soil areas already identified. Having stated that the Applicant has no intention of leaving undisturbed soil areas without suitable ground cover and/or crop cover that may be subject to erosion in rainfall events. The Applicant intends to be a good steward of the Property and use reasonable effort to mitigate erosion possibilities resulting from the construction phase of both his agricultural operations and the proposed Project and to protect natural flora and fauna undisturbed that may exist on the Property. Suitable erosion barriers as identified herein will mitigate erosion of soils.

**Air Quality**

### *Environmental Setting*

The Project area and surrounding area is affected by pollutants derived from the volcanic emissions from the ongoing Kilauea eruption. Other sources of air pollutants to a limited degree include vehicle exhaust emissions along the Hawai'i Belt Road. In general, however, the ambient air quality of the Project Area meets all Federal and State standards as evidenced by its designation as an "attainment" area by the State Department of Health, Clean Air Branch.

### *Potential Impacts and Mitigation Measures*

Short term impacts may result from construction activity relating to the proposed single-family residence, including dust and exhaust from machinery and vehicles. Given the temporary or intermittent nature of these activities, the potential impacts should be minimal and will dissipate after the residence has been completed. The resulting minor potential impacts resulting from the proposed single-family residential use are expected to be minimal.

The proposed outdoor cooking structure is in character of typical traditional Hawaiian lifestyle. The use of the outdoor cooking facilities will only be intermittent and will only have a very temporary minor effect on the air quality of the area. Suitable spark arrestor devices will be incorporated into the design, as described herein, in order to provide an additional element of fire safety when the structure is in use.

As such, the proposed residential use will not have a significant impact on the air quality of the surrounding area.

## **Noise**

### *Environmental Setting*

Ambient noise levels at The Project site are low to moderate and are typical for a rural agricultural area near the ocean. The primary noise generators in the area are the wind, ocean waves, vehicles on the Hawai'i Belt Road and vehicles entering the Property.

### *Potential Impacts and Mitigation Measures*

Temporary noise impacts will occur from construction activity relating to the proposed single-family residence and are unavoidable. Construction noise will comply with Department of Health rules for "Community Noise Control". Mitigation of construction noise to inaudible levels will not be practical due to the anticipated intensity of noise sources as well as the exterior nature of the work (excavation, grading, trenching, concrete pouring, hammering, etc.).

The resulting potential impacts resulting from the construction of the proposed residence are expected to be minimal. These activities will likely result in marginal increase in noise levels and will not have a significant impact on the ambient noise levels in the area. Construction activities will be conducted during daylight hours generally between 8:00 a.m. and 6:00 p.m. Monday to Saturday.

## **Scenic Resources**

### *Environmental Setting*

The predominant scenic views in the vicinity of the Project site are of the Pacific Ocean, the high, near vertical pali and the shoreline area. There are no views of the Property and the Project site from the Hawai'i Belt Road because the road is cut deeply below grade along an embankment mauka of the Property.

The Property is situated between two sites listed as examples of natural beauty in the Hawai'i County General Plan: Kolekole Gulch and Hakalau Bay/Gulch. Hakalau Bay/Gulch is situated approximately 5,000 feet north of the Property and Kolekole Gulch is situated approximately 1,200 feet south of the Property.

### *Potential Impacts and Mitigation Measures*

The open space and scenic resources in the vicinity of the Project will not be impacted significantly by the Project. The existing residence and greenhouse operation to the West are screened by large trees from views of the Project site. The only other residence in the vicinity is over 1,000 ft. to the South of the Project site and screened by trees from view. *Ref exhibits 12 and 18.*

The Applicant's proposed residence is being designed to blend into the subject and surrounding lands as much as reasonable, which is the primary reason for the Applicant's plan to build on a slab foundation, as opposed to post and pier. It is not presently clear whether a residence constructed on a post and pier foundation would be visible from the Hawaii Belt Road or Kolekole Gulch. Certainly post and pier construction would present the roof top at a higher elevation increasing the likelihood of being visible to the surrounding area. A limited amount of post and pier construction is intended particularly under the lanai Eastern and Southern locations in order to support the lanai above filled areas and in order to reduce the overall cut and fill leveling of the planned residence site.

Considering the vegetation that is present along the top of the pali, which includes ironwood trees and hala clusters among other species, as well as the 125 foot structural setback from the top of the pali that is proposed, it is highly unlikely that any of the proposed improvements would be visible from the Kolekole Gulch. There are no views from the coastal highway of the Property. It is also highly unlikely that any of the improvements proposed would be visible from Hakalau Bay/Gulch due to its significant distance from the Property. However, the dwelling will be visible from surrounding properties in the 7 lot, private, gated subdivision but the views from the residences thereon is blocked by trees *ref. exhibits 12, 18*. Limited views from the ocean may also exist through the heavily treed pali however considerable high screening exists in the seaward area of the planned '*single family residence*'.

Other alternatives such as post and pier foundation, which would include less cut overall, would result in a dwelling that is more physically imposing on the land, causing greater visual impact to the surrounding area. The proposed dwelling has been designed and sited in such a way that it will

meld into the existing conditions. As such, the dwelling is not expected to have any adverse impact on the sites listed as examples of natural beauty in the Hawaii County General Plan.

Finally the term ‘Scenic’ implies that the Project area can be seen by the General Public which is demonstrated herein to not be the case as there exists no public views of the Property. Also aside from the general public the residence site selection was particularly selected such that it cannot be easily seen from either of the 2 other residences in the sub-division. Both of those residences were constructed in full knowledge that residences may be subsequently constructed on their adjacent vacant lots including the subject Property.

**It is noteworthy** that the scenic areas of the Project area already qualify for ‘non-conforming agricultural activities thereon. Generally the existing allowed non-conforming agricultural uses of the property described herein already allow disturbed soil areas (cultivation) on all of the areas of the proposed Project and agricultural crops generally thereon in substantial qualifying areas. As such it is believed by the Applicant that cut and fill and bare soil areas of the Project site will have minimal effect on the ‘*existing allowed scenic conditions*’ of the site during the construction phase of the project. As stated earlier the site is screened by trees from views from the adjacent 2 residences *ref. exhibits 12 & 18*. Also having stated that the Applicant has no intention of leaving undisturbed soil areas without suitable ground cover and/or crop cover that may be subject to erosion in rainfall events. The Applicant intends to be a good steward of the Property and use reasonable effort to mitigate erosion possibilities and the applicant intends to promote his uses of the Property in concert with his allowed agricultural uses in order to maintain the natural scenic appearance of the Property.

Given the temporary or intermittent nature of the construction activities, the potential impacts to the scenic resources of the site should be minimal and will dissipate after the residence has been completed. The resulting minor potential impacts resulting from the proposed single-family residential use are expected to be minimal.

## **Social, Cultural and Economic Setting**

### **Socio-Economic Characteristics**

#### *Setting*

Hawai`i County's population increased by more than 56,000 persons between 1980 and 2000. Between 1980 and 1990, Hawai`i Island's population increased by 30.7 percent, and increased by 23.6 percent between 1990 and 2000. The April 1, 2000 population figure for Hawai`i County was 148,677 according to census figures compiled by the County of Hawai`i, Department of Research and Development.

The South Hilo district had a population of 47,386 in 2000 which represented approximately 32 percent of the total population for Hawai`i Island. The City of Hilo is the largest population center on the island with the main offices of the County government, branch offices of Federal and State agencies located there. The island's major deep draft harbor and international airport are also

located in Hilo. In addition to industrial, commercial and social service activities, the University of Hawai`i Hilo and Hawai`i Community College and affiliated research programs play an important role in Hilo's economy.

Hilo and the rest of the East Hawai`i` communities are adjusting to the loss of the sugar industry in the mid 1990's. The continuation of agriculture in the district has required a major shift from large-scale single-commodity production to smaller scale, multi-commodity 29 multi-market base. The shift to diversified agriculture is characterized by larger numbers of self-employed and smaller scale independent businesses.

#### *Potential Impacts and Mitigation Measures*

Other properties in the immediate vicinity of the Project site are utilized for a variety of diversified agricultural activities including a certified orchid nursery, the propagation of foliage stock and the cultivation of edible ginger and Chinese taro as well as residential uses. The Project will not have any significant effect on the socio-economic characteristics of the area other than the residence will be used in support of the Applicant's stewardship of the Property and agricultural uses thereon which will contribute very modestly but none-the-less positively to the economy in general.

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the property described herein already allow disturbed soil areas (cultivation) on all of the areas of the proposed Project and general agriculture on a substantial area of the Property. It has been evidenced herein as an '**Historic use dating back over 100 years**'. Construction activities will contribute to the local economy and the residence will allow the Applicant to be a good steward of his agricultural uses of the Property. The proposed single family residence on the Project site will be utilized in support of the agricultural uses of the Property and is in keeping with the above noted shift to diversified agriculture in the region as characterized by larger numbers of self-employed and smaller scale independent businesses and the Historic agricultural uses of the Property.

### **2.2.2 Adjacent Land Uses**

#### *Existing Setting*

The areas immediately West (mauka) of the Property are situated in the State Land Use Agricultural district. The areas immediately North, South, and East are designated Conservation. (See State Land Use District Boundary Map on page 16 of the 2008 McCully(s) residence EA and FONSI.) *ref. exhibit 6*. The parcels immediately adjacent to The Project Area have the same general characteristics of the subject property. Of the five adjoining parcels in the subdivision, three are currently vacant and two have been developed with single-family dwellings. An orchid nursery business has also been established on TMK No.: (3) 2-9-003: 048 along with a single-family dwelling.

The adjoining communities of Hakalau and Honomu include a mixture of agriculture, residential and limited commercial uses. The majority of the residences in these communities are remnants of the former sugar plantation camps. A number of newer homes have been constructed on parcels Historically utilized for sugar production.

### *Potential Impacts and Mitigation Measures*

The Project is consistent with the character of the parcels within the immediate vicinity of The Project site. It is also consistent with the character of the neighboring Hakalau and Honomu communities.

Other properties in the immediate vicinity of the Project site are utilized for a variety of diversified agricultural activities including a certified orchid nursery, the propagation of foliage stock and the cultivation of edible ginger and Chinese taro as well as residential uses. The Project will not have any significant effect on the adjacent land uses.

The proposed single family residence on the Project site in support of the agricultural uses of the Property is in keeping with the above noted shift to diversified agriculture in the region as characterized by larger numbers of self-employed and smaller scale independent businesses. As such the Project will have minimal effect on the '*existing allowed conditions*' of the site and will generally be the same as the existing surrounding agricultural land uses.

### **Public Facilities and Services**

#### **Roads***Existing Setting*

Hawai'i Belt Road (Highway 19) is a State highway providing the major route for cross-island transportation. The State highway is situated approximately 360 feet west of the subject Property. A 30-foot wide access and utility easement provides access to all three of the subject Property lots. The easement is currently improved with a 12-foot wide pavement from the State highway down to the edge of the Property, which is the middle lot #29.

### *Potential Impacts and Mitigation Measures*

No significant impact on traffic or the highway system is anticipated. The additional traffic generated by the proposed single-family residential use will be minimal. As such, no significant impact on traffic or the highway system is anticipated.

### **2.3.2 Water System**

#### *Existing Setting*

The County's Department of Water Supply has confirmed, by letter dated April 4, 2005, that water is available to the Project via an existing six-inch waterline along the Old Mamalahoa Highway, on the opposite side of the Hawai'i Belt Road *ref exhibit 6*. The previous property owners, McCully(s) installed the necessary service laterals to serve the Property, and a waterline has been constructed within the access and utility easement leading to Lot 29.

### *Potential Impacts and Mitigation Measures*

The Project will not have any adverse impact on the existing Department of Water Supply system.

### **2.3.3 Protective Services**

### *Existing Setting*

The closest fire and police stations to the House Site are the district stations situated in the community of Laupahoehoe approximately 9 miles to the Northwest. The Property is also situated within the service area of the main police and fire stations that are approximately 19 miles away in Hilo.

### *Potential Impacts and Mitigation Measures*

The Project will not have an impact on the existing service providers.

## **2.3.4 Schools**

### *Existing Setting*

The Project Lands are served by Kalaniana'ole School and Hilo High School. Kalaniana'ole School is located approximately 9 miles southeast and Hilo High School is located approximately 19 miles south of the Property.

### *Potential Impacts and Mitigation Measures*

The Project will not have an impact on the existing public school system.

## **2.3.5 Power and Communication Systems**

### *Setting*

The Project Lots are served by Hawaii Electric Light Company and Hawaiian Telecom through underground utility lines that have been installed for the proposed Project in a road and utilities easement on adjacent property to the West.

### *Potential Impacts and Mitigation Measures*

The Project will not have any significant adverse impact on the power and communication systems serving the region. The proposed 'single family residence' will be off-grid electrically with power supplied by solar.

## **2.3.6 Wastewater**

### *Setting*

The Project is not within the service limits of the County waste-water disposal system.

### *Potential Impacts and Mitigation Measures*

The Residence will dispose of septic water on site and will comply with County waste water septic permitting and requirements.

### **2.3.7 Solid Waste**

#### *Setting*

There is no municipal collection system for solid waste in the County of Hawai'i. The County provides a solid waste transfer station near Honomu, approximately 1 mile from the Project site.

#### *Potential Impacts and Mitigation Measures*

The Project will not have any adverse impact regarding solid waste. The Applicant intends to use the solid waste transfer station near Honomu in support of the proposed residence.

Applicant acknowledges that construction waste is not allowed to be disposed of at a transfer station. All construction debris, waste and spoils intended to be disposed of off-site shall be inspected for the presence of pests (specifically Argentine ants) prior to removal from the site. Waste determined to be infested by unwanted pests shall be treated and cleared of such pests before removal from the Project site. Such construction waste will be transferred to a properly registered waste disposal business.

### **Archaeology, Historic and Cultural Resources**

#### *Setting*

An archaeological assessment of the property was conducted by Rechtman Consulting, LLC, in July of 2004. The Property was systematically and intensively examined, and one site (SIHP Site 50-10-26-24212) (two historic-period railroad features) were discovered. These features were identified as a possible railroad grade section and a railroad trestle abutment. A copy of the consultant's report can be found in the 2008 McCully(s) EA and FONSI document *ref. exhibit 6*. In summarizing its findings, the archaeological consultant states the following:

*“Systematic survey of three parcels (TMK 3-2-9-03: 13, 29 60) produced no evidence of traditional Hawaiian remains or evidence that the area was currently being accessed for the exercise of traditional and customary practices.”*

*“One historic era site-SIHP Site 24212, was recorded. The site contains two features associated with the Hamakua Division of Hilo Railroad-Hawaii Consolidated Railway which were recorded in the northwestern portion of The Project area. One is a possible section of railroad grade and the other is a railroad trestle abutment. The features were in active use by the railroad from 1911 to 1946. Their primary function was to facilitate the transport of raw sugar from the many mills along the Hilo and Hamakua Coasts to the harbor at Hilo Bay. In later years, they also served the secondary function of facilitating tourism.”*

The archaeological consultant provided the following significance evaluation and treatment recommendations:



*“Site 24212 is considered significant under Criteria D for the information it has yielded regarding early twentieth century agriculture (sugar cane production), transportation infrastructure. As the current inventory survey project recorded Site 24212 in detail, however, no further work is recommended.”*

*“In the unlikely event that archaeological resources are encountered during future development activities at TMK: 3-2-9-03: 13, 29, and 60, work in the immediate area of the discovery should be halted and DLNR-SHPD contacted as outlined in Hawaii Administrative Rules 13§13-275-12.”*

By letter dated December 22, 2004, DLNR-SHPD accepted and agreed with the archaeological consultant’s recommended treatment of Site 24212 and noted that the consultant’s report was adequate to meet the requirements of Section 13-276, HAR. The report was accepted as final. Rechtman Consulting, LLC, also conducted a cultural assessment for the Property. Archival and documentary information was reviewed, including Mahele Land Awards and Grants and historic maps.

This research did not reveal any documentation of any previous or ongoing traditional or customary practices. The area was historically known as Hilo-pali-Ku (Hilo of the upright cliffs) and there are a few accounts that indicate this area, which encompasses the sheer cliffs stretching along the Hāmākua Coast from the Wailuku River to Waipi`o and beyond, once supported a large pre-contact Hawaiian population that subsisted on crops such as taro, sweet potato, banana, and coconut. Other agricultural resources such as ‘awa, bamboo and sugarcane were also cultivated on the kula lands that stretched from South Hilo to Hāmākua. In the second half of the nineteenth century, the transportation difficulties that had delayed the large-scale commercial exploitation of the kula lands were overcome and sugarcane plantations replaced the subsistence agriculture and grazing as the dominant land use.

In order to identify cultural resources and potential traditional cultural practices associated with the Project site and this portion of the Wailea ahupua`a, the consultant contacted Ululan Sherlock of the Office of Hawaiian Affairs (OHA) and Keba Maly of Kumu Pono Associates in June of 2004. Neither had any specific information relative to the Property. However, OHA suggested contacting the Laupahoehoe Hawaiian Civic Club. Lucille Chung and Walter Victor were contacted, and they, in turn, referred the consultant to Jack or Waich Ouye, Yukio Takeya and Lorraine Mendoza, who were contacted in June and July of 2004.

The interviewees recalled that the railway used to run across the property until the Kolekole Bridge was destroyed by the tsunami of 1946. On the adjacent property to the south of the 7 lot subdivision, **there used to be a pig farm** that was used by camp residents and a trail that accessed the shore. This trail allowed the residents and local fisherman access to the shoreline below the pali that bounds the property to the East. This trail was not located on the Property nor did it cross such Property.

The consultant summarized its findings regarding cultural resources relating to the Combined Property (using the referenced “Petition Area”) as follows: “None of the organizations or

individuals that were contacted had any information relative to the existence of traditional cultural properties in the immediate vicinity of the Petition Area; nor did they provide any information indicating past or current use of the area for traditional and customary practices. It is unlikely that there are any traditional or customary practices occurring in the Petition Area **as the lands were utilized for sugarcane cultivation and associated transportation for over 100 years**. Any traditional Hawaiian features that may have been associated with former cultural practices that may have occurred in the Petition Area would have been destroyed by the sugarcane cultivation and related uses.”

The Applicant interviewed the field manager of the agricultural farming business which occupied the Property up to 1992. The field manager stated that this particular Property and the surrounding 7 lot subdivision was maintained as a *‘seed farm’* for their agricultural business for over 40 years and all public access from all directions was strictly prohibited in order to not contaminate the seed production on the Property. Thus there exists no recent history of public access to the Property or the subdivision to its West after the closure of the railroad around 1950.

A complete copy of the Archaeological Inventory Survey and Limited Cultural Assessment of TMKs: (3) 2-9-003: 013, 029, and 060 is provided as an addendum of the 2008 McCully(s) environmental assessment/FONSI *ref exhibit 6*. The comment letter from the State Historic Preservation Division dated December 22, 2004 and a supplemental letter from the consultant Rechtman Consulting, LLC, dated January 24, 2005 are also included therein.

### *Potential Impacts*

There were no cultural or historic properties, other than Site 24212, identified in the Combined Property Area. There were also no traditional or customary cultural practices found to be associated with such property. The Project is therefore anticipated to have “no effect” on significant historic sites or traditional and customary cultural practices. The Historic use of the Property was for Agriculture. The proposed Residence will assist the Applicant in the stewardship of the continuing agricultural use of the Property (the Historic use).

## **SUMMARY OF POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS AND PROPOSED MITIGATION MEASURES**

### **Short Term Impacts**

The Project will comply with standard county mitigation requirements including an erosion barrier mounted between the construction site and the ocean, identified daytime construction activities, noise mitigation and the like.

Specific Best Management Practices will be utilized by the applicant.

- Sediment wattles and/or compost-filled biosocks will be installed to capture sediment along the perimeter of the site work.
- Impermeable lined sediment basins will be utilized to capture concrete wash down

water from concrete trucks

- Construction activities with the potential to produce polluted runoff will not be allowed during unusually heavy rains or storm conditions that might generate storm water runoff.

In addition, no significant impact of floral or faunal resources is anticipated. No rare, threatened or endangered species as listed by the U.S. Fish and Wildlife Service appear to be present on the parcel, nor are there unique or valuable wildlife habitats. No existing or proposed federally designated critical habitat is present within the Petition Area. The only native plant species that was discovered by the Botanical Surveys was the popolo berry.

The proposed Project will have very little impact on the Project area. Exhibit 1 is a 2014 updated biological assessment update to the original biological assessment in Exhibit 6 conducted on behalf of the McCully(s). Therein it is recommended.....

*We offer the following recommendations in order to avoid impacts to endangered but Widespread native birds and the Hawaiian hoary bat:*

- *To minimize impacts to the endangered Hawaiian hoary bat, we recommend that trees taller than 15 feet should not be removed or trimmed during the bat birthing and pup rearing season (June 1 through September 15), to the extent practical.*
- *To minimize impacts to Hawaiian Hawks, we recommend avoiding earthmoving within 100 meters of tall trees or tree cutting during the breeding season for Hawaiian Hawks (March through the end of September). If this time period cannot be avoided, arrange for a hawk nest search to be conducted by a UH Hilo biologist or other qualified biologist. If hawk nests are present in or near the project site, all land clearing activity should cease until the expiration of the breeding season.*

The applicant has no specific plans for tree removal. None-the-less the Applicant will avoid impacts to Hawaiian hoary bats, there will be no clearing of woody vegetation taller than 15 feet during the bat pupping season, which runs from June 1 through September 15 each year.

The construction period is anticipated to extend for a period greater than a year. The Project area where specific site work is anticipated is maintained as lawn. However the only land clearing (cut and fill activities) will be done during the first year of the Project. Therefore a hawk nest search will be conducted by a UH Hilo biologist or other qualified biologist in March of the year during which cut and fill of soil is conducted (as recommended by the biologist in Exhibit 1) for the project applied for. As recommended if hawk nests are present in or near the project site, all land clearing activity will cease until the expiration of the breeding and nesting season.

All construction activity will take precautions to prevent fire ignition during construction of the improvements. No construction vehicles will be allowed to park in areas vegetated with ignitable material, such as dry grass or shrubs; instead, the Applicant will identify areas for parking.

In order to minimize the potential for the unintentional introduction/spread of invasive plants and animals (most crucially but not limited to fire ants, Argentine ants, black widow spiders, to/from the MKRA, the Applicant shall:

1. Ensure that all heavy equipment and construction equipment/material delivery

vehicles transported to/from the Project are clean and free of soil, organic material and pests prior to entering or leaving the Project area. Equipment/vehicles failing inspection shall be properly cleaned/treated and re-inspected until cleared for transport.

2. All crushed rock, for use in repairing the roadway, transported to the Project site for use on this project shall be crushed/prepared as soon as practicable prior to transport so as to minimize the potential for infestation by pests. Material stockpiled longer than 10 consecutive calendar days prior to transport shall not be used on this project. The swimming pool area of the project will have rounded river stone surrounding it. This material will be purchased off site and inspected for pests before being transported to the Property.

3. All construction debris, waste and spoils intended to be disposed of off-site shall be inspected for the presence of pests (specifically Argentine ants) prior to removal from the site. Waste determined to be infested by unwanted pests shall be treated and cleared of such pests before removal from the Project site.

Also refer to the Best Management Practices section of this CDUA/EA on page 78 for further description of the adverse environmental impacts and the proposed mitigation measures.

A positive short term impact will be the construction activities will result in a small but none-the-less positive impact on the economy of the local area.

### **Long Term Impacts**

The Project will not result in significant negative Long Term Impacts. A positive impact will be that a '*single family residence*' will be located on lot 060 that will provide for good stewardship of the Property's present on-going agricultural uses of the Property as opposed to its present situation without the stewardship that normally results from an owner/resident on the Property.

## **ALTERNATIVES**

### **Alternative Actions Considered**

Under the no action alternative, The Applicant would not submit the CDUA for the proposed Project. The Applicant does not own a residence in Hawaii. The Applicant is conducting agricultural uses of the Project area and requires a '*single family residence*' particularly in order that the Applicant can provide good stewardship of the upkeep of the property and the Historical Agricultural uses of the Property. The Applicant believes that not having a '*single family residence*' on the property is neither financially viable nor would it allow the best use of the Property. A residence will assist in the management of the naturally open and scenic nature of the Property. The site selection and design of the residence is believed by the Applicant to require the least soil disturbance, place the residence at a maximum distance from the ocean and preserve the scenic views from the two other residences in the subdivision.

## EVALUATION CRITERIA

The following criteria are provided with this Final Environmental Assessment as further background information that was submitted with the Applicant's CDUA and SMAA.....

The Department or Board will evaluate the merits of a proposed land use based upon the following eight criteria (*ref §13-5-30 (c)*):

1. **The purpose of the Conservation District** is to conserve, protect, and preserve the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. (*ref §13-5-1*) How is the proposed land use consistent with the purpose of the conservation district?

The proposed project is an allowed use according to HAR §13-5-24, L 3. Also a similar project was evaluated and received a CDUP 3445 in 2008 (the McCully(s) residence). The EA and FONSI and resulting CDUP 3445 referenced herein found No Significant Impact *ref exhibit 6, page 39 therein*. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA and EA.

**It is noteworthy** that generally the existing permitted non-conforming agricultural uses of the property described herein already allow agriculture on a substantial area of the Property. Erosion control on such an ocean-side site requires dynamic regular management during and after rainfall events. The Applicant intends to be a good steward of the Property and use reasonable effort to mitigate erosion possibilities resulting from both his agricultural operations and the proposed Project. The residence on-site will provide for such dynamic management of the Property which will include monitoring and control of insect pests and weeds (including invasive species control), control of erosion potential and scenic view management through regular debris removal of fallen trees and the like.

The allowed non-conforming agricultural use of the Property is in keeping with the shift to diversified agriculture in the region as characterized by larger numbers of self-employed and smaller scale independent businesses. As such the Project will have minimal negative effect on the *'existing allowed conditions'* and generally more positive effect on the Property and the land use will generally be the same as the existing surrounding agricultural land uses which include residences thereon.

Having a residence on the Property will allow the Applicant to appropriately provide good stewardship of the Property and maintain the long-term sustainability of its natural resources and the public health, safety, and welfare of the region and site.

Therefore the proposed Project is consistent with the purpose of the Conservation District in that a single-family dwelling is an identified use in the R Subzone and the Applicant is reasonably committed to preserve the limited resources of the site which will be conserved, protected, and preserved during and after the construction phase of the Project. The residence will therefore have a strong positive effect on the Property and the community.

**2. How is the proposed use consistent with the objectives of the subzone of the land on which the land use will occur? (ref §13-5-11 through §13-5-15)**

- The proposed project is an allowed use according to HAR 13-5-7 & 22. Also a similar project was evaluated in 2008 (the McCully(s) residence. The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA. The applied for land uses are only on former field and road areas. As such the natural areas of the Property area will not be affected by the Project.

**DLNR established** the following five Subzones within the Conservation District: Protective, Limited, Resource, General and Special. The Property is situated entirely within the Conservation District, Resource (“R”) Subzone. Pursuant to Section 13-5-3, HAR, the objective of the R Subzone is “to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.”

Although the Property is designated within the R Subzone, it has a Historic history of intensive agricultural use for approximately 100 years before such use was effectively suspended by the closure of the Hilo Coast Processing Company. Various consultants were retained to survey the floral, archaeological and cultural resources of the Property. The findings and conclusions of the consultants’ reports are that the previous agricultural use appears to have destroyed any significant archaeological, biological and cultural resources that may have previously existed on the Property.

In addition, the Property is not visible from the Hawai’i Belt Road, which is cut through an embankment that blocks any makai view of the Property, the coastline or the ocean from such road. There is no shoreline access from the Property as it is bounded on the makai side by a steep sea pali that ranges in height from 100 feet above mean sea level and the North and South sides by private land with similar no public access.

Finally the Applicant interviewed the field manager of the agricultural farming business which occupied the Property up to 1992. The field manager identified that this particular Property and the entire area of the 7 lot subdivision was maintained as a **‘seed farm’** for their agricultural business for over 40 years and all public access from all directions was strictly prohibited in order to not contaminate the seed production on the Property.

The Project is not expected to affect the air quality of the Property or that of the surrounding Conservation District lands beyond potential short-term impacts resulting from construction activity. Temporary noise impacts will also result from construction activity. No impacts are anticipated upon geology, coastal hazards or soils.

Provided the BLNR approves the subject application and issues a CDUP, identified land uses within the R Subzone, as described under Section 13-5-24, HAR, include the following:

A single-family residence that conforms to the design standards as outlined in Section 13-5-24, HAR; and

As demonstrated by the foregoing, the proposed Project is consistent with the R Subzone. Section 13-5-24, HAR, limits the developable area for single-family dwellings in the Conservation District to a maximum of 5,000 sq. ft. (including any decks, garages, swimming pools, or other structures). The proposed residence is consistent with the Conservation District Rules, as demonstrated by the attached preliminary architectural drawings *exhibits 14 and 15*

(a) & (b) and 16. Relative to the existing vacant state of the site, a dwelling will allow the Applicant to maintain careful monitoring of site conditions, in effect providing stewardship of the natural resources of the site and the allowed agricultural uses of the Property.

It is noteworthy.....

- The **Resource** designation of the Property appears to designate that the Property **encompasses** one of the following areas.....

HAR §13-5-13 Resource (R) subzone. (a) The objective of this subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas.

**(b) The (R) subzone shall encompass:**

(1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;

*The Applicant notes that the Property is privately owned and completely surrounded by private lands with no public access whatsoever.*

(2) Lands suitable for growing and harvesting of commercial timber or other forest products;

*The soils are designated 'prime agricultural lands' which are not the sort of lands particularly suitable for timber or forest product production*

(3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;

*The Applicant notes that the Property is privately owned and completely surrounded by private lands with no public access whatsoever.*

(4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;

*This is not relevant to the Property*

(5) Lands and state marine waters seaward of the shoreline to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

*This is not relevant to the Property*

- The natural slope of the Property is relatively modest and comparable to similar former agricultural properties in the area that are not similarly zoned Conservation. The potential for erosion is minimal.

There appears to be no specific record of why the property was 'taken by inverse condemnation' into the Conservation District other than because it was zoned 'other' by the County at the time that the Conservation district lands were identified, seemingly without recorded reasoning, approx. 50 years ago. More specifically, as demonstrated above, none of the characteristics of the Property appear to be identified in HAR 13-5-13. There exists no public views of the ocean from the coastal highway as the highway is cut deeply through a hillside along the subdivision in which the Property is located.

It seems that its current use for agriculture and a residence thereon is more appropriate to its physical characteristics and Historical agricultural use. Also LUC guidelines emphatically state '**agricultural land shall remain agricultural**' and '**shall means must**'! The Historic use of the Property was for intensive cultivation for commercial agricultural crops. A '*single family residence*', as applied for herein, is believed by the Applicant to be an appropriate land use today

both in support of the existing allowed agricultural activities on the Property and/or as provided for in HAR 13-5 as an allowable Conservation District land use.

The Applicant has struggled throughout this Application to properly identify and qualify the Proposed land use for a residence thereon within its designated Resource subzone and particularly in the “Evaluation Criteria” section of this Application as the Property does not appear to have the above mentioned criteria of lands described for the (R) subzone to encompass. The section regarding Evaluation Criteria states.....

The Department or Board will evaluate the merits of a proposed land use based upon the following eight criteria (ref 13-5-30 (c)): wherein the question is asked...

*“How is the proposed use consistent with the objectives of the subzone of the land on which the land use will occur? (ref 13-5-11 through 13-5-15)*

The Property appears to not be an example of the sort of property the “(R) subzone shall encompass” as the existing physical conditions of the Property do not appear in the listed elements of Resource zoned property. This has resulted in difficulty for the Applicant in the preparation of this CDUA/EA. While the law requires that the Applicant propose his land use in compliance with HAR 13-5 the Property appears to have been improperly designated as a Resource zoned property. None-the-less the Applicant has developed this CDUA/EA to design the land use to be compatible with the allowed agricultural use **and** the natural resources of the Property.

**3. Describe how the proposed land use** complies with the provisions and guidelines contained in chapter 205A, HRS, entitled “Coastal Zone Management” (see 205A objectives on p. 8).

The objectives and policies of the Hawai’i Coastal Zone Management (“CZM”) Program, as set forth in Chapter 205 A, Hawai’i Revised Statutes (HRS”), include the protection and maintenance of the State’s coastal resources. Accordingly, the Special Management Area (“SMA”) Map and the Flood Insurance Rate Map (“FIRM”) are utilized to protect coastal resources. Below is a statement of the CZM Program’s objectives and policies, as contained in Section 205-2, HRS, and a brief discussion of the Project’s compliance with such objectives and policies.

*Note: While the applicant generally defines the Project as being 125’ from the bluff/pali in this application the Applicant clarifies that while the majority of the Project which is the single family residence is located 125’ inland from the bluff/pali the outdoor cooking structure, 40 sq. ft. ref. exhibits 14 & 16 (40 sq. ft.), is located 100 ft. from the bluff/pali. No other use that is being applied for herein is closer than 100 ft. from the bluff/pali.*

**1. Recreational Resources**

**Objective:** Provide coastal recreation opportunities accessible to the public.

**Policies:**

- (A) Improve coordination and funding of coastal recreational planning and management; and
- (B) Provide adequate, accessible and diverse recreational opportunities in the coastal zone



management area by:

- Protecting coastal resources uniquely suited for recreational opportunities that cannot be provided in other areas;
- Require replacement of coastal resources having significant recreational value, including, but not limited to, surfing sites, fishponds and sand beaches, when such resources would be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;
- Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
- Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
- Ensuring public recreational uses of county, state and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;
- Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;
- Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and
- Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land natural resources, and county authorities; and crediting such dedication against the requirements of section 46-6.

**Discussion:** The objective is stated to provide coastal recreation opportunities accessible to the public. The Property is located in a private gated community. There is no public access to the Property nor to the shoreline below the Property as the area is bounded by high steep cliffs. There exists no beach at the waterline.

The Applicant interviewed the field manager of the agricultural farming business which occupied the Property up to 1992. The field manager stated that this particular Property and the surrounding 7 lot subdivision was maintained as a '*seed farm*' for their agricultural business for over 40 years and all public access from all directions was strictly prohibited in order to not contaminate the seed production on the Property. Thus there exists no recent history of public access to the Property or the subdivision to its West after the closure of the railroad around 1950.

The Conservation District Use Application ("CDUA/EA" and SMA) process will allow DLNR and County to review, assess and regulate the Project in detail. The Project will have no effect on coastal recreational opportunities. There is no shoreline access available from the Property. It will also have no effect on public access to Kolekole Beach Park, located approximately 1,200 feet to the south of the Property.

## 2. Historic Resources

**Objective:**

Protect, preserve, and, where desirable, restore those natural and manmade Historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

**Policies:**

- Identify and analyze significant archaeological resources;
- Maximize information retention through preservation of remains and artifacts or salvage operations; and
- Support state goals for protection, restoration, interpretation, and display of historic resources.

**Discussion:**

The Conservation District Use Application (“CDUA/EA and SMA”) process will allow DLNR and County to review, assess and regulate the Project in detail. The Property was systematically surveyed for archaeological resources and one site was discovered. The Property included one historic-period railroad feature. An additional historic-era railroad feature was located on TMK: (3) 2-9-003: 060. Due to the Property’s previous agricultural use, it is highly unlikely that any additional subsurface archaeological resources exist there.

An archaeological assessment of the property was conducted by Rechtman Consulting, LLC, in July of 2004. Such Property was systematically and intensively examined, and one site (SIHP Site 50-10-26-24212) (two historic-period railroad features) were discovered. These features were identified as a possible railroad grade section and a railroad trestle abutment. A copy of the consultant’s report can be found in the 2008 McCully(s) EA and FONSI document *ref. exhibit 6*.

In summarizing its findings, the archaeological consultant states the following: “Systematic survey of three parcels (TMK 3-2-9-03: 13, 29 60) produced no evidence of traditional Hawaiian remains or evidence that the area was currently being accessed for the exercise of traditional and customary practices.”

“One historic era site-SIHP Site 24212, was recorded. The site contains two features associated with the Hamakua Division of Hilo Railroad-Hawaii Consolidated Railway which were recorded in the northwestern portion of The Project area. One is a possible section of railroad grade and the other is a railroad trestle abutment. The features were in active use by the railroad from 1911 to 1946. Their primary function was to facilitate the transport of raw sugar from the many mills along the Hilo and Hamakua Coasts to the harbor at Hilo Bay.”

The archaeological consultant provided the following significance evaluation and treatment recommendations:

*“Site 24212 is considered significant under Criteria D for the information it has yielded regarding early twentieth century agriculture (sugar cane production), transportation infrastructure. As the current inventory survey project recorded Site 24212 in detail, however, no further work is recommended.”*

*“In the unlikely event that archaeological resources are encountered during future development activities at TMK: 3-2-9-03: 13, 29, and 60, work in the immediate area of the discovery should be halted and DLNR-SHPD contacted as outlined in Hawaii Administrative Rules 13§13-275-12.”*

By letter dated December 22, 2004, DLNR-SHPD accepted and agreed with the archaeological consultant’s recommended treatment of Site 24212 and noted that the consultant’s report was adequate to meet the requirements of Section 13-276, HAR. The report was accepted as final.

Rechtman Consulting, LLC, also conducted a cultural assessment for the Property. Archival and documentary information was reviewed, including Mahele Land Awards and Grants and historic maps.

This research did not reveal any documentation of any previous or ongoing traditional or customary practices. The area was historically known as Hilo-pali-Ku (Hilo of the upright cliffs) and there are a few accounts that indicate this area, which encompasses the sheer cliffs stretching along the Hāmākua Coast from the Wailuku River to Waipi`o and beyond, once supported a large pre-contact Hawaiian population that subsisted on crops such as taro, sweet potato, banana, and coconut. Other agricultural resources such as ‘awa, bamboo and sugarcane were also cultivated on the kula lands that stretched from South Hilo to Hāmākua. In the second half of the nineteenth century, the transportation difficulties that had delayed the large-scale commercial exploitation of the kula lands were overcome and sugarcane plantations replaced the subsistence agriculture and grazing as the dominant land use.

In order to identify cultural resources and potential traditional cultural practices associated with The Project site and this portion of the Wailea ahupua`a, the consultant contacted Ululan Sherlock of the Office of Hawaiian Affairs (OHA) and Kepa Maly of Kumu Pono Associates in June of 2004. Neither had any specific information relative to the Property. However, OHA suggested contacting the Laupahoehoe Hawaiian Civic Club. Lucille Chung and Walter Victor were contacted, and they, in turn, referred the consultant to Jack or Waich Ouye, Yukio Takeya and Lorraine Mendoza, who were contacted in June and July of 2004.

The interviewees recalled that the railway used to run across the property until the Kolekole Bridge was destroyed by the tsunami of 1946. On the adjacent property to the south, there used to be a pig farm that was used by camp residents and a trail that accessed the shore. This trail allowed the residents and local fisherman access to the shoreline below the pali that bounds the Property to the East. This trail was not located on the Property nor did it cross the Property.

The consultant summarized its findings regarding cultural resources relating to the Combined Property (using the referenced “Petition Area”) as follows: “None of the organizations or individuals that were contacted had any information relative to the existence of traditional cultural properties in the immediate vicinity of the Petition Area; nor did they provide any information indicating past or current use of the area for traditional and customary practices. It is unlikely that there are any traditional or customary practices occurring in the Petition Area as the lands were utilized for sugarcane cultivation and associated transportation for over 100 years. Any traditional Hawaiian features that may have been associated with former cultural practices that may have occurred in the Petition Area would have been destroyed by the sugarcane cultivation and related uses.”

A complete copy of the Archaeological Inventory Survey and Limited Cultural Assessment of TMKs: (3) 2-9-003: 013, 029, and 060 is provided as an addendum of the 2008 McCully(s) environmental assessment *ref. exhibit 6*. The comment letter from the State Historic Preservation Division dated December 22, 2004 and a supplemental letter from the consultant Rechtman Consulting, LLC, dated January 24, 2005 are also included therein.

### **Potential Impacts**

There were no cultural or historic properties, other than Site 24212, identified in the Combined Property Area. There were also no traditional or customary cultural practices found to be associated with such property.

Finally the Applicant interviewed the field manager of the agricultural farming business which occupied the Property up to 1992. The field manager stated that this particular Property was maintained as a ‘*seed farm*’ for their agricultural business for over 40 years and all public access from all directions was strictly prohibited in order to not contaminate the seed production on the Property.

**It is noteworthy** that generally the existing allowed “**Historic**” non-conforming agricultural uses of the property described herein already allow agriculture on a substantial area of the Property. **These reflect the “Historic” use of the Property as described throughout this application.** The Applicant intends to be a good steward of the Property and use reasonable effort to mitigate negative effects to the Historic resources on/of the Property from both the allowed non-conforming agricultural operations and the proposed Project. The proposed single

family residence on the Project site in support of the agricultural uses of the Property is in keeping with the shift to diversified agriculture in the region as characterized by larger numbers of self-employed and smaller scale independent businesses. As such the Project will have positive effects on the *‘existing allowed conditions’* of the site and will generally be the same as the existing surrounding agricultural land uses.

Having a residence on the Property will allow the Applicant to appropriately preserve and protect the Historic agricultural use of the Property and to provide good stewardship of the Property and maintain the long-term sustainability and the public health, safety, and welfare of the near term Historic uses of the site.

Therefore the proposed Project is consistent with the purpose of the Conservation District in that a single-family dwelling is an identified use in the R Subzone and that the limited resources of the site will be conserved, protected, and preserved during and after the construction phase of the Project and the Residence will provide the ‘on site’ dynamic management of the Property’s allowed Historic resources.

The Project is therefore anticipated to have “a positive effect” on the Historic resources of the Property as the residence will provide on-site dynamic management of the Property.

### **(3) Scenic & Open Space Resources**

#### **Objective:**

Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

#### **Policies:**

- Identify valued scenic resources in the coastal zone management area;
- Ensure that new development are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
- Preserve, maintain, and , where desirable, improve and restore shoreline open space and scenic resources; and
- Encourage those developments that are not coastal dependent to locate in inland areas.

#### **Discussion:**

The Conservation District Use Application (“CDUA/EA and SMA”) process will allow DLNR and County to review, assess and regulate the Project in detail. The Project is not expected to have any significant impact on scenic and open space resources. The predominant scenic views in the vicinity of The Project site are of the Pacific Ocean, the high, near vertical pali and the shoreline area. There are no public views of the Project site from the Hawai`i Belt Road because the road is cut below a high grade along an embankment mauka of the Property.

The Property is situated between two sites listed as examples of natural beauty in the Hawai'i County General Plan: Kolekole Gulch and Hakalau Bay/Gulch. Hakalau Bay/Gulch is situated approximately 5,000 feet north of the Property and Kolekole Gulch is situated approximately 1,200 feet south of the Property.

*Potential Impacts and Mitigation Measures*

The Project will not impact significantly on open space and scenic resources in the vicinity of the site. The existing residence and greenhouse operation to the West are screened by large trees from views of the Project site. The only other residence in the vicinity is over 1,000 ft. to the South of the Project site and screened by trees from view. *Ref. exhibits 12 and 18.* There are no views of the proposed residence site from the North of lot 60 as it is bordered by a heavily treed gulch at this location *ref. exhibit 12.*

The Applicant's proposed dwelling is being designed to blend into the subject and surrounding lands as much as reasonable, which is the primary reason for the Applicant's plan to build on a slab foundation, as opposed to post and pier. It is not presently clear whether a dwelling constructed on a post and pier foundation would be visible from the Hawaii Belt Road or Kolekole Gulch. Certainly post and pier construction would present the roof top at a higher elevation increasing the likelihood of being visible to the surrounding area.

Considering the vegetation that is present along the top of the pali, which includes ironwood trees and hala clusters among other species, as well as the 125 foot structural setback from the top of the pali that is proposed, it is highly unlikely that any of the proposed improvements would be visible from the Hawaii Belt Road or Kolekole Gulch. It is also highly unlikely that any of the improvements proposed would be visible from Hakalau Bay/Gulch due to its significant distance from the Property. Also, the dwelling will not be visible from surrounding properties *ref. exhibits 12 and 18.* Limited views from the ocean may also exist through the heavily treed pali however considerable high screening exists in the seaward area of the Project site.

Other alternatives such as post and pier foundation, which would include less cut overall, would result in a residence that is more physically imposing on the land, causing greater visual impact to the surrounding area. The proposed residence has been designed and sited in such a way that it will meld into the existing conditions. As such, the dwelling is not expected to have any adverse impact on the sites listed as examples of natural beauty in the Hawaii County General Plan nor the scenic views of the 2 neighboring residences *ref exhibit 12.*

A similar project was evaluated in 2008 (the McCully(s) residence). The EA and FONSI and resulting CDUP 3445 and County SMA Determination found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA and SMA. The Project “*single family*

*residence*” in this CDUA is further from the pali, requires less cut and fill, is similar in size and appearance to the former 2008 McCully(s) approved residence.

The Applicant has no residence in Hawaii. The applied for land use will provide the Applicant with an opportunity to provide “on site” dynamic management of the scenic and open spaces on the Property.

#### (4). **Coastal Ecosystems**

##### **Objective:**

Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

##### **Policies:**

- Exercise an overall conservation ethic, and practice stewardship in the protection , use and development of marine and coastal resources;
- Improve the technical basis for natural resource management;
- Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
- Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversion, channelization and similar land and water uses, recognizing competing water needs; and
- Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.

##### **Discussion:**

The Conservation District Use Application (“CDUA/EA and SMA”) process will allow DLNR and County to review, assess and regulate the Project in detail. The Project is not expected to have an adverse effect on coastal ecosystems. The Property is bounded by a sea pali that is 100 to 140 feet above sea level.

The proposed ‘single family residence’ will be located at a maximum distance from the ocean on the subject lot (at around 125 ft. from the pali). It will be located beginning at 26 ft. from the boundary with adjacent lot to the West.

A county D.O.H. approved septic system will be applied for prior to construction. The septic system will be located down-slope to the South of the applied for 'single family residence' and will also be over 226 ft. from the pali. As such there is limited potential for discharge into near-shore waters.

The 'single family residence' applied for is located substantially further from the pali than the former 2008 McCully(s) planned residence (125 ft. rather than 70 ft.) which was declared SMA exempt by the county.

The proposed Project is not expected to have any direct impact on Puahanui Stream or marine waters in-as-much as any additional runoff generated will be disposed of on site in compliance with State and County regulations. No development is planned in the immediate vicinity of Puahanui Stream.

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the property described herein already allow agriculture on a substantial area of the Property. The Applicant intends to be a good steward of the Property and use reasonable effort to mitigate erosion possibilities resulting from both his agricultural operations and the proposed Project on Coastal ecosystems.

The objective is to protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

The proposed single family residence will provide dynamic 'on site' management of the on-going allowed agricultural uses of the Property and the Property in general. Particularly on-site management is desirable during heavy rainfall events in order to monitor and mitigate soil erosion. The Project will therefore add to the protection of the valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

Therefore the proposed Project is consistent with the purpose of the Conservation District in that a single-family dwelling is an identified use in the R Subzone and that the limited resources of the site will be conserved, protected, and preserved during and after the construction phase of the Project.

#### **(5) Economic Uses**

##### **Objective:**

Provide public or private facilities and improvements important to the State's economy in suitable locations.

##### **Policies:**

- Concentrate coastal dependent development in appropriate areas;



- Ensure that coastal development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
- Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
  - Use of presently designated locations is not feasible;
  - Adverse environmental effects are minimized; and
  - The development is important to the State's economy.

**Discussion:**

The Conservation District Use Application (“CDUA/EA and SMA”) process will allow DLNR and County to review, assess and regulate the Project in detail. The Property is entirely suited for the proposed use. Surrounding land uses are agricultural and residential in nature. The County zoning is Agricultural, which also allows single-family residential use.

Hawai'i County's population increased by more than 56,000 persons between 1980 and 2000. Between 1980 and 1990, Hawai'i Island's population increased by 30.7 percent, and increased by 23.6 percent between 1990 and 2000. The April 1, 2000 population figure for Hawai'i County was 148,677 according to census figures compiled by the County of Hawai'i, Department of Research and Development.

The South Hilo district had a population of 47,386 in 2000 which represented approximately 32 percent of the total population for Hawai'i Island. The City of Hilo is the largest population center on the island with the main offices of the County government, branch offices of Federal and State agencies located there. The island's major deep draft harbor and international airport are also located in Hilo. In addition to industrial, commercial and social service activities, the University of Hawai'i Hilo and Hawai'i Community College and affiliated research programs play an important role in Hilo's economy.

Hilo and the rest of the East Hawai'i' communities are adjusting to the loss of the sugar industry in the mid 1990's. The continuation of agriculture in the district has required a major shift from large-scale single-commodity production to smaller scale, multi-commodity 29 multi-market base. The shift to diversified agriculture is characterized by larger numbers of self-employed and smaller scale

## **Potential Impacts and Mitigation Measures independent businesses.**

Other properties in the immediate vicinity of The Project site are utilized for a variety of diversified agricultural activities including a certified orchid nursery, the propagation of foliage stock and the cultivation of edible ginger and Chinese taro as well as residential uses.

The Applicant currently utilizes the property for agricultural uses. The construction of a single family residence will allow the Applicant to better manage the agricultural uses of the Property and provide better stewardship of the Property in general. The agricultural operations on the Property will add to improvements important to the State's economy.

The Project will thus have a positive effect on the socio-economic characteristics of the area. The Objective of the Conservation District is to "Provide public or private facilities and improvements important to the State's economy in suitable locations". The Property has allowed agricultural use on it. The Property is "suitable" for Agriculture. Agriculture is identified by the State as important to the State's economy. The applied for residence will be in support of the agricultural uses of the Property.

### **(6) Coastal Hazards**

#### **Objective:**

Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.

#### **Policies:**

- Develop and communicate adequate information about storm wave, tsunami, flood erosion, subsidence, and point and nonpoint source pollution hazards
- Ensure that development comply with requirements of the Federal Flood Insurance Program; and
- Prevent coastal flooding from inland projects.

#### **Discussion:**

The Conservation District Use Application ("CDUA/EA and SMA") process will allow DLNR and County to review, assess and regulate the Project in detail. The Property is outside of the tsunami inundation zone and is not located in a known coastal hazard area for hurricanes. The Property is bounded on the makai side by a high sea pali ranging between 100 and 140 feet above sea level, and, as such, seems reasonably free from tsunami and storm waves/surge risk. Erosion and subsidence may pose potential risks. However, as an additional precaution, the Applicant's proposed dwelling is intended to be approximately

125 feet mauka of the edge of the sea pali. *Ref. exhibit 4 Dr. Kwong shoreline set-back letter wherein 70 ft. min. set-back is recommended.*

In 2008 the set back requirement was considered by James Kwong, PhD, PE of Yogi Kwong Engineers, LLC on behalf of the McCully(s) regarding a subsequent 2008 CDUA HA 3445 for the McCully(s) residence. CDUP HA 3445 was granted for the construction of a residence for the McCully(s) on lot 029 a contiguous lot to lot 060. Subsequent to that the McCully(s) application was withdrawn and no residence was built. As a part of that CDUA evaluation the noted professional was consulted regarding erosion and set-back requirements. Dr. Kwong concluded that the 70-foot setback was adequate based on a helicopter and site reconnaissance, review of various historical aerial and topographic photos and maps and the height of the sea pali. *ref exhibit 4 and Sam Lemmo testimony exhibit 3 which stated an 80 ft. setback was sufficient.*

In the case of the present CDUA the shoreline set back is substantially greater (125ft. vs. 70 ft.) than what was already approved for the previous property owner McCully(s) planned residence.

**The objective is to** reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.

The proposed single family residence will allow the Applicant to provide dynamic ‘on site’ management of the on-going allowed agricultural uses of the Property and the Property in general. Particularly on-site management is desirable during heavy rainfall events in order to monitor and mitigate soil erosion. The Project will therefore add to the protection of the valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

## **(7) Managing Development**

### **Objective:**

Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

### **Policies:**

- Use, implement and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
- Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and
- Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms

understandable to the public to facilitate public participation in the planning and review process.

**Discussion:**

The Conservation District Use Application (“CDUA/EA and SMA”) process will allow DLNR and County to review, assess and regulate the Project in detail. In addition, due to the Property being situated within the SMA, an SMA Assessment has been prepared and submitted to the County Planning Director for processing. The SMA Assessment process offers additional opportunity for governmental oversight.

**(8) Public Participation**

**Objective:**

Stimulate public awareness, education, and participation in coastal management.

**Policies:**

- Use, implement and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
- Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and
- Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

**Discussion:**

The CDUA/EA and SMA process allows opportunities for public participation, including the requirement for compliance with Chapter 343, Hawai’i’ Revised Statutes. The Environmental Assessment process includes a public comment period during which members of the public may submit comments on the Project. In addition, the SMA Assessment process will allow the County Planning Director to assess the Project in detail.

**(9) Beach Protection**

**Objective:**

Protect beaches for public use and recreation.

**Policies:**

- Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;
- Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and
- Minimize the construction of public erosion-protection structures seaward of the shoreline.

**Discussion:**

The Conservation District Use Application (“CDUA/EA and SMA”) process will allow DLNR and County to review, assess and regulate the Project in detail. The Project will not interfere with natural beach processes. There is a risk of erosion, but that risk will not be increased due to the Project. The applied for Project will be located 125 ft. inland of the pali.

The objective is to protect beaches for public use and recreation. There are no beaches adjacent to the property however there is Kolekole park approx. 1500 ft. to the South of the Property and another park approx. 5,000 ft. to the North of the Property. Also there is no public access to the Property nor the shoreline below the property. The Property is in a private gated community and is surrounded by private lands.

The proposed Project will have a positive effect on the area as the residence will provide for dynamic on-site management of the Property particularly as it respects possible erosion issues that may occur as the result of large rainfall events.

**(10) Marine Resources**

**Objective:**

Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

**Policies:**

- Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial’
- Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;
- Assert and articulate the interests of the state as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;
- Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and
- Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

**Discussion:**

The Conservation District Use Application (“CDUA/EA and SMA”) process will allow DLNR and County to review, assess and regulate the Project in detail. The Project is not expected to impact marine resources due to its distance from the water’s edge. Additionally, the Project will be served by an individual wastewater system approved by DOH.

The objective is to promote the protection, use, and development of marine and coastal resources to assure their sustainability. There are no beaches adjacent to the property however there is Kolekole park approx. 1500 ft. to the South of the Property and another park approx. 5,000 ft. to the North of the Property. Also there is no public access to the Property nor the shoreline below the property. The Property is in a private gated community and is surrounded by private lands and inaccessible high steep cliffs ocean-side.

The proposed single family residence will allow the Applicant to provide dynamic ‘on site’ management of the on-going allowed agricultural uses of the Property and the Property in general. Particularly on-site management is desirable during heavy rainfall events in order to monitor and mitigate soil erosion. The Project will therefore add to the protection of the marine resources, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

4. **Describe how** the proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.

The proposed Project is an allowed use according to HAR 13-5-7 & 22. Also a similar project was evaluated in 2008 (the McCully(s) residence. The EA and FONSI and resulting CDUP HA 3445 referenced herein found **No Significant Impact**. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA/EA.

The Applicant’s single family residence will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region. The design and construction of the residence will be sensitive to the site, with measures taken to minimize environmental impacts. Due to the Property’s previous Historic agricultural use, the Applicant does not anticipate the need for extensive grading or significant changes to the existing contours of the Property other than to the area surrounding the planned dwelling, parking pad and related structures.

The proposed ‘*single family residence*’ will be situated on a previously cultivated, relatively flat hill top at the North-Western boundary of lot 060 which is presently maintained as mowed lawn. It will be located beginning 26 ft. to the East of the Western boundary of lot 060. As such the only soil disturbance will be to soil that has previously been cultivated/disturbed during agricultural uses on the property.

Generally cut soil will be placed along the Eastern side of and at the Northern end of the access road and along the Eastern and Southern sides (and under) of the applied for ‘single family residence’. No land alteration activities, including cut or placement of fill material, will be conducted within 100 ft. of the top of the bluff/pali. All fill material will be re-planted quickly in order to minimize the potential of erosion of the disturbed soil. A suitable erosion barrier, constructed according to County standards, will be located down-slope (seaward) of the Project site and will remain in place until remaining disturbed soil areas have been replanted to grass.

Mitigative measures will be implemented to ensure that no impacts to the surrounding existing natural resources occurs both during the construction phase and subsequently during residency.

Specific Best Management Practices will be utilized by the applicant.

- Sediment wattles and/or compost-filled biosocks will be installed to capture sediment along the perimeter of the site work.
- Impermeable lined sediment basins will be utilized to capture concrete wash down water from concrete trucks

- Construction activities with the potential to produce polluted runoff will not be allowed during unusually heavy rains or storm conditions that might generate storm water runoff.

In addition, no significant impact of floral or faunal resources is anticipated. No rare, threatened or endangered species as listed by the U.S. Fish and Wildlife Service appear to be present on the parcel, nor are there unique or valuable wildlife habitats. No existing or proposed federally designated critical habitat is present within the Petition Area. The only native plant species that was discovered by the Botanical Surveys was the popolo berry.

The proposed Project will have very little impact on the Project area. Exhibit 1 is a 2014 updated biological assessment update to the original biological assessment in Exhibit 6 conducted on behalf of the McCully(s). Therein it is recommended.....

*We offer the following recommendations in order to avoid impacts to endangered but Widespread native birds and the Hawaiian hoary bat:*

- *To minimize impacts to the endangered Hawaiian hoary bat, we recommend that trees taller than 15 feet should not be removed or trimmed during the bat birthing and pup rearing season (June 1 through September 15), to the extent practical.*
- *To minimize impacts to Hawaiian Hawks, we recommend avoiding earthmoving within 100 meters of tall trees or tree cutting during the breeding season for Hawaiian Hawks (March through the end of September). If this time period cannot be avoided, arrange for a hawk nest search to be conducted by a UH Hilo biologist or other qualified biologist. If hawk nests are present in or near the project site, all land clearing activity should cease until the expiration of the breeding season.*

The applicant has no specific plans for tree removal. None-the-less the Applicant will avoid impacts to Hawaiian hoary bats, there will be no clearing of woody vegetation taller than 15 feet during the bat pupping season, which runs from June 1 through September 15 each year.

The construction period is anticipated to extend for a period greater than a year. The Project area where specific site work is anticipated is maintained as lawn. However the only land clearing (cut and fill activities) will be done during the first year of the Project. Therefore a hawk nest search will be conducted by a UH Hilo biologist or other qualified biologist in March of the year during which cut and fill of soil is conducted (as recommended by the biologist in Exhibit 1) for the project applied for. As recommended if hawk nests are present in or near the project site, all land clearing activity will cease until the expiration of the breeding season.

All construction activity will take precautions to prevent fire ignition during construction of the improvements. No construction vehicles will be allowed to park in areas vegetated with ignitable material, such as dry grass or shrubs; instead, the Applicant will identify areas for parking.

In order to minimize the potential for the unintentional introduction/spread of invasive plants and animals (most crucially but not limited to fire ants, Argentine ants, black widow spiders, to/from the MKRA, the Applicant shall:

1. Ensure that all heavy equipment and construction equipment/material delivery vehicles transported to/from the Project are clean and free of soil, organic material



and pests prior to entering or leaving the Project area. Equipment/vehicles failing inspection shall be properly cleaned/treated and re-inspected until cleared for transport.

2. All crushed rock, fill, soil and plant materials transported to the Project site for use on this project shall be crushed/prepared as soon as practicable prior to transport so as to minimize the potential for infestation by pests. Material stockpiled longer than 10 consecutive calendar days prior to transport shall not be used on this project.

3. All construction debris, waste and spoils intended to be disposed of off-site shall be inspected for the presence of pests (specifically Argentine ants) prior to removal from the site. Waste determined to be infested by unwanted pests shall be treated and cleared of such pests before removal from the Project site.

5. **Describe how** the proposed land use, including buildings, structures and facilities, is compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.

The proposed project is an allowed use according to HAR 13-5. Also a similar project was evaluated in 2008 (the McCully(s) residence). The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA.

The locality and surrounding lots in the 7 lot subdivision have 2 residences on them. One of the residences supports a large commercial greenhouse operation on it (an agricultural activity). Thus the proposed land use, including buildings, structures and facilities, is compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.

6. Describe how the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon.

The proposed project is an allowed use according to HAR 13-5. Also a similar project was evaluated in 2008 (the McCully(s) residence). The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA.

The majority of the surrounding area is utilized for agricultural and residential purposes. The County zoning for the surrounding area is largely Agricultural. Aside from limited Urban District designations to the North at Hakalau, mauka across the Hawai'i Belt Road and to the South at Honomu, the State land use designations of the surrounding area are Agricultural and Conservation.

The Property is entirely suitable for the proposed Project. The Property and surrounding lands were historically used for agricultural purposes. However, the surrounding lands are now used mainly for agricultural and residential purposes. The proposed single family residence will be designed to be compatible with the land and surrounding areas as much as possible.

It is notable that there is no public view of the Property, the coastline or the ocean from the Hawai'i Belt Road as the road has been cut deeply through and along an embankment in the

vicinity of the Project Site.

The natural beauty of the South Hilo district is dominated by Mauna Kea and Mauna Loa. From various locations in the area there are magnificent views of the mountains. Hakalau Bay/Gulch and Kolekole Gulch are listed in the Hawai'i County General Plan for Natural Beauty Sites. Kolekole Gulch is located approximately 1,200 feet to the South of the Property and Hakalau Bay/Gulch is located approximately 5,000 feet to the North.

The proposed Project will have no effect on either site. There is no shoreline access from the Property due to the cliffs that form the makai boundary of the Property.

Finally the Applicant interviewed the field manager of the agricultural farming business which occupied the Property up to 1992. The field manager stated that this particular Property was maintained as a '*seed farm*' for their agricultural business for over 40 years and all public access from all directions was strictly prohibited in order to not contaminate the seed production on the Property.

No significant impacts to floral or faunal resources are anticipated. Historically the entire property has been extensively utilized for intensive agriculture for a period approximately 100 years. The Property has remained substantially fallow since 1992 when the last sugar crop was harvested and has since been maintained as a grassed lawn and more recently has been planted to various agricultural plantings. In effect restoring the Property to its Historic use dating over 100 past years. No rare, threatened or endangered species as listed by the U.S. Fish and Wildlife Service appear to be present on the lot, nor are there unique or valuable wildlife habitats. No existing or proposed federally designated critical habitat is present on the Property.

**It is noteworthy** that generally the existing allowed non-conforming agricultural uses of the property described herein already allow agriculture on a substantial area of the Property. The Applicant intends to be a good steward of the Property and use reasonable stewardship of the Property and its allowed uses to ensure its natural 'open scenic' spaces are reasonably maintained. The proposed single family residence on the Project site in support of the agricultural uses of the Property is in keeping with the shift to diversified agriculture in the region as characterized by larger numbers of self-employed and smaller scale independent businesses. The Applicant selected the site for the applied for residence in a highly screened area away from existing views from the two adjacent residences *ref. exhibit 12* in order to preserve the existing scenic views yet still allowing a residence thereon. As such the Project will have minimal effect on the '*existing allowed conditions*' of the site and will generally be the same as the existing surrounding agricultural land uses.

7. **If applicable**, describe how subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.

No subdivision of land is being applied for.

8. **Describe how** the proposed land use will not be materially detrimental to the public health, safety and welfare.

The proposed project is an allowed use according to HAR 13-5. Also a similar project was evaluated in 2008 (the McCully(s) residence. The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA.

The Project will not be materially detrimental to the public health, safety and welfare as all phases of design and construction will comply with all appropriate governmental requirements with regard to environmental and public health concerns. Subsequent portions of the 2008 McCully(s) FONSI and Environmental Assessment identify all potential impacts and discuss appropriate mitigative measures to ensure that no significant detrimental effects on public health, safety, or welfare result from the construction of the proposed Project.

## CULTURAL IMPACTS

**Articles IX and XII of the State Constitution, other state laws, and the courts of the State require government agencies to promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups**

Please **provide the identity and scope of cultural, historical and natural resources** in which traditional and customary native Hawaiian rights are exercised in the area.

The proposed project is an allowed use according to HAR 13-5. Also a similar project was evaluated in 2008 (the McCully(s) residence. The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA. No traditional and customary native Hawaiian rights were found to be exercised in the area.

An Archaeological Inventory Survey and Limited Cultural Assessment of the Project Site was conducted by Rechtman Consulting, LLC, in July of 2004. The Property, including the two adjacent contiguous lots 029 and 013 to the South of the planned dwelling were systematically and intensively examined and one historic site, SIHP Site 5—10-26-2412 (“Site 2412”), was discovered which included two historic-period railroad features which were identified as a possible railroad grade section and a railroad trestle abutment.

One feature (Feature 1) is located crossing all 3 lots and the other feature (Feature 2) is located on lot 060 which is where the planned single family residence is intended to be constructed. This survey produced no evidence of traditional Hawaiian remains or evidence that the property was currently being used for the exercise of traditional and customary native Hawaiian religious or cultural practices. The DLNR’s State History Preservation Division (“SHPD”) accepted and agreed with the Archaeological Inventory Survey’s recommendation that no further work was necessary at the site.

The Property was historically known as the Hilo-pali-Ku area, which encompasses the sheer cliffs stretching along the Hamakua Coast from the Wailuku River to Waipio and beyond, once supported a large pre-contact Hawaiian population that subsisted on crops such as taro, sweet potato, banana and coconut. Other agricultural resources such as ‘awa, bamboo and sugarcane were also cultivated on the kula lands that stretched from South Hilo to Hamakua. In the second half of the nineteenth century, the transportation difficulties that had delayed the large-scale commercial exploitation of the kula lands were overcome and sugarcane plantations replaced the subsistence agriculture and grazing as the dominant land use.

In order to identify cultural resources and potential traditional cultural practices associated with the Project and this portion of the Wailea ahupua’a, Reichman Consulting, LLC, ref *exhibit 6 appendix F*, contacted Ululani Sherlock of the Office of Hawaiian Affairs (“OHA”) and Kapa Maly of Kumu Pono Associates in June of 2004. Neither of them had any specific information relative to the Property. In addition, Lucille Chung and Walter Victor of the Laupahoehoe Hawaiaian Civic Club were contacted, who then referred the consultant to Janck and Waichi Ouye, Yukio Takeya and Lorraine Mendoza.

The interviewees recalled that the railway used to run across the Property until the Kolekole Bridge was destroyed in the 1946 tsunami. None of the organizations or individuals

contacted had any information relative to the existence of traditional cultural properties in the immediate vicinity of the Property; nor did they provide any information indicating past or current use of the area for traditional and customary practices. It is unlikely that there are any traditional or customary practices occurring on the Property as the lands were utilized for agricultural crop production and associated transportation for over 100 years. The Project is therefore anticipated to have ‘no effect’ on significant historic sites or traditional and customary cultural and/or religious native Hawaiian practices.

Finally the Applicant interviewed the field manager of the agricultural farming business which occupied the Property up to 1992. The field manager stated that this particular Property and more generally all of the area of the 7 lot subdivision was maintained as a ‘*seed farm*’ for their agricultural business for over 40 years and all public access from all directions was strictly prohibited in order to not contaminate the seed production on the Property.

**Identify** the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action.

No traditional and customary native Hawaiian rights were found to be exercised in the area. The Project is not anticipated to have any effect on any significant historic or pre-historic archaeological resources. As discussed above, SHPD concurred with the Archaeological Inventory Survey’s recommendation of no further work relating to the two historic-period railroad features of Site 24212. The Project is not anticipated to have any effect on cultural resources, including traditional and customary native Hawaiian rights. No Hawaiian cultural practices are known to take place on site and there are no trails that cross the Property. Also, there is no public access to the shoreline from the Property due to the high sea pali that forms the makai boundary. Therefore, traditional and customary native Hawaiian rights will not be affected or impaired by the proposed action.

Finally the Applicant interviewed the field manager of the agricultural farming business which occupied the Property up to 1992. The field manager stated that this particular Property was maintained as a ‘*seed farm*’ for their agricultural business for over 40 years and all public access from all directions was strictly prohibited in order to not contaminate the seed production on the Property.

**What feasible action**, if any, could be taken by the BLNR in regards to your application to reasonably protect native Hawaiian rights?

As discussed above, there are no known cultural resources on the property and native Hawaiian rights are not expected to be impacted in any way. Individuals contacted upon suggestion by the local branch of OHA could not provide any information regarding cultural resources practices on this site. In addition, there are no known trails for shoreline access. Therefore, no action by the BLNR is necessary to reasonably protect native Hawaiian rights.

Finally the Applicant interviewed the field manager of the agricultural farming business which occupied the Property up to 1992. The field manager stated that this particular Property was maintained as a ‘*seed farm*’ for their agricultural business for over 40 years and all public access from all directions was strictly prohibited in order to not contaminate the seed production on the Property.

As such the Applicant cannot identify any steps that could be taken by the BLNR in regards to this Application to reasonably protect native Hawaiian rights.

## **OTHER IMPACTS**

**Does the proposed land use have an effect (positive/negative) on public access to and along the shoreline or along any public trail?**

The proposed land use will not have any effect on public access to and along the shoreline or along any public trail as no public access exists on the site and there is no beach area below the cliff. Also a similar project was evaluated in 2008 (the McCully(s) residence). The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA. The project is located within a 'private gated community'. The shoreline in the area does not have any beach. There is only a steep cliff leading down from the property into the ocean. Therefore the Project will have no effect on public access to and along the shoreline.

**Does the proposed use have an effect (positive/negative) on beach processes?**

The proposed project is not expected to have adverse impacts on beach processes. The Property is bounded by the edge of a high sea pali (ranging between 100 and 140 feet above mean sea level) on the makai side. There is no beach ocean-side of the Property. A similar project was evaluated in 2008 (the McCully(s) residence). The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact on beach processes. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA.

**Will the proposed use cause increased runoff or sedimentation?**

A similar project was evaluated in 2008 (the McCully(s) residence). The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA.

The proposed 'single family residence' will be located at a maximum distance from the ocean on the subject lot (over 125 ft. from the pali). It will be located beginning at 26 ft. from the boundary with adjacent lot to the West. A county D.O.H. approved septic system will be applied for prior to construction. The septic system will be located down-slope to the South of the applied for 'single family residence' and will also be located 226 ft. from the pali located to the East.

The 'single family residence' applied for is located much further from the bluff/pali than the former 2008 McCully(s) planned 'single family residence' (125 ft. rather than 70 ft.) which was declared SMA exempt by the county.

The proposed use is not expected to cause increased runoff or sedimentation. All phases of the Project, including design and construction, will comply with all appropriate governmental requirements with regard to environmental and public health concerns. The County presently mandates that all runoff be contained on-site. An individual wastewater system approved by the DOH will be installed to serve the single-family dwelling. As such, there is limited potential for discharge into near-shore waters.

The proposed Project is not expected to have any direct impact on Puahanui Stream or marine waters in-as-much as any additional runoff generated will be disposed of on site and to the South and East of the planned single family residence in compliance with State and County regulations. No development is planned in the vicinity of Puahanui Stream.

During the construction period

- Sediment wattles and/or compost-filled biosocks will be installed to capture sediment along the perimeter of the site work.
- Impermeable lined sediment basins will be utilized to capture concrete wash down water from concrete trucks
- Construction activities with the potential to produce polluted runoff will not be allowed during unusually heavy rains or storm conditions that might generate storm water runoff.

**Will the** proposed use cause any visual impact on any individual or community?

A similar project was evaluated in 2008 (the McCully(s) residence. The EA and FONSI and resulting CDUP HA 3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA. The adjacent 2 residences are screened by trees and distance from view of the proposed '*single family residence*' site. *Ref. exhibits 12 and 18.* The 2 residences also have view plane easements on the 3 lots that protect, *ref. exhibit 16 survey map*, the areas of the existing views that have been deemed important to the lot owners in the 7 lot subdivision. The proposed '*single family residence*' is not in any such protected view plane. Otherwise no other community can see the proposed '*single family residence*' site. The area is heavily screened by trees *ref. exhibits 12 & 18.*

**Please describe** any sustainable design elements that will be incorporated into the proposed land use (*such as the use of efficient ventilation and cooling systems; renewable energy generation; sustainable building materials; permeable paving materials; efficient energy and water systems; efficient waste management systems; et al.*).

1. The proposed '*single family residence*' will be naturally ventilated
2. The proposed '*single family residence*' will utilize solar electric power
3. The proposed '*single family residence*' will utilize solar heating of water and solar heating for use in drying of clothes and the like
4. The building materials will be of neutral low impact colors
5. The paving materials will be crushed rock
6. The septic system will be a gravity flow design through the tank and leeching field.
7. The water system will be comparable to similar residential use
8. Extensive use of covered outdoor lanai's (typical Hawaiian construction) are utilized as



an outdoor living space incorporated into the single family residence reducing the need for artificial climate control.

If the Project involves landscaping, please describe how the landscaping is appropriate to Conservation District (*e.g. use of indigenous and endemic species; xeriscaping in dry areas; minimizing ground disturbance; maintenance or restoration of the canopy; removal of invasive species; habitat preservation and restoration; et al.*).

The area for the planned 'single family residence' is presently mowed lawn comprised of native and non-native grasses. The proposed 'single family residence' construction will result in the disturbance of soil within 20 ft. of its perimeter and will require re-planting. The disturbed and fill areas will be replanted to grass and maintained as lawn and agricultural plantings. The areas use was most recently (during the last 20 years) a (1) mowed lawn and (2) a field road. There exist 3 albesia (a type of eucalyptus tree) adjacent to the building site. As these trees have a reputation of weak wood and failure it is planned that they **may** be removed and replaced with palm trees.

**Please describe the Best Management Practices** that will be used during construction and implementation of the proposed land use.

The proposed Project will have very little impact on The Project area. Exhibit 1 is a 2014 updated biological assessment update to the original biological assessment in Exhibit 6 conducted on behalf of the McCully(s). Therein it is recommended.....

*We offer the following recommendations in order to avoid impacts to endangered but Widespread native birds and the Hawaiian hoary bat:*

- *To minimize impacts to the endangered Hawaiian hoary bat, we recommend that trees taller than 15 feet should not be removed or trimmed during the bat birthing and pup rearing season (June 1 through September 15), to the extent practical.*
- *To minimize impacts to Hawaiian Hawks, we recommend avoiding earthmoving within 100 meters of tall trees or tree cutting during the breeding season for Hawaiian Hawks (March through the end of September). If this time period cannot be avoided, arrange for a hawk nest search to be conducted by a UH Hilo biologist or other qualified biologist. If hawk nests are present in or near the project site, all land clearing activity should cease until the expiration of the breeding season.*

Other than stated the applicant has no specific plans for tree removal. None-the-less the Applicant will avoid impacts to Hawaiian hoary bats, there will be no clearing of woody vegetation taller than 15 feet during the bat pupping season, which runs from June 1 through September 15 each year.

The construction period is anticipated to extend for a period greater than a year. The Project area where specific site work is anticipated is maintained as lawn. However the only land clearing (cut and fill activities) will be done during the first year of the Project. Therefore a hawk nest search will be conducted by a UH Hilo biologist or other qualified biologist in March of the year during which cut and fill of soil is conducted (as recommended by the biologist in Exhibit 1) for the

project applied for. As recommended if hawk nests are present in or near the project site, all land clearing activity will cease until the expiration of the breeding season.

Construction activities will only be conducted between 8:00 a.m. and 6:00 p.m. Monday to Saturday. Noise and dust will be managed such as not to be inordinate.

All construction activity will take precautions to prevent fire ignition during construction of the improvements. No construction vehicles will be allowed to park in areas vegetated with ignitable material, such as dry grass or shrubs; instead, the Applicant will identify areas for parking.

In order to minimize the potential for the unintentional introduction/spread of invasive plants and animals (most crucially but not limited to fire ants, Argentine ants, black widow spiders, to/from the Project, the Applicant shall:

1. Ensure that all heavy equipment and construction equipment/material delivery vehicles transported to/from the Project are clean and free of soil, organic material and pests prior to entering or leaving the Project area. Equipment/vehicles failing inspection shall be properly cleaned/treated and re-inspected until cleared for transport.
2. All crushed rock, fill, soil and plant materials transported to the Project site for use on this project shall be crushed/prepared as soon as practicable prior to transport so as to minimize the potential for infestation by pests. Material stockpiled longer than 10 consecutive calendar days prior to transport shall not be used on this project.
3. All construction debris, waste and spoils intended to be disposed of off-site shall be inspected for the presence of pests (specifically Argentine ants) prior to removal from the site. Waste determined to be infested by unwanted pests shall be treated and cleared of such pests before removal from the Project site.

Disturbed soil areas that are not utilized for the MDA areas will be replanted to native and endemic grasses and continue to be maintained as lawn areas as they are presently.

When/where/if applicable the Applicant shall insure that all earthwork and grading will be in conformance with:

- (a) "Storm Drainage Standards," County of Hawai'i, October, 1970, and as revised.
- (b) Applicable standards and regulations of Chapter 27, "Flood Control," of the Hawai'i County Code.
- (d) Applicable standards and regulations of Chapter 10, "Erosion and Sedimentation Control," of the Hawai'i County Code.
- (e) Conditions of an NPDES permit, if required, and any additional best management practices required by the Board of Land and Natural Resources.

**Please describe the measures that** will be taken to mitigate the proposed land use's environmental and cultural impacts. The proposed project will not significantly impact the environment or culture of the area. The proposed project is an allowed use according to HAR 13-5. Also a similar project was evaluated in 2008 (the McCully(s) residence). The EA and FONSI and resulting CDUP HA

3445 referenced herein found No Significant Impact. The Project applied for herein is sufficiently similar that it will be reasonable to find that no significant impact also applies to this CDUA.

The result of the project will be that the Property will have a residence on it that will be occupied by the owner of the property. This will enable dynamic daily on-going stewardship/ management of the Property eg. daily inspections of the property, property maintenance, pest control, fire hazard management, and management of the on-going agricultural activities on the property which will mitigate the proposed land use's environmental and cultural impacts.

## **DETERMINATION, FINDINGS AND REASONS FOR SUPPORTING DETERMINATION**

### **Significance Criteria**

According to the Department of Health Rules (11-200-12, HAR), an applicant or agency must determine whether an action may have a significant impact on the environment, including all phases of the project, its expected consequences both primary and secondary, its cumulative impact with other projects, and its short and long-term effects. The Rules establish "Significance Criteria" to be used as a basis for identifying whether a proposed action will have a **significant environmental impact on the environment**.

#### **1. Involves an irrevocable commitment to loss or destruction of any *natural or cultural resources*.**

Neither *natural* or *cultural resources* appear to be defined in the definition section of HAR 11-200. Applicant proposes to construct a single-family residence within the Conservation District. The subject property was previously utilized for sugar cane production (agricultural use) for approximately 100 years. The specific area on the property proposed for the construction of the single family residence was formerly cultivated for this agricultural use. Also the proposed access road was formerly first a railroad road bed and subsequent field road. It is unlikely that the potential disturbed soil areas resulting from the proposed land use contain any particular existing natural or cultural resources that will be destroyed or irrevocably lost by the proposed dwelling and road construction.

However, having said that the project areas are presently mowed grasses, 'a planted crop of introduced species'. While *Natural Resources* in HAR 13-5 is defined as including "*plants*" and grass is a plant there will undoubtedly be some destruction of an existing '*natural resource*' as the grass in the developed area will now be removed and supplanted by a residence. Again HAR 11-200 does not define the term 'natural resource' so the destruction of a modest amount of grass will not have a significant effect on the environment of the project site as contemplated in HAR 11-200.

Grass is technically a field crop, in the case of the subject property, which is an allowed 'non conforming agricultural use' of the property. Since cultivation of the area is also a continuing allowed non-conforming use of the property it is reasonable to find that the residence will not result in the destruction of a natural resource (grass) that is not already allowed to be destructed in an agricultural use of the property through the allowed cultivation of the land.

Finally similar projects are routinely supported by FONSI(s) . As 'natural resources' are not defined in HAR 11-200 the destruction of the grass is proposed to be minimal in scope and thus this land use is proposed to not **have a significant environmental impact**. Similarly 'Cultural Resources' are not defined in HAR 11-200 nor does it appear to be defined in HAR 13-5. A study

was conducted by a professional respecting ‘cultural resources’ on the property and the report is contained in the McCully FONSI which is included in this Final EA. In that study no cultural resources were found on the property and thus the project will not impact the cultural resources on the project site. In summary, therefore, the project does not involve an irrevocable commitment to the loss or destruction of any natural or cultural resources that are contemplated by HAR 11-200.

**2. Curtails the range of beneficial uses of the environment.**

Applicant’s proposed action will not curtail the range of beneficial uses of the environment. As the Property is presently within the Conservation District, the allowable uses are generally restricted and regulated by DLNR. The approval of the Project will not curtail the range of beneficial uses of the environment, rather, the approval of the Project will allow the Applicant to commence an allowable use within the Conservation District, R Subzone. The proposed project is on private land in a gated community with restricted access. There is no access from the ocean side which is the only public side of the property as there exists a high, near vertical cliff above the ocean below, on the Eastern side of the property. There exists no public views of the property from the other sides. Therefore there exists no significant range of beneficial uses of the environment intended in HAR 11-200 that are curtailed but rather benefits enjoyed by the owner of this property contemplated as a result of this project.

**3. Conflicts with the State's long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS; and any revisions thereof and amendments thereto, court decisions, or executive orders.**

The proposed action is consistent with the Environmental Policies and Guidelines established in Chapter 344, HRS, and the National Environmental Policy Act. Therefore the proposed project is not in conflict with such policies or goals.

**4. Substantially affects the economic or social welfare of the community or state.**

The proposed action will have little impact on the economic and social welfare of the community. Other properties in the immediate vicinity are utilized for both residential and agricultural purposes. The construction of a single-family residence on TMK No.: (3) 2-9-003: 060 and the repair of the access road crossing lot 029 will not have any significant effect on the socio-economic characteristics of the area.

**5. Substantially affects public health.**

The proposed action will not have any substantial impact on public health. Potential noise, air, water and drainage impacts associated with the construction of the proposed residence and the subsequent single-family residential use will be minimal and will be addressed by complying with Federal, State and County requirements.

**6. Involves substantial secondary impacts, such as population changes or effects on public facilities.**

The proposed action will not involve any increase in the number of existing lots and will not generate any substantial secondary impacts. The proposed action is consistent with the socio-economic transition that is occurring in the region and therefore substantial secondary impacts, contemplated in HAR 11-200, will not be impacted by the planned project.

**7. Involves a substantial degradation of environmental quality.**

The proposed dwelling and residential use will not result in a substantial degradation of environmental quality. Any significant environmental resources that might have previously existed on the Property were likely destroyed during the cultivation of sugar cane that spanned nearly one hundred years. The proposed residential use will be generally consistent with the character of the adjoining parcels as well as the neighboring Hakalau and Honomu communities. The Project will not add any new lots or increase the density of the Property. Therefore the planned project will not involve a substantial degradation of environmental quality.

**8. Is individually limited but cumulatively has considerable effect on the environment, or involves a commitment for larger actions.**

The proposed action will not involve any increase in the number of existing lots and will not generate any substantial secondary impacts. No additional land uses that are regulated/restricted by HAR 13-5 are contemplated by the applicant thus there is unlikely to be a cumulative effect of additional regulated land uses on the environment. The residence will allow the Applicant to better manage his existing agricultural use of his property. The applicant has already planted substantial areas of the 3 TMK parcels to agricultural crops. This agricultural use of the lots is an allowed use (an allowed non-conforming land use) according to HAR 13-5. The property was utilized for agriculture at the time that it was taken into the Conservation District. As such, the approval of the proposed action does not involve a commitment for larger actions and will not induce other regulated actions having a cumulative effect on the environment. The applicant will be better able to manage his existing agricultural use of his property by having a residence on his property. The agricultural use is already a formerly allowed, and now an **‘existing, larger action’** and the addition of a residence now does not represent a **new commitment** for larger actions beyond the planned project nor does it represent a commitment for larger actions.

**9. Substantially affects a rare, threatened or endangered species or its habitat.**

The project site has been extensively disturbed by earthmoving equipment due to the former agricultural and railway/roadway use and does not have any candidate, proposed, or listed threatened or endangered species on the Property. As such, the proposed action will not have any substantial adverse effect on any rare, threatened or endangered species or its habitat.

**10. Detrimentially affects air or water quality or ambient noise levels.**

Short term impacts will result from the proposed residential use including increased noise levels, dust and exhaust from machinery involved in the construction phase. Given the temporary or intermittent nature of these activities, the potential impacts from any construction should be minimal. Potential water quality impacts will be mitigated by strict adherence to State and County rules and regulations, which mandate that all runoff be disposed of on site. Thus the planned project will not detrimentally affect air or water quality or ambient noise levels contemplated in HAR 11-200.

**11. Affects or is likely to suffer damage by being located in an environmentally sensitive area, such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, freshwater, or coastal waters.**

Despite a past assertion by a representative of the OCCL in correspondence to the applicant that **“all conservation lands are sensitive by their very nature”** the Applicant’s subject property is not particularly identified on government maps and the like as being in an environmentally sensitive

area such as a flood plain, tsunami zone, beach, geologically hazardous land, estuary, freshwater. However the property is adjacent to coastal waters. The applicant notes that similar projects in apparent more “sensitive” areas within the Conservation District are routinely approved for the use as single family residences.

Shoreline areas in Hawai`i, particularly those on the northeast side exposed to the prevailing winds and heaviest wave attack, are subject to shoreline retreat. The rate of retreat in Hawai`i has been estimated at an average rate of a couple of inches a year. (Macdonald and Abbott, 1977.) Some locations may experience sudden and rapid retreat due to landslides which may be associated with sea cliff collapse. A 125-foot structural setback from the bluff/pali has been implemented in order to minimize the effects of potential shoreline retreat. In addition, a geotechnical study was conducted which found that the existing slope is grossly stable and can be expected to remain so under reasonably foreseeable conditions. Therefore the project will not result in a negative impact on a particularly sensitive environment as contemplated in HAR 11-200.

**12. Substantially affects scenic vistas and view planes identified in county or state plans or studies.**

The open space and scenic resources in the vicinity of the House Site will not be adversely affected by the proposed action. No County or State plans or studies have been identified by the applicant which identifies the project area as a scenic vista or view plane. The House Site is not visible from the Hawai`i Belt Road and the Project will have no impact on the natural beauty of Kolekole Gulch and Hakalau Bay/Gulch, which are identified as examples of natural beauty in the Hawai`i County General Plan. Therefore the planned project will not substantially affect scenic vistas and view planes identified in county or state plans or studies.

**13. Requires substantial energy consumption.**

The proposed residential use will not require substantial energy consumption. Applicant intends to utilize solar energy and LP Gas in support of the single-family dwelling. The use of large shaded lanai areas which will limit solar heat gain into the residence and the use of roof top ventilation of heat trapped inside as well as large sliding glass doors facing Eastward into the trade winds will minimize energy consumption. The residence is intended to be ‘off the grid’ and not rely on the supply of electrical energy from a public source. Therefore the residence on the property will not require substantial energy consumption as contemplated in HAR 11-200.

***Findings***

*Based on the foregoing information presented, it is determined that the construction of a single-family residence in the Conservation District on the subject property will not have a significant effect. As such, a determination of a Finding of No Significant Impact for the proposed action is appropriate.*

***Reasons Supporting Determination***

*The nature and scale of the proposed action is such that no significant environmental effects are anticipated. Potential impacts, if any, can be mitigated through compliance with all governmental requirements including those of the State Department of Health and the County Dept. of public works*

## **List of exhibits**

Exhibit 1 - 2014 Biology report, 13 pages

Exhibit 2 - overlay Church res. vs. McCully res, 1 page

Exhibit 3 - Sam Lemmo testimony McCully LUC hearing (shoreline set back), 3 pages

Exhibit 4 - Dr. Kwong letter – shoreline set back, 1 page

Exhibit 5 - cut and fill for driveway and house site, 1 page

Exhibit 6 - 2008-02-08-HA-FEA-McCullyEA is not supplied herein as it is a large document of over 100 pages. It can be found at....

[http://oeqc.doh.hawaii.gov/Shared%20Documents/EA\\_and\\_EIS\\_Online\\_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully\(s\)-Residence.pdf](http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully(s)-Residence.pdf)

Exhibit 7 - Brewer F31 field map, 1 page

Exhibit 8 - Brewer field map, 1 page

Exhibit 9 - John Cross letter Sept. 16, 2015, 1 page

Exhibit 12 - aerial photo of subdivision and notes, 1 page

Exhibit 14 – Floor plan of residence and floor plan (MDA) calculation

Exhibit 15 (a) & (b) - elevation views of residence

Exhibit 16 – Topographical view of lots 013, 029, 060 showing setbacks from pali of residence, fire place and septic field. Also showing new (2015) property lines and view plane easements on the lots. Also showing set back for residence from lot 048 to the West of lot 060

Exhibit 17 – Topographical view of lots 013, 029, 060 showing residence, driveway, outdoor cooking area, septic tank and field, structure accessory to agricultural use on lot 029 (750 sq. ft. washroom, storage and processing bldg.)

Exhibit 18 – house view to West lot 048, 1 page

Exhibit 20 - Response to Mr. Church RE CDUA HA-3764, 3 pages

Exhibit 21 – Undated (rec'd March 31, 2016) DLNR letter of acceptance for processing CDUA 3767 for 'Church single family residence', 3 pages

Exhibit 22 – DLNR/OCCL letter dated May 31 'end of comment period for Draft EA' including copies of end of comment periods letters.....18 pages

- April 21 letter – DLNR Land Division letter, agricultural use of Private Lands
- May 20 OEQC comment letter to Draft EA
- April 26 letter Department of Health comment letter
- April 27 County of Hawaii letter
- May 2 Citizen letter Robin Rudolph
- May 31 DLNR/OCCL end of comment period letter
- Undated letter Department of land and Natural Resources Engineering Division To: Land Division, Russell Y. Tsuji

Exhibit 23 Applicant's response to DLNR/OCCL letter of acceptance (March 31) and end of comment period letter dated May 31, 4 pages

Exhibit 24 Applicant's letter to DLNR Land Division dated April 13, 4 pages

Exhibit 25 Applicant's letter responding to May 20 OEQC comment letter, 9 pages

Exhibit 26 Applicant's letter responding to April 26 Department of Health comment letter, 3 pages

Exhibit 27 Applicant's letter responding to April 27 County letter, 1 page

Exhibit 28 Applicant's letter responding to May 2 citizen, Robin Rudolph, letter, 4 pages

Exhibit 29 Applicant's response to DLNR Engineering Division, 1 page

Exhibit 30 Road, 1 page



## **EXHIBIT 1**

***General Botanical Survey and Vertebrate Fauna Assessment,  
TMKs (3<sup>rd</sup>.) 2-9-003:013, 029 & 060  
Wailea, South Hilo District, Island of Hawai'i***

By Ron Terry, Ph.D. and Patrick J. Hart, Ph.D.  
Geometrician Associates, LLC

November 2014

***General Botanical Survey and Vertebrate Fauna Assessment,  
TMKs (3<sup>rd</sup>.) 2-9-003:013, 029 & 060  
Wailea, South Hilo District, Island of Hawai‘i***

By Ron Terry, Ph.D. and Patrick J. Hart, Ph.D.  
Geometrician Associates, LLC  
November 2014

*Introduction*

This biological survey was prepared for Ken Church and Joan Hildal, landowners of a roughly 4.6-acre property that includes TMKs (3<sup>rd</sup>.) 2-9-003:013, 029 & 060 (Figure 1) (“the property”). The survey was prepared accessory to an application for a Conservation District Use Permit for consolidation/resubdivision and subsequent development of up to three single-family homes on the property. As shown in Figures 2 and 3, which are aerial and ground photos of the property, most of the property is covered with lawn and crop plantings, including bamboo, coconuts and squash, associated with long-standing agricultural use. It is our understanding that development will be limited to these already heavily disturbed areas and their fringes. All land not maintained in this manner is located on or adjacent to a sea cliff that is 100 to 140 feet in height or in the Puahanui Stream gulch, the center of which is the north boundary of the property. These steep areas are forested with trees, shrubs and understory plants. The sea cliff itself and the seashore below the cliffs are State property makai of the land owned by Mr. Church and Ms. Hildal.

The objectives of the botanical survey component of this survey were to 1) describe the vegetation; 2) list all species encountered; and 3) determine the likelihood of the presence of rare, threatened or endangered plant species, and to identify the locations of any individuals found. The area was surveyed by Ron Terry and Patrick Hart in November 2014. Plant species were identified in the field and, as necessary, collected and keyed out in the laboratory. Special attention was given to the possible presence of any federally (USFWS 2014) listed threatened or endangered plant species, although the habitat did not indicate a strong potential for their presence.

The survey also included a limited faunal survey restricted to a list of birds and introduced mammals, reptiles, or amphibians observed during the botanical survey. Also considered in this report is the general value of the habitat for native birds and the Hawaiian hoary bat. Not included in the survey were invertebrates or aquatic species or habitat.

*Vegetation Type and Influences*

The geology of the property consists of Hamakua Volcanics from Mauna Kea that are 70,000 to 250,000 years in age and covered with weathered Pahala Ash (Wolfe and Morris 1996). The natural slope perpendicular to the sea on the interfluvium on the property between stream gulches is on the order of 5 to 7 percent. Steep slopes over 100 percent (i.e., 45 degrees) are present on Puahanui Stream and on the sea cliffs makai of the

property. The area receives an average annual rainfall of about 140 inches (Giambelluca et al 2014)). The natural vegetation of this part of the Hamakua Coast was most likely lowland rain forest dominated by ‘ohi‘a (*Metrosideros polymorpha*), uluhe (*Dicranopteris linearis*) and hala (*Pandanus tectorius*) (Gagne and Cuddihy 1990). However, the general landscape of the Hamakua Coast has been radically altered by centuries of agriculture and settlement, and little to no native vegetation remains in most locations. Gulches and sea cliffs continue to have remnant spots with at least some native elements, although even these are generally dominated by non-natives.

This property is currently in agriculture and open space but has a history of sugar cane cultivation (Tsukazaki Yeh & Moore 2008). After the cessation of sugar cane cultivation in (presumably) the mid-1980s, the area lay fallow until 1992, after which it was maintained in grass with scattered landscape plantings of crop plants such as bamboo and squash. A 2004 survey of a portion of the property by botanist Evangeline Funk conducted as part of a previous application for a Conservation District Use Permit (Tsukazaki Yeh & Moore 2008) found a number of weedy species, only two native species (hala and popolo – *Solanum americanum*) and no threatened or endangered plant species.

#### *Results: Vegetation*

The vegetation consists of basically three types, as shown in Figures 2a-c:

1. Open, mown grass with scattered maintained plantings of landscape and agricultural species, including non-native grasses, sedges, herbs, vines, shrubs and trees;
2. Gulch vegetation with some hala but primarily non-native trees and shrubs with an understory of herbs, heavily covered by lianas; and
3. Sea cliff fringe vegetation of various non-native trees along with the native hala, with a fairly spare understory of non-native shrubs and herbs with the occasional native vine nanea (*Vigna marina*) and native shrub naupaka (*Scaevola sericea*).

In some areas, the hala is dense enough that it represents native vegetation that is similar, if not as rich in native species, to what might have been here prior to human settlement and alteration. We did not observe any ‘ohi‘a or other native trees aside from hala that might be expected to be present if the vegetation were pristine.

#### *Flora*

All plant species found on the property during the survey are listed in Table 1. Of the 94+ species detected, four were indigenous (native to the Hawaiian Islands and elsewhere) and none were endemic (found only in the Hawaiian Islands). No rare or unusual plant species were present. Many of the species detected were specifically planted rather than naturally occurring.

### *Threatened and Endangered Plant Species and Critical Habitat*

No threatened or endangered plant species as listed by the U.S. Fish and Wildlife Service appear to be present on the property, nor are there uniquely valuable habitats. No existing or proposed federally designated critical habitat is present on the property.

### *Botanical Impacts and Recommended Mitigation Measures*

The history of continuous disturbance coupled with the lowland context has resulted in a flora and vegetation on the part of the property planned for development that has little value in terms of conserving native vegetation or threatened or endangered plant species. We understand that the hala patches near the sea cliff and within the gulch will not be disturbed and that the semi-native vegetation here will remain intact. As such, no adverse botanical impacts are expected as a result of the proposed development and continuing uses.

### *Fauna*

A total of ten bird species were observed during the survey, all of them common non-natives (see Table 2). We would expect the migratory resident Golden Plover (*Pluvialis fulva*) to be at least occasionally present, as it frequently rests and forages on mowed lawns throughout the State of Hawai‘i during its residence here from August to April.

The area is also undoubtedly utilized by the endemic Hawaiian Hawk (*Buteo solitarius*). The endangered Hawaiian Hawk is widespread, hunting throughout forested, agricultural and even residential areas of the island of Hawai‘i. It nests in large trees and can be vulnerable during the summer nesting season. Aside from the hawk, it is unlikely that native forest birds would make much use of the property because of its relatively low elevation and lack of native plants.

Additionally, it is possible that small numbers of the endangered endemic Hawaiian Petrel (*Pterodroma sandwichensis*) and the threatened Newell’s Shearwater (*Puffinus auricularis newelli*) over-fly the property between the months of May and November. The Hawaiian Petrel was formerly common on the Island of Hawai‘i. This pelagic seabird reportedly nested in large numbers on the slopes of Mauna Loa and in the saddle area between Mauna Loa and Mauna Kea, as well as at the mid-to-high elevations of Hualālai. It has within recent historic times been reduced to relict breeding colonies located at high elevations on Mauna Loa and, possibly, Hualālai. Hawaiian Petrels were first listed as an endangered species by the USFWS in 1967 and by the State of Hawai‘i in 1973. Newell’s Shearwaters were also once common on the Island of Hawai‘i. This species breeds on Kaua‘i, Hawai‘i, and Moloka‘i. Newell’s Shearwater populations have dropped precipitously since the 1880s (Banko 1980, Day et al., 2003). This pelagic species nests high in the mountains in burrows excavated under thick vegetation, especially *uluhe* (*Dicranopteris linearis*) fern. Newell’s Shearwater was listed as a threatened species by the USFWS in 1975 and by the State of Hawai‘i in 1973.

The primary cause of mortality in both Hawaiian Petrels and Newell’s Shearwaters in Hawai‘i is thought to be predation by alien mammalian species at the nesting colonies.

Collision with man-made structures is considered another significant cause. Nocturnally flying seabirds, especially fledglings on their way to sea in the summer and fall, can become disoriented by exterior lighting. When disoriented, seabirds often collide with manmade structures, and if they are not killed outright, the dazed or injured birds are easy targets of opportunity for feral mammals. There is no suitable nesting habitat within or close to the property for either species.

Various mammals would be expected on the property, including small Indian mongoose (*Herpestes a. auropunctatus*), mice (*Mus* spp.), rats (*Rattus* spp.), cats (*Felis catus*) and domestic dogs (*Canis f. familiaris*). None of these alien mammals have conservation value and all are deleterious to native flora and fauna. During the survey, only the mongoose was observed.

Although not detected in the survey, which took place in daylight, the only native Hawaiian land mammal, the Hawaiian Hoary Bat (*Lasiurus cinereus semotus*), may also be present in the general area, as it is present in many areas on the island of Hawai'i. They may forage for flying insects the property on a seasonal basis and may also roost in trees and large shrubs.

There are no native terrestrial reptiles or amphibians in Hawai'i. The only reptile observed was an unidentified species of skink (Family: Scincidae). No other reptiles and amphibians were detected during the survey, but we understand that coqui frogs (*Eleutherodactylus coqui*) are also present. It is likely that the bufo toad (*Bufo marinus*) and several species of gecko and anole lizards are also present.

No invertebrate survey was undertaken as part of the survey, but rare native invertebrates tend to be associated with native vegetation and are very unlikely to be present. Although no lava tube openings were observed, if caves are present, native invertebrates including spiders and insects could be present, especially if the roots of native trees extend into the caves.

#### *Impacts and Mitigation Measures for Fauna*

We offer the following recommendations in order to avoid impacts to endangered but widespread native birds and the Hawaiian hoary bat:

- To minimize impacts to the endangered Hawaiian hoary bat, we recommend that trees taller than 15 feet should not be removed or trimmed during the bat birthing and pup rearing season (June 1 through September 15), to the extent practical.
- To minimize impacts to Hawaiian Hawks, we recommend avoiding earthmoving within 100 meters of tall trees or tree cutting during the breeding season for Hawaiian Hawks (March through the end of September). If this time period cannot be avoided, arrange for a hawk nest search to be conducted by a UH Hilo biologist or other qualified biologist. If hawk nests are present in or near the project site, all land clearing activity should cease until the expiration of the breeding season.

- If any of the homes or other activities incorporate outdoor lighting, they may attract endangered Hawaiian Petrels and Newell's Shearwaters, which may become disoriented by the lighting, resulting in birds being downed. To avoid the potential downing of Hawaiian Petrels and Newell's Shearwaters by their interaction with outdoor lighting, we recommend no construction or unshielded equipment maintenance lighting after dark between the months of April and October. All permanent lighting should be shielded in strict conformance with the Hawai'i County Outdoor Lighting Ordinance (Hawai'i County Code Chapter 9, Article 14), which requires shielding of exterior lights so as to lower the ambient glare caused by unshielded lighting.

### *Report Limitations*

No biological survey of a large area can claim to have detected every species present. Some plant species are cryptic in juvenile or even mature stages of their life cycle. Dry conditions can render almost undetectable plants that extended rainfall may later invigorate and make obvious. Thick brush can obscure even large, healthy specimens. Birds utilize different patches of habitat during different times of the day and seasons, and only long-term study can determine the exact species composition. The findings of this survey must therefore be interpreted with proper caution; in particular, there is no warranty as to the absence of any particular species.

*Literature Cited*

- Banko, W. E. 1980. "Population Histories – Species Accounts Seabirds: Newell's Shearwater ('A'o)." Cooperative National Park Resources Studies Unit, University of Hawai'i at Manoa, Department of Botany, Technical Report #5A.
- Day, R. H., B. Cooper, and T. C. Telfer. 2003. *Decline of Townsend's (Newell's) Shearwaters (Puffinus auricularis newelli) on Kauai, Hawaii*. The Auk 120: 669-679.
- Funk, E. "Botanical Survey for the McCully Project Site, Wailea, Hawaii." App. D in Tsukazaki Yeh & Moore 2008. *Final Environmental Assessment & Finding Of No Significant Impact, Conservation District Use Application Wailea, South Hilo District, Island of Hawai'i*. Prep. for Hawaii Department of Land and Natural Resources, Office of Conservation and Coastal Lands.
- Gagne, W., and L. Cuddihy. 1990. "Vegetation," pp. 45-114 in W.L. Wagner, D.R. Herbst, and S.H. Sohmer, eds., *Manual of the Flowering Plants of Hawai'i*. 2 vols. Honolulu: University of Hawai'i Press.
- Giambelluca, T.W., Q. Chen, A.G. Frazier, J.P. Price, Y.-L. Chen, P.-S. Chu, J.K. Eischeid, and D.M. Delparte, 2013: Online Rainfall Atlas of Hawai'i. Bull. Amer. Meteor. Soc. 94, 313-316, doi: 10.1175/BAMS-D-11-00228.1.
- Tsukazaki Yeh & Moore. 2008. *Final Environmental Assessment & Finding Of No Significant Impact, Conservation District Use Application Wailea, South Hilo District, Island of Hawai'i*. Prep. for Hawaii Department of Land and Natural Resources, Office of Conservation and Coastal Lands.
- U.S. Fish and Wildlife Service (USFWS). 2014. *USFWS Threatened and Endangered Species System (TESS)*. Washington: GPO.  
[http://ecos.fws.gov/tess\\_public/StartTESS.do](http://ecos.fws.gov/tess_public/StartTESS.do).
- University of Hawai'i at Hilo, Dept. of Geography. 1998. *Atlas of Hawai'i*. 3rd ed. Honolulu: University of Hawai'i Press.
- Wolfe, E.W., and J. Morris. 1996. *Geologic Map of the Island of Hawai'i*. USGS Misc Investigations Series Map i-2524-A. Washington, D.C.: U.S. Geological Survey.

Figure 1. Property TMK Map

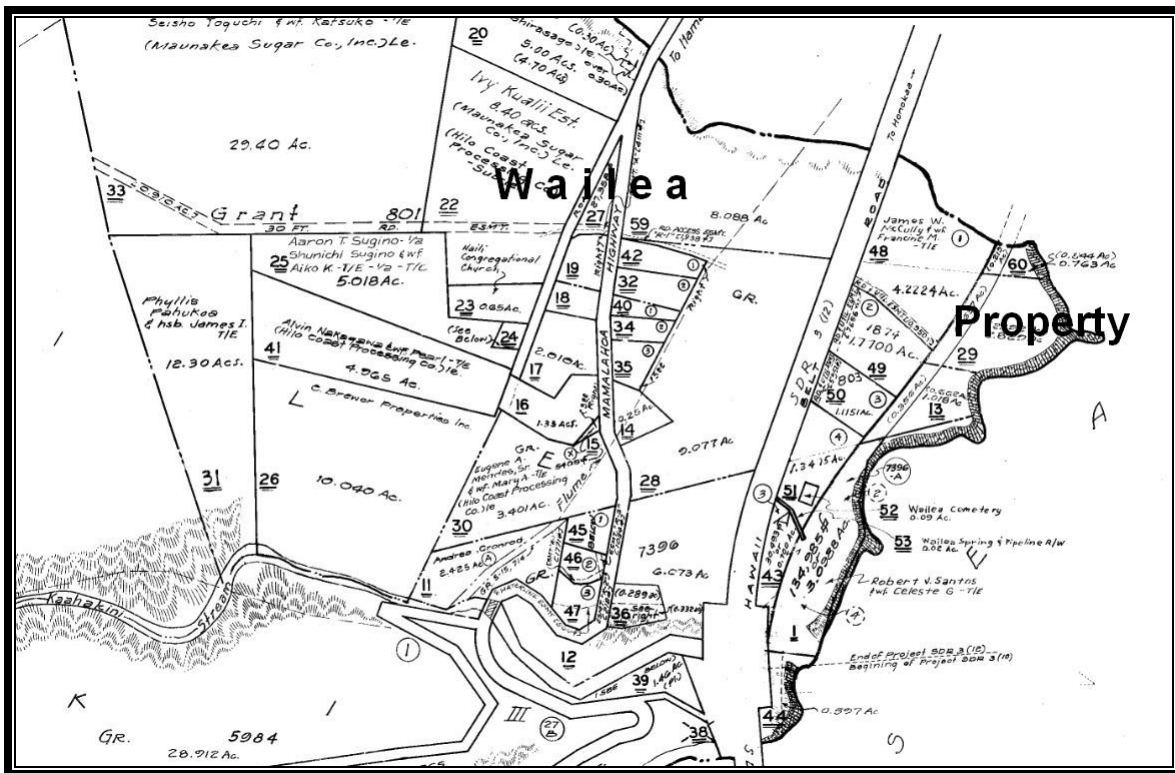
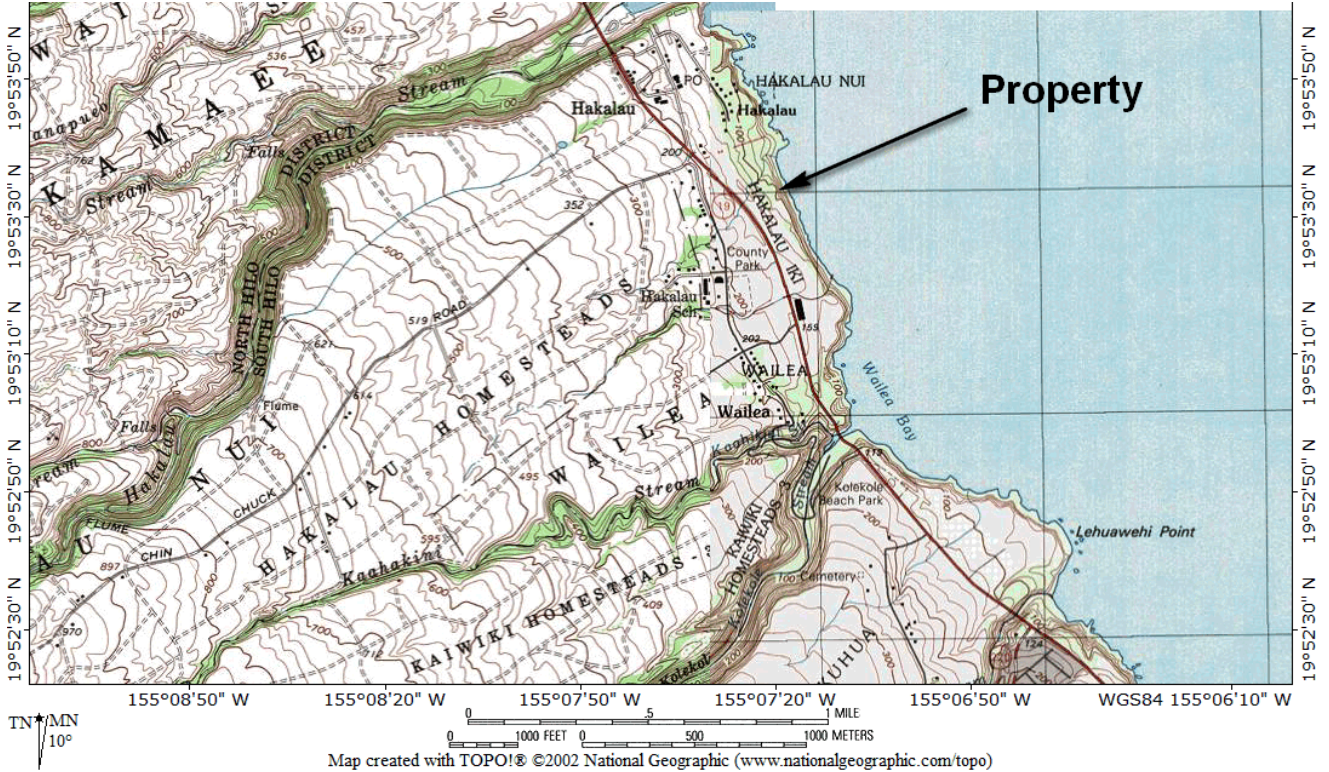
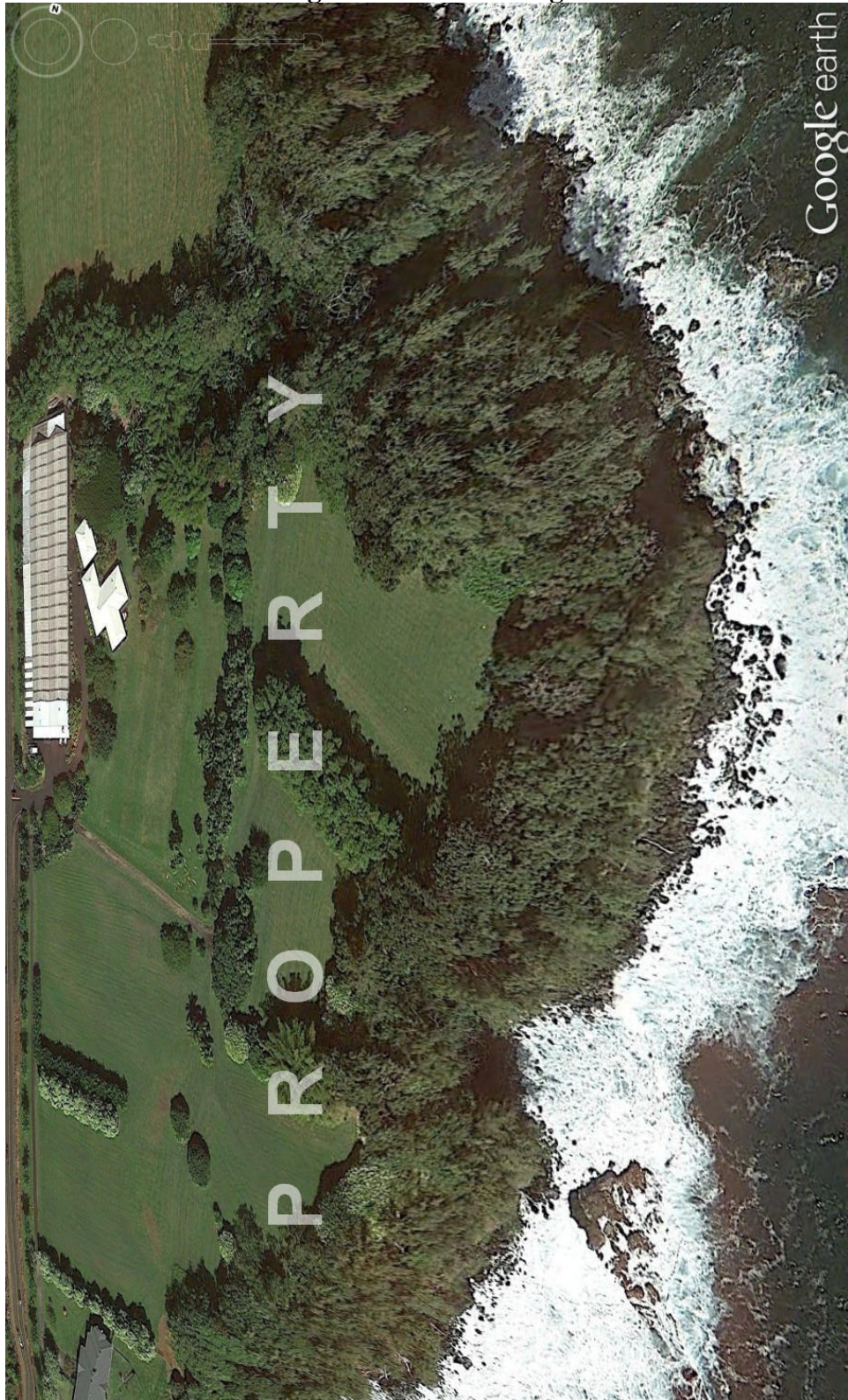


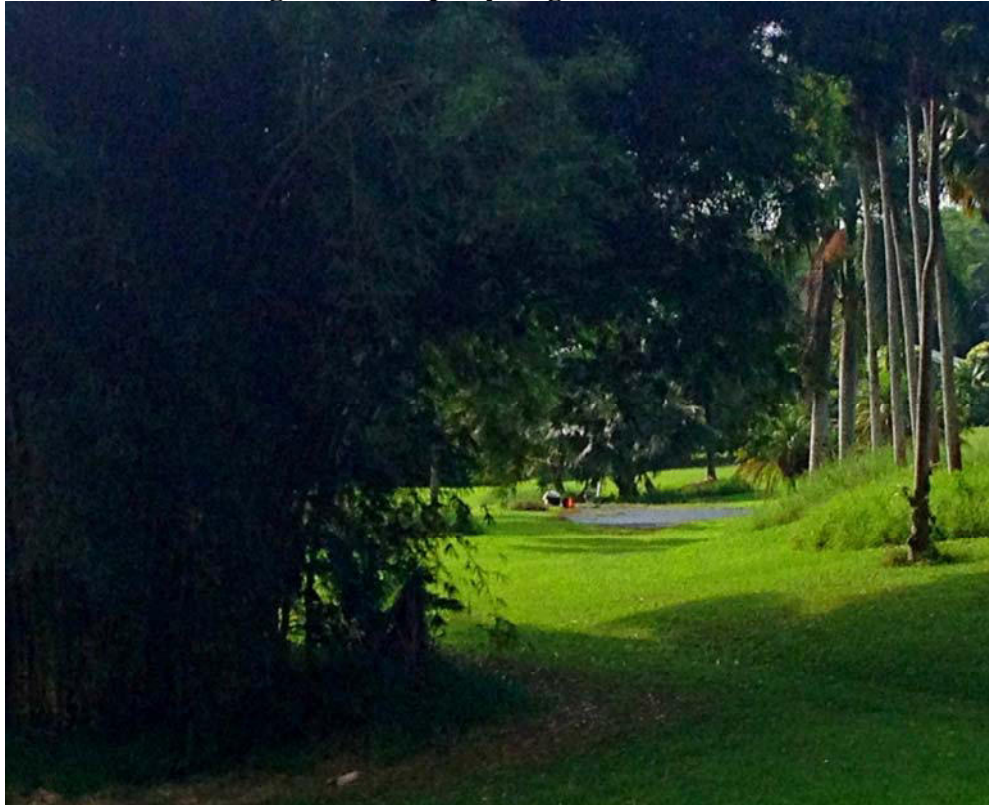


Figure 2a. Aerial Image



Base Map © Google Earth

**Figure 3. Property Vegetation Photos**



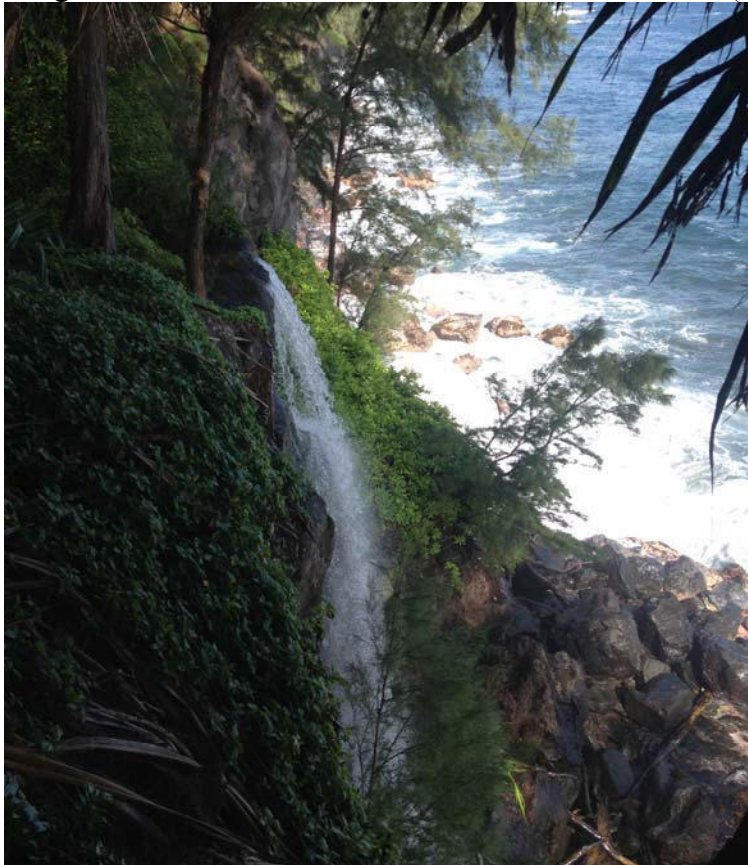
3a. Maintained vegetation over most of property ▲ ▼ 3b. Gulch vegetation



**Figure 3. Property Vegetation Photos**



3c. Sea cliff vegetation ▲ ▼ 3d. Gulch flows to sea as waterfall (off property)



**Table 1. Plant Species Observed on Property\***

Scientific Name	Family	Common Name	Life Form	Status*
<i>Adiantum hispidulum</i>	Pteridaceae	Rough maidenhair fern	Fern	A
<i>Ageratum conyzoides</i>	Asteraceae	Ageratum	Herb	A
<i>Aleurites moluccana</i>	Euphorbiaceae	Kukui	Tree	A
<i>Alocasia macrorrhizos</i>	Araceae	Ape	Shrub	A
<i>Archontophoenix alexandrae</i>	Arecaceae	Alexander palm	Tree	A
<i>Ardisia elliptica</i>	Myrsinaceae	Shoebuttton ardisia	Tree	A
<i>Asystasia gangetica</i>	Acanthaceae	Chinese violet	Herb	A
<i>Bambusa vulgaris</i>	Poaceae	Yellow clumping bamboo	Tree	A
<i>Begonia sp.</i>	Begoniaceae	Begonia	Herb	A
<i>Canavalia cathartica</i>	Fabaceae	Maunaloa	Vine	A
<i>Carica papaya</i>	Caricaceae	Papaya	Tree	A
<i>Casuarina equisetifolia</i>	Casuarinaceae	Ironwood	Tree	A
<i>Cecropia obtusifolia</i>	Cecropiaceae	Cecropia	Tree	A
<i>Centella asiatica</i>	Apiaceae	Gotu kola	Herb	A
<i>Chamaecrista nictitans</i>	Fabaceae	Partridge pea	Herb	A
<i>Chamaesyce hirta</i>	Euphorbiaceae	Hairy spurge	Herb	A
<i>Chamaesyce hypericifolia</i>	Euphorbiaceae	Graceful spurge	Herb	A
<i>Citharexylum sp.</i>	Verbenaceae	Fiddlewood	Tree	A
<i>Citrus maxima</i>	Rutaceae	Pomelo	Tree	A
<i>Citrus reticulata</i>	Rutaceae	Tangerine	Tree	A
<i>Clusia rosea</i>	Clusiaceae	Autograph tree	Tree	A
<i>Cocos nucifera</i>	Arecaceae	Coconut	Tree	A
<i>Coffea arabica</i>	Rubiaceae	Coffee	Shrub	A
<i>Coix lachryma-jobi</i>	Poaceae	Job's tears	Grass	A
<i>Colocasia esculenta</i>	Araceae	Taro	Shrub	A
<i>Commelina diffusa</i>	Commelinaceae	Honohono	Herb	A
<i>Cordyline fruticosa</i>	Agavaceae	Ti	Shrub	A
<i>Crassocephalum crepidioides</i>	Asteraceae	Crassocephalum	Herb	A
<i>Crepis capillaris</i>	Asteraceae	Hawk's beard	Herb	A
<i>Commelina diffusa</i>	Commelinaceae	Honohono	Herb	A
<i>Crotalaria sp.</i>	Fabaceae	Crotalaria	Herb	A
<i>Cucurbita pepo</i>	Cucurbitaceae	Squash, pumpkin	Vine	A
<i>Cyperus involucratus</i>	Cyperaceae	Umbrella sedge	Sedge	A
<i>Cyperus polystachyos</i>	Cyperaceae	Cyperus	Herb	A
<i>Cyperus rotundus</i>	Cyperaceae	Purple nut sedge	Herb	A
<i>Cyrtomium falcatum</i>	Dryopteridaceae	Holly fern	Fern	A
<i>Desmodium triflorum</i>	Fabaceae	Desmodium	Herb	A
<i>Diplazium esculentum</i>	Athyriaceae	Warabi	Fern	A
<i>Eleusine indica</i>	Poaceae	Wiregrass	Herb	A
<i>Emilia sonchifolia</i>	Asteraceae	Pualele	Herb	A
<i>Epipremnum pinnatum</i>	Araceae	Pothos vine	Vine	A
<i>Eucalyptus robusta</i>	Myrtaceae	Eucalyptus	Tree	A
<i>Ficus microcarpa</i>	Moraceae	Chinese banyan	Tree	A
<i>Garcinia sp.</i>	Clusiaceae	Mangosteen	Tree	A
<i>Hedychium sp.</i>	Zingiberaceae	Ginger	Herb	A
<i>Ipomoea triloba</i>	Convolvulaceae	Little bell	Vine	A

<i>Kyllinga brevifolia</i>	Cyperaceae	Kili‘o‘opu	Herb	A
<i>Kyllinga nemoralis</i>	Cyperaceae	Kili‘o‘opu	Herb	A
<i>Lantana camara</i>	Verbenaceae	Lantana	Shrub	A
<i>Litchi chinensis</i>	Sapindaceae	Lychee	Tree	A
<i>Macaranga tanarius</i>	Euphorbiaceae	Bingabing	Shrub	A
<i>Malvaviscus penduliflorus</i>	Malvaceae	Turk’s cap	Herb	A
<i>Mangifera indica</i>	Anacardiaceae	Mango	Tree	A
<i>Megathyrsus maximus</i>	Poaceae	Guinea grass	Herb	A
<i>Melinis repens</i>	Poaceae	Red top grass	Herb	A
<i>Melochia umbellata</i>	Sterculiaceae	Melochia	Tree	A
<i>Merremia tuberosa</i>	Convolvulaceae	Wood rose	Vine	A
<i>Mimosa pudica</i>	Fabaceae	Sleeping grass	Herb	A
<i>Morinda citrifolia</i>	Rubiaceae	Noni	Tree	A
<i>Musa x paradisiaca</i>	Musaceae	Banana	Shrub	A
<i>Nephelium lappaceum</i>	Sapindaceae	Rambutan	Tree	A
<i>Nephrolepis multiflora</i>	Nephrolepidaceae	Sword Fern	Fern	A
<i>Odontonema cuspidatum</i>	Acanthaceae	Odontonema	Shrub	A
<i>Oplismenus sp.</i>	Poaceae	Basket grass	Herb	A
<i>Oxalis corniculata</i>	Oxalidaceae	Creeping wood sorrel	Herb	A
<i>Oxalis debilis</i> var. <i>corymbosa</i>	Oxalidaceae	Pink wood sorrel	Herb	A
<i>Paederia foetida</i>	Rubiaceae	Maile pilau	Vine	A
<i>Pandanus tectorius</i>	Pandanaceae	Hala	Tree	I
<i>Panicum repens</i>	Poaceae	Torpedo grass	Herb	A
<i>Paspalum conjugatum</i>	Poaceae	Hilo grass	Herb	A
<i>Pennisetum purpureum</i>	Poaceae	Napier grass	Herb	A
<i>Persea americana</i>	Lauraceae	Avocado	Tree	A
<i>Philodendron sp.</i>	Araceae	Philodendron	Shrub	A
<i>Phlebodium aureum</i>	Polypodiaceae	Phlebodium	Fern	A
<i>Phyllanthus sp.</i>	Euphorbiaceae	Phyllanthus	Herb	A
<i>Phymatosorus grossus</i>	Polypodiaceae	Maile-scented fern	Fern	A
<i>Pinus spp.</i>	Pinaceae	Pine	Tree	A
<i>Pluchea symphytifolia</i>	Asteraceae	Sourbush	Shrub	A
<i>Polygala paniculata</i>	Polygalaceae	Bubble-gum plant	Herb	A
<i>Psidium cattleianum</i>	Myrtaceae	Strawberry guava	Tree	A
<i>Psidium guajava</i>	Myrtaceae	Guava	Shrub	A
<i>Saccharum officinarum</i>	Poaceae	Sugar cane	Herb	A
<i>Scaevola sericea</i>	Goodeniaceae	Naupaka	Shrub	I
<i>Schefflera actinophylla</i>	Araliaceae	Octopus tree	Tree	A
<i>Solanum americanum</i>	Solanaceae	Popolo	Shrub	I
<i>Spathodea campanulata</i>	Bignoniaceae	African tulip	Tree	A
<i>Sphagneticola trilobata</i>	Asteraceae	Wedelia	Herb	A
<i>Syzygium jambos</i>	Myrtaceae	Rose apple	Tree	A
<i>Thunbergia fragrans</i>	Acanthaceae	White thunbergia	Vine	A
<i>Thunbergia grandifolia</i>	Acanthaceae	White thunbergia	Vine	A
<i>Trema orientalis</i>	Ulmaceae	Trema	Tree	A
<i>Urochloa mutica</i>	Poaceae	California grass	Herb	A
<i>Vigna marina</i>	Fabaceae	Nanea, Beach pea	Vine	I

A=Alien E=Endemic I=Indigenous END=Federal and State Listed Endangered

**Table 2. Bird Species Observed on Property**

<b>Scientific name</b>	<b>Common name</b>	<b>Status</b>
<i>Acridotheres tristis</i>	Common Myna	Alien Resident
<i>Cardinalis cardinalis</i>	Northern Cardinal	Alien Resident
<i>Carpodacus mexicanus</i>	House Finch	Alien Resident
<i>Geopelia striata</i>	Zebra Dove	Alien Resident
<i>Leiothrix lutea</i>	Red-billed Leiothrix	Alien Resident
<i>Lonchura punctulata</i>	Nutmeg Mannikin	Alien Resident
<i>Serinus mozambicus</i>	Yellow-Fronted Canary	Alien Resident
<i>Sicalis flaveola</i>	Saffron Finch	Alien Resident
<i>Streptopelia chinensis</i>	Spotted Dove	Alien Resident
<i>Zosterops japonicus</i>	Japanese White-eye	Alien Resident

**EXHIBIT 2**

**Overlay Church residence 2016**

**Vs.**

**McCully residence 2008**

LOT 049

LOT 048

LOT 013

Lot 029

LOT 060



McCully residence

Church residence

Existing Driveway

High water mark

70' setback line  
Top of pali

McCully  
CUT 1200 cubic yd.  
Area 11,500 s.ft.  
Fill 699 cubic yd  
Fill area 11,140 s.ft.

SITE PLAN - SHOWING AREAS OF CUT AND FILL

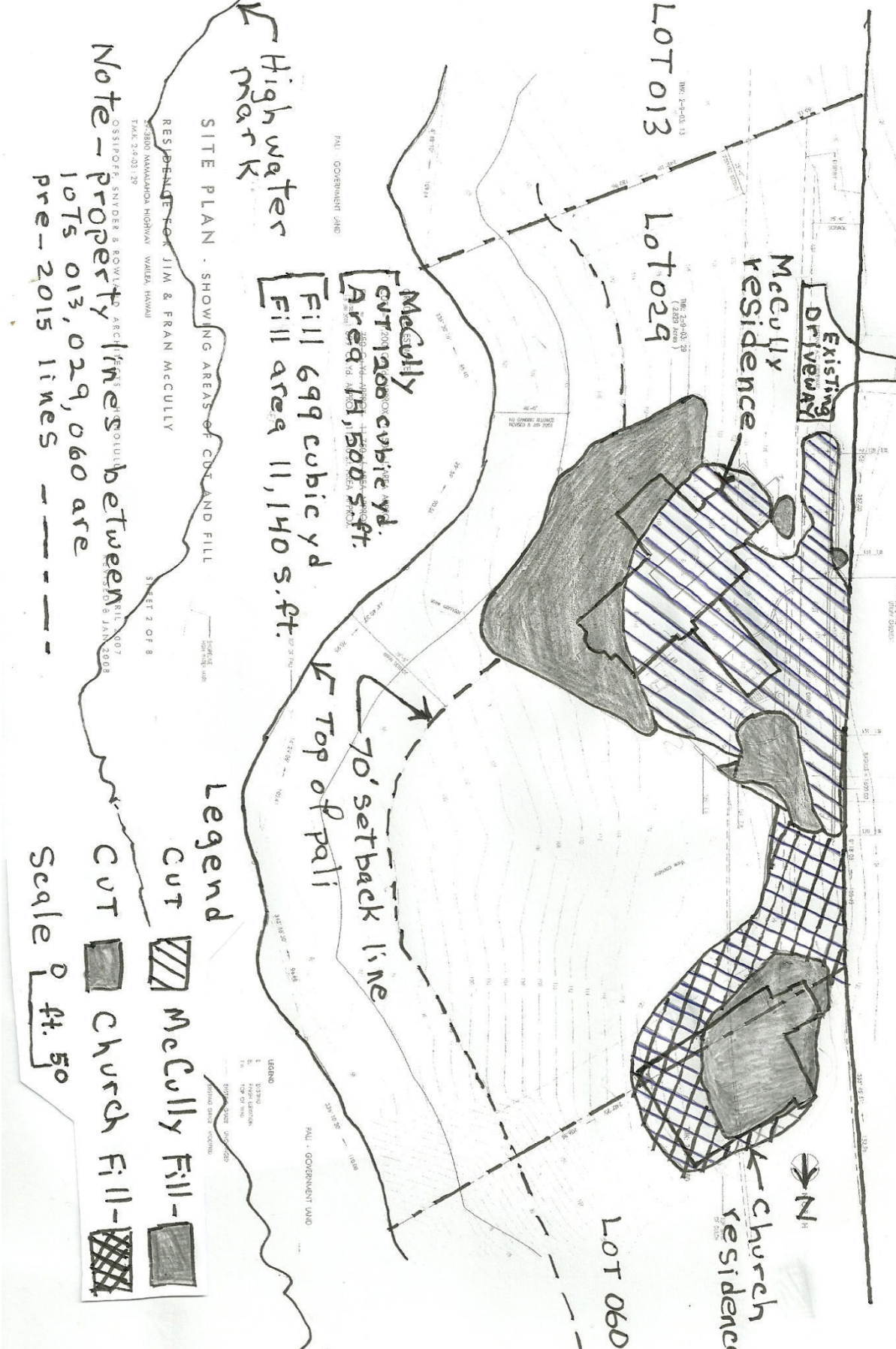
RESIDENTS FOR JIM & FRAN McCULLY  
1830 MAKAHAHA HIGHWAY WAIHEA, HAWAII

SHEET 2 OF 8

Note - PROPERTY LINES BETWEEN LOTS 013, 029, 060 ARE PRE-2015 LINES

Legend  
CUT [diagonal lines] McCully Fill - [solid grey]  
CUT [cross-hatch] Church Fill - [diagonal lines]

Scale 0 ft. 50





**EXHIBIT 3**

**Sam Lemmo**

**Adminstrator OCCL**

**Testimony at**

**LUC hearing**

**Regarding set back considerations**

## EXHIBIT 3

A05-757 JAMES W. McCULLY and FRANCINE M. McCULLY

May , 2006 (Sam Lemmo Testimony )

### State's Witness

#### 1. Sam Lemmo

Mr. Lemmo discussed the two CDUPs, which have been approved and noted that one permit was still in progress and referenced the GIS map area.

Mr. Tsukazaki noted that Petitioner had no questions.

Mr. Hayashi raised a few questions on the 80-foot setback.

Mr. Lemmo stated that they arrived at the 80-foot setback through a recommendation from Dr. Fletcher on a pending CDUA project with a similar environment, such as high bluffs, similar types of weathering soils, ocean conditions, and similar vegetation.

Vice Chair Judge posed questions on the two approved and one pending CDUPs and asked if any permits have gone through the process and been denied in the past.

Mr. Lemmo stated that he could not find any applications that have been denied. He added that they prepare a report and make recommendations to the Land Board for approval. Mr. Lemmo commented that for this pending application, they are recommending approval since the applicant has cooperated with their suggestions and the applicant has done a good job of mitigating potential impacts.

Commissioner Kanuha asked if this petitioner had come in for a conservation district permit would the OCCL conduct an analysis similar to the pending application that Mr. Lemmo has referenced.

Mr. Lemmo replied in the affirmative and added that they would do exactly what they did for the (pending) Johnson case and would apply the same practices.

Commissioner Kanuha asked if it was still Mr. Lemmo's position that this petition not be converted from the conservation to the agricultural districts.

Mr. Lemmo replied in the affirmative.

Commissioner Kanuha commented that being familiar with the site, the two CDUP approvals were primarily in agricultural use sometime before the conservation district was overlaid on them and asked Mr. Lemmo if this was correct.

Mr. Lemmo replied that he believed that was correct and added that they were in agricultural use and believed that the conservation zoning occurred in 1964.

Mr. Yee asked if a person builds a house on conservation district, does there need to be some agricultural activities on the parcel.

Mr. Lemmo replied that there is no requirement to farm land as a condition of approval.

Commissioner Im posed questions on the type of farm activities allowed in the conservation district and the amount of agricultural lands in the area where agricultural activities can be performed along the coastline.

Mr. Lemmo stated that the agricultural activities that would be allowed depends on what is being proposed. Some activities can be harmful to the land (piggeries, chicken farms, etc.) however, the OCCL typically supports applications for agricultural use subject to a management plan. Mr. Lemmo added that they had just approved such an application last year. A big landowner was allowed to grow ornamental plants in the conservation area.

Chair Sakumoto posed questions relative to the analysis done by Dr. Fletcher and the formula for the 80-foot setback.

Mr. Lemmo clarified that the 80-foot setback was not based on a formula, but was estimated in lieu of doing a formal analysis. Without having a coastal geologist looking at the property you would want to put it back further than the minimum county requirement of 40-feet. Mr. Lemmo added that he would explain to the Land Board and they would either agree or not agree if this distance was an acceptable finding. The 80-foot threshold had been used in a similar project. Typically, erosion becomes a reality. This 80-foot setback will still give the petitioner the ability to build a residence and believed that it is a reasonable setback.

Commissioner Kanuha asked what types of agricultural uses are permitted within the conservation district and if the OCCL would still recommend an 80-foot

setback even if the petitioner has previously cleared and landscaped the land for farm related activities.

Mr. Lemmo stated that they have allowed typical farming activities and do not have too many requests for agricultural uses. Generally, they believe that agriculture could become a reasonable use if appropriate mitigation measures are established. Mr. Lemmo added that the OCCL would still look at that as a reasonable condition of development, whether it is structural, or not involving a structure. If the request was to conduct agricultural activities, irrigations lines, etc. and everything is discretionary and up to a certain point you would want to maintain a nice buffer that could have some agricultural use.

**EXHIBIT 4**

**Dr. Kwong letter**

**Shoreline set back considerations**



May 1, 2007

Mr. R. Ben Tsukazaki, Esq.  
Tsukazaki Yeh & Moore  
85 W. Lanikaula Street  
Hilo, HI 96720

Subject: Preliminary Geotechnical Evaluation of Sea Cliff at McCully Property  
TMK: 2-9-003: 013, 029 and 060, Wailea, South Hilo, Hawaii

Dear Mr. Tsukazaki:

Based on your recent request and Yogi Kwong Engineers, LLC's (YKE) sea cliff evaluation in support of a planning study at the McCully property, more specifically identified as TMK: 2-9-003: 013, 029 and 060, Wailea, South Hilo, Hawaii, below is a brief summary of our preliminary geotechnical opinions in support of the planning study. Our services are performed based on our earlier proposal to Mr. James McCully.

We understand the proposed McCully single-family dwelling and related improvements to be constructed on TMK: 2-9-003: 029 will be sited no less than 70 feet inland of the bluff edge. During our site reconnaissance in November 2005, the property was maintained as a grassed area with scattered landscape plantings which did not show observable sign of recent mass wasting above the edge of the sea cliff. Review of 2007 aerial photograph of site observed similar surface conditions.

Based on a review of various historical aerial and topographic photos and maps, as well as the siting of the proposed single-family dwelling no less than 70 feet inland of the top of the bluff at the time of design and construction, I feel that the setback appears prudent based on the height of the existing bluff (approximately 100 to 140 feet high) and a 75-year design life for the dwelling and associated structures against potential coastal erosion caused by intensive or storm wave action, tsunami, and related coastal flooding. The proposed 70-foot setback from the top of the bluff appears reasonable considering the height of the bluff.

We understand that Mr. McCully will retain a qualified geotechnical engineer to perform site and project specific detailed geotechnical investigation for the design and construction of the dwelling and associated structures and related earthworks and hillside stability pertaining to the new development. These services are beyond the scope of YKE's study.

Please feel free to contact us if you have any questions concerning this letter report.

Yours truly,

Yogi Kwong Engineers, LLC

James Kwong, Ph.D., P.E.

Principal

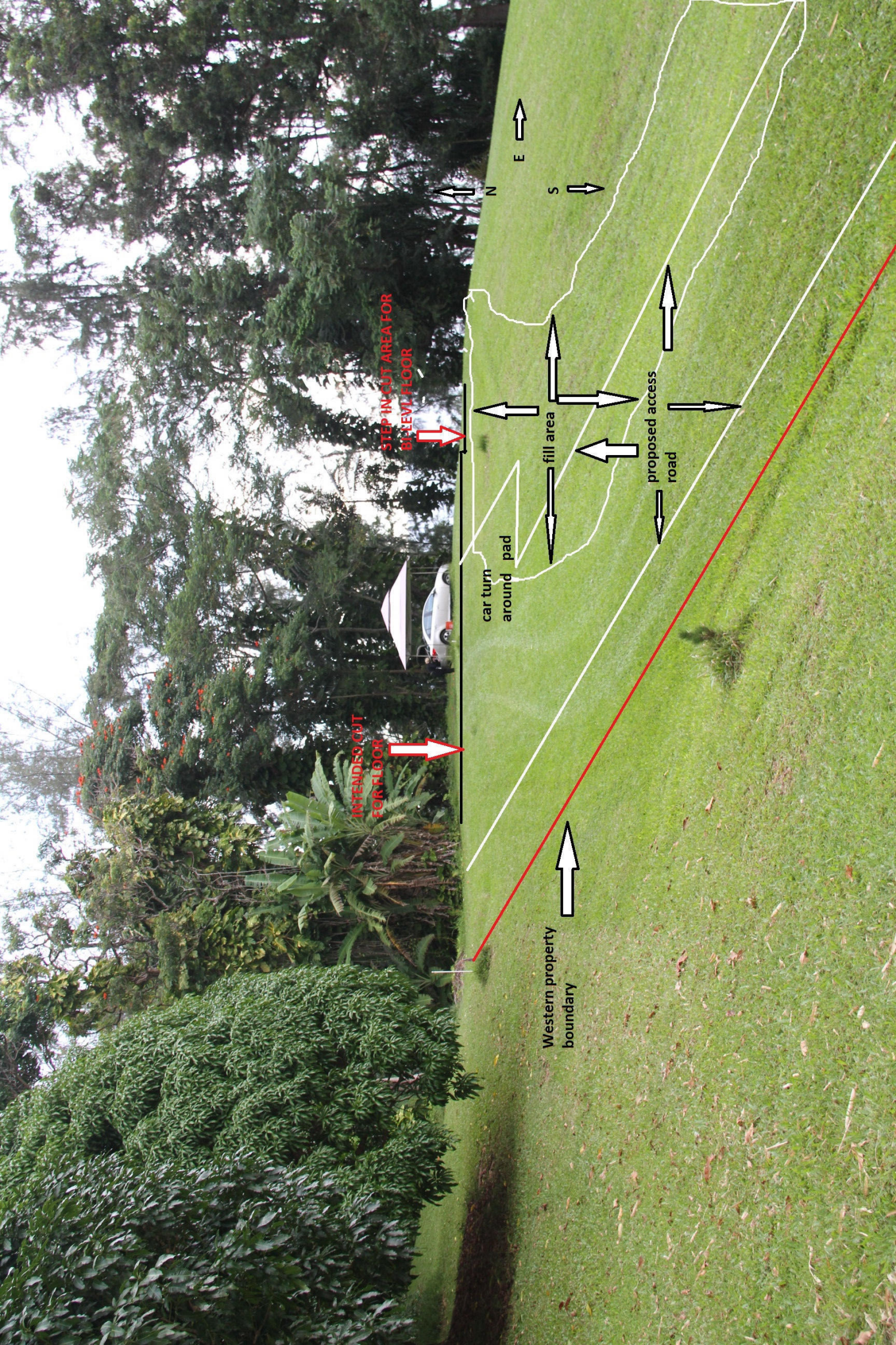
Yogi Kwong Engineers, LLC,  
615 Piikoi Street, Suite 1605  
Honolulu, Hawaii 96814  
Tel: 808.596.2928  
Fax: 808.596.2409

**EXHIBIT 5**

**Cut and fill for**

**Driveway and**

**Planned Church family residence**



STEP IN CUT AREA FOR BELLEVUE FLOOR

INTEND TO CUT FOR FLOOR

E

N

S

car turn around pad

fill area

proposed access road

Western property boundary



## **EXHIBIT 6**

### **2008-02-08-HA-FEA-McCully FONSI**

[http://oeqc.doh.hawaii.gov/Shared%20Documents/EA\\_and\\_EIS\\_Online\\_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully\(s\)-Residence.pdf](http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully(s)-Residence.pdf)

**This document is approx. 160 pages long. It is submitted hereto as a separate pdf file or can be found on line at the above address**

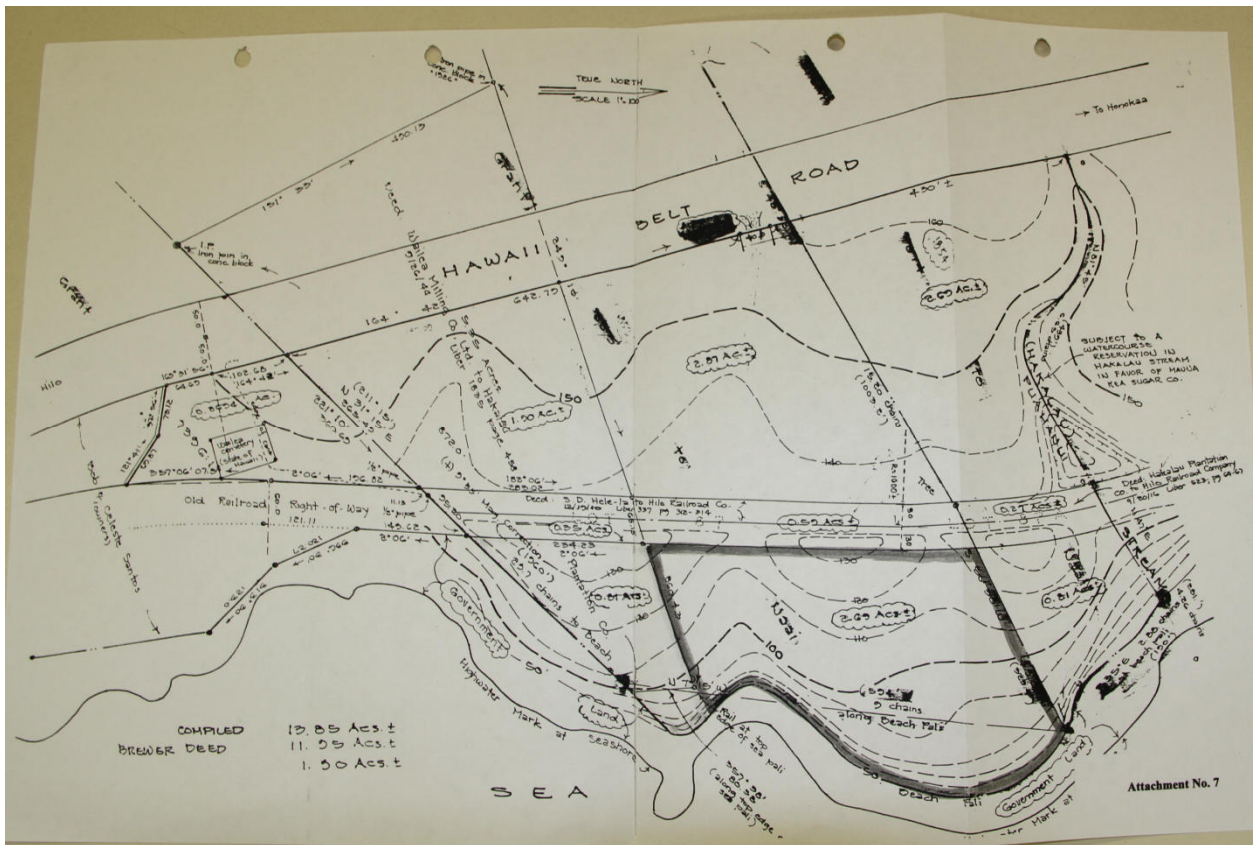
**EXHIBIT 7**

**Brewer F 31  
Field Map**



**EXHIBIT 8**

**Brewer Field Map**



**EXHIBIT 9**

**John Cross letter**

**Re: Ag use of Subject Property**

**For agricultural/Horticultural use**

Edmund C. Olson Trust No. 2  
P.O. Box 446  
Papaikou, Hawaii 96781

Sept. 16, 2015

Subject: Tax Map Keys (TMK's): (3) 2-9-003: 029, 0<sup>013,060</sup>23, 0~~00~~0, South Hilo, Hawaii

To whom it may concern,

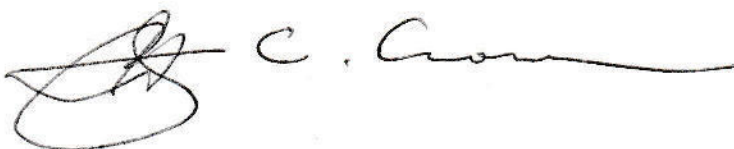
My name is John C. Cross. I am a resident of Hakalau, Hawaii and was born and raised in Hilo. I am very familiar with the subject property listed above. I was in the employ of Mauna Kea Agribusiness and C. Brewer & Company, Ltd. from 1984 to 2005. During those years I was the crop control superintendent for the sugar company until the closure of cane operations in 1994, after that I became Land Manager then Vice President of Real Estate for C. Brewer & Co. Ltd. On or around 1992 the company sold the subject property to James McCully.

Leading up to that time the subject property's continuous land use was agricultural production. I have maps in the C. Brewer archives now owned by the Olson Trust that show the sugar companies had used the land for agricultural production for over 100 years. I was the custodian of records for C. Brewer & Co. Ltd. and continue in that capacity under the Trust from 2005 to present.

Specifically the 3 subject TMK parcels had a cultivated area of 3.2 acres that were used for agriculture. Specifically, this area was part of my "seed field" under my management. The balance of their area was a gulch on the Northern end of the field and a narrow uncultivated area along the ocean pali. Ref. attached survey document of BLOCK F31B and aerial photo. The area of the cultivated field is outlined with a bold black line.

Should you need to contact me please e-mail me at [john@olsontrust.com](mailto:john@olsontrust.com) or call me at (808) 987-4229.

Sincerely,



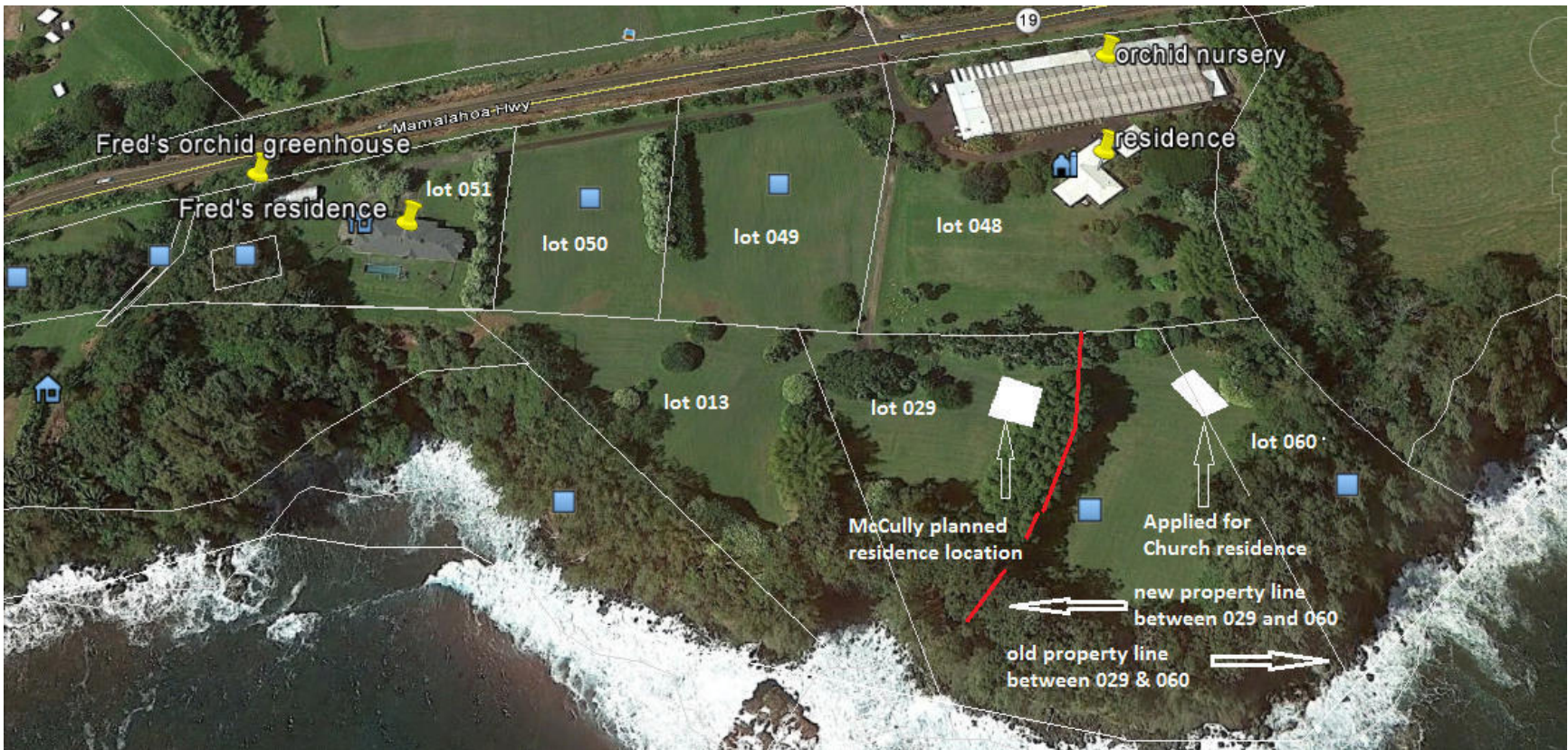
John C. Cross

**EXHIBIT 12**

**Aerial photo of**

**Subdivision and notes**





Aerial photo of subdivision lots 013, 029, 060, 048, 049, 050, 051

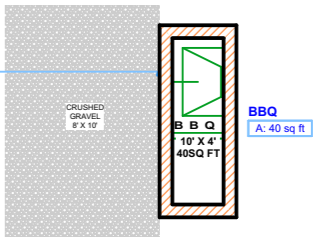
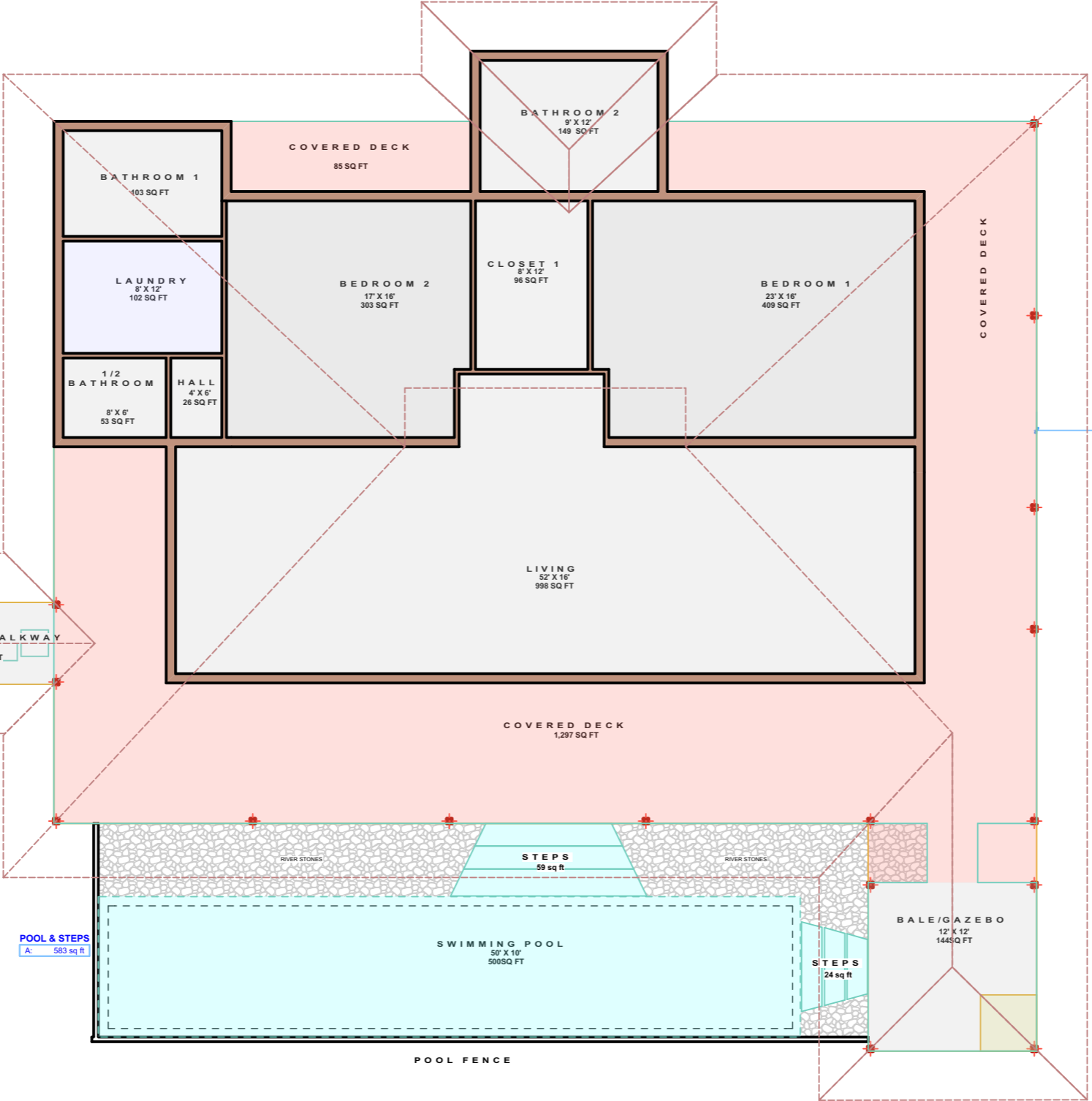
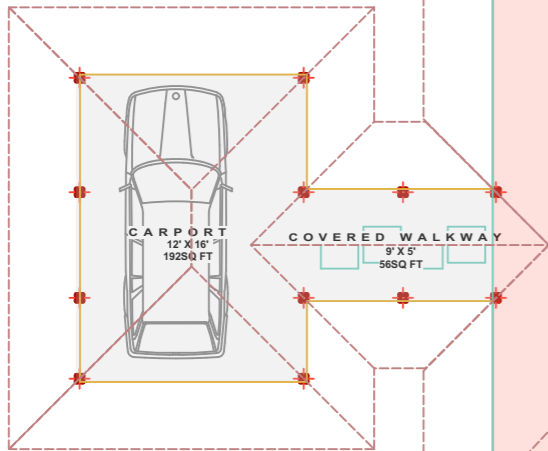
## **EXHIBIT 14**

### **Floor plan of residence and Maximum Developable Area Calculation**

LIVING	52' X 16' 997 SQ FT
BEDROOM 1	23' X 16' 409 SQ FT
CLOSET 1	8' X 12' 96 SQ FT
BEDROOM 2	17' X 16' 303 SQ FT
BATHROOM 1	8' X 12' 103 SQ FT
BATHROOM 2	9' X 12' 149 SQ FT
1/2 BATHROOM	8' X 6' 53 SQ FT
LAUNDRY	8' X 12' 102 SQ FT
HALL	4' X 6' 26 SQ FT
COVERED DECK	1,297 SQ FT
COVERED DECK	85 SQ FT
BALE/GAZEBO	12' X 12' 144 SQ FT
CARPOR	12' X 16' 192 SQ FT
COVERED WALKWAY	9' X 5' 56 SQ FT
POOL & STEPS	50' X 10' 500 SQ FT
MECHANICAL ROOM	4' X 4' 16 SQ FT
BBQ	10' X 4' 40 SQ FT

**TOTAL 4,649 SQ FT**

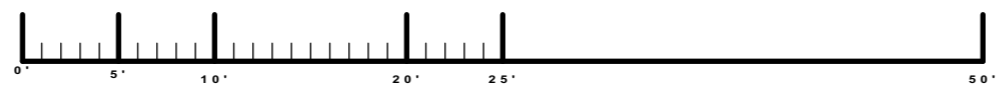
**NOTE**  
ROOM AREAS EXCLUDES WALL THICKNESS  
TOTAL FLOOR AREA OF 4,649 SQ FT INCLUDES  
EXTERNAL WALL THICKNESS WHERE APPLICABLE



**HOUSE**  
A: 4,010 sq ft

**POOL & STEPS**  
A: 583 sq ft

**MECHANICAL ROOM**  
A: 16 sq ft

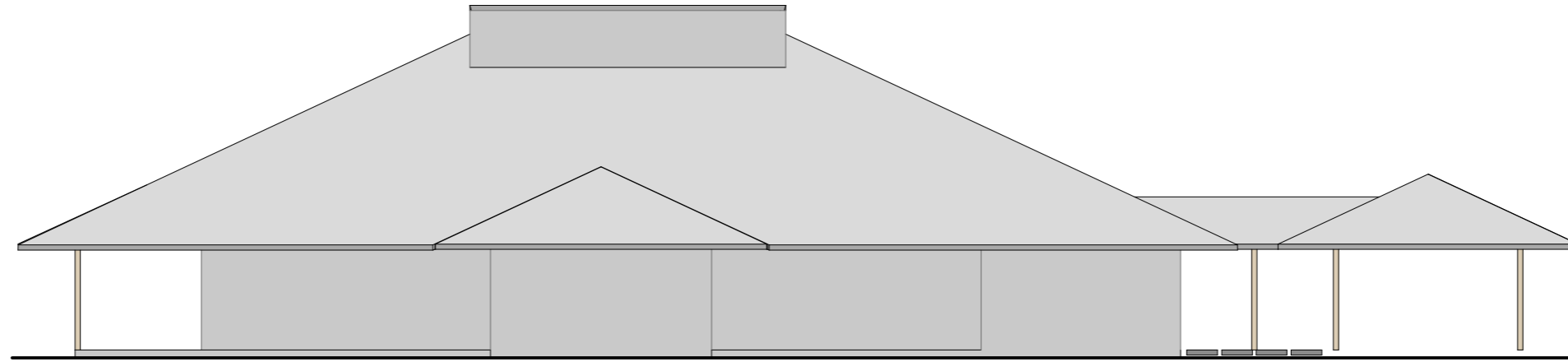


**CHURCH RESIDENCE  
EXHIBIT 14**

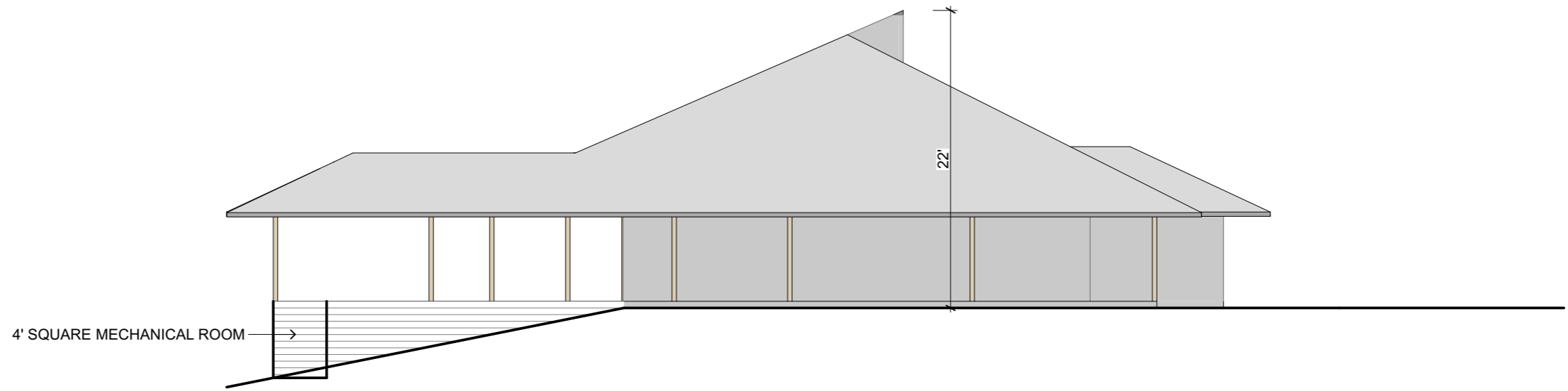
**EXHIBIT 15 (a) & (b)**

**Elevation views of**

**Planned Church residence**

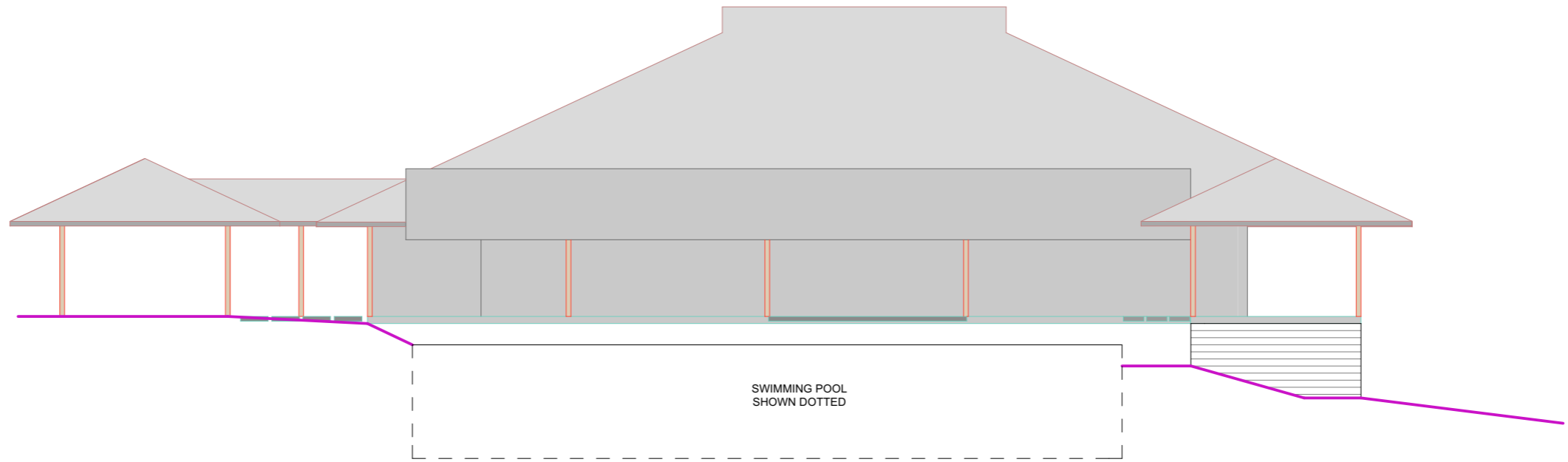


North Elevation 1" = 10'



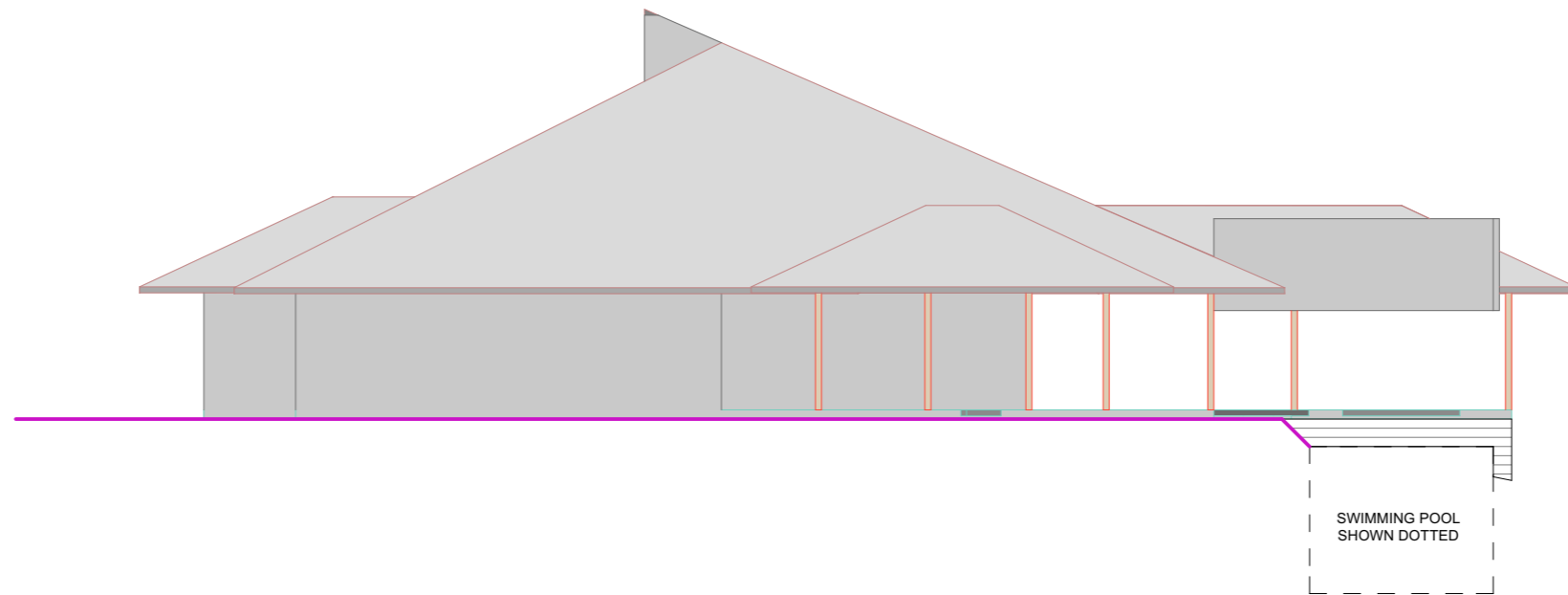
East Elevation 1" = 10'

**EXHIBIT 15 A**  
**CHURCH RESIDENCE**



South Elevation

1" = 10'



West Elevation

1" = 10'

**EXHIBIT 15 B  
CHURCH RESIDENCE**

**EXHIBIT 16**

**Topographical survey and view**

**Of**

**Planned residence showing....**

**Residence,**

**Setbacks**

**Fire place**

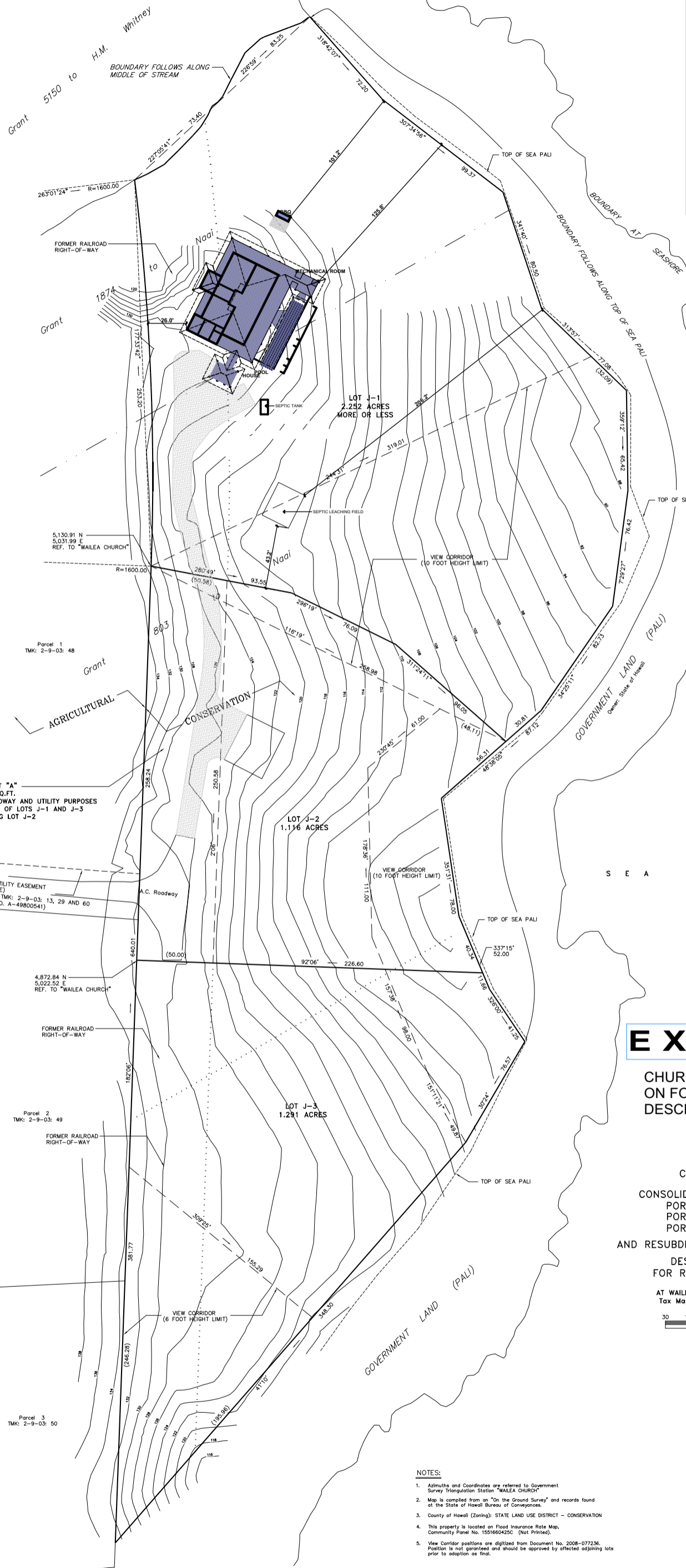
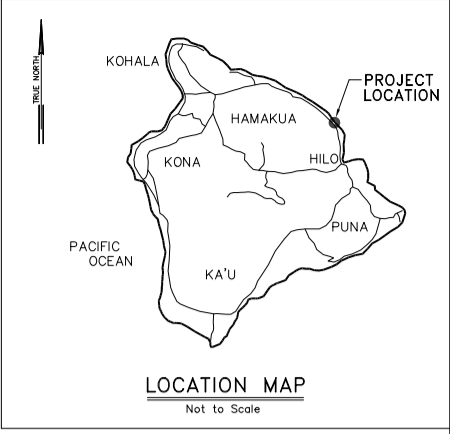
**Septic field**

**And**

**Property lines and view plane easements**

**On the lots.**

TRUE NORTH  
Scale: 1 in. = 30 ft.



EASEMENT "A"  
12,720 SQ. FT.  
FOR ROADWAY AND UTILITY PURPOSES  
IN FAVOR OF LOTS J-1 AND J-3  
AFFECTING LOT J-2

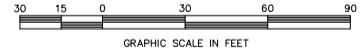
ROAD AND UTILITY EASEMENT  
(30 FEET WIDE)  
IN FAVOR OF T.M.K. 2-9-03: 13, 29 AND 60  
(DOCUMENT NO. A-4980541)

# EXHIBIT 16

CHURCH RESIDENCE SUPERIMPOSED  
ON FORMER SURVEY DOUCMENT -  
DESCRIBED HERE UNDER

CHURCH SUBDIVISION  
CONSOLIDATION OF THE FOLLOWING:  
PORTION OF GRANT 1874 TO NAAI  
PORTION OF GRANT 803 TO NAAI  
PORTIONS OF RAILROADS RIGHT-OF-WAY  
AND RESUBDIVISION INTO LOTS J-1, J-2 AND J-3  
DESIGNATION OF EASEMENT "A"  
FOR ROADWAY AND UTILITY PURPOSES

AT WAILEA, SOUTH HILO, ISLAND OF HAWAII, HAWAII  
Tax Map Key (3rd. Div.): 2-9-3: 13, 29 and 60



OWNER(S): KENNETH STANLEY CHURCH  
ADDRESS: 400 HUALANI STREET # 275  
HILO, HAWAII 96720

SUBDIVIDER: KENNETH STANLEY CHURCH  
ADDRESS: 400 HUALANI STREET # 275  
HILO, HAWAII 96720

- NOTES:
1. Admitts and Coordinates are referred to Government Survey Triangulation Station "WAILEA CHURCH"
  2. Map is compiled from an "On the Ground Survey" and records found at the State of Hawaii Bureau of Conveyances.
  3. County of Hawaii (Zoning): STATE LAND USE DISTRICT - CONSERVATION
  4. This property is located on Flood Insurance Rate Map, Community Panel No. 155160425C (Not Printed).
  5. View Corridor positions are digitized from Document No. 2008-077236. Position is not guaranteed and should be approved by affected adjoining lots prior to adoption as final.



This work was prepared by me  
or under my direct supervision  
*Peter H. Souza Jr.*  
Peter H. Souza Jr.  
Licensed Professional Surveyor  
Certificate Number 9279



**EXHIBIT 17**

**Topographical survey document**

**Showing**

**Lots 013, 029, 060**

**Showing**

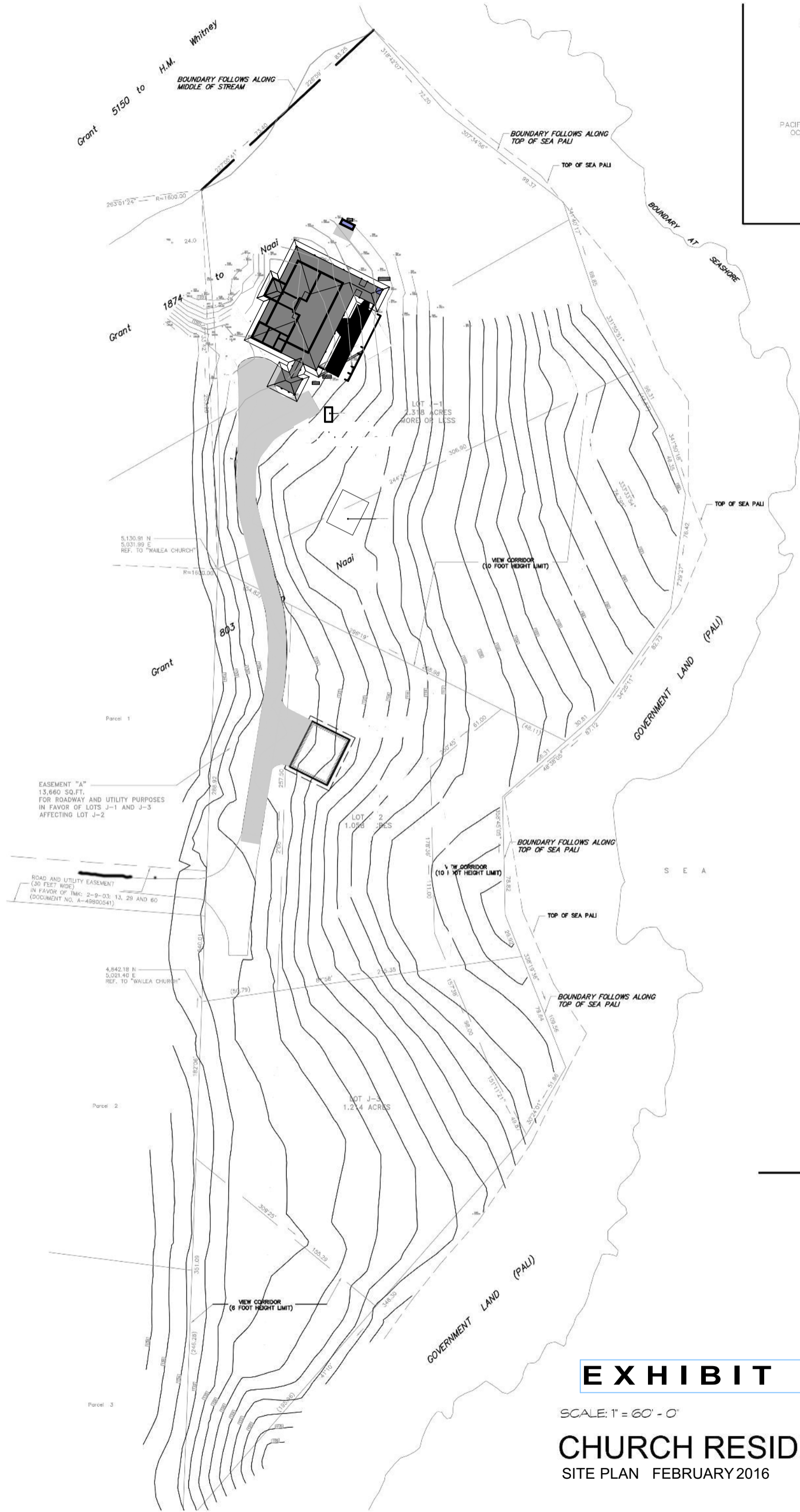
**Residence**

**Driveway**

**Outdoor cooking area**

**Septic tank and field**

**Structure accessory to agricultural use on lot 029**



**EXHIBIT 17**

SCALE: 1" = 60' - 0"

**CHURCH RESIDENCE**  
SITE PLAN FEBRUARY 2016



## **EXHIBIT 18**

**Picture showing trees blocking the view from the residence  
To the West of the planned residence**



**EXHIBIT 20**

**OCCL letter responding to earlier version of  
CDUA for residence**

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Ref: OCCL:LY

CDUA: HA-3764

**FEB - 8 2016**

Mr. Ken Church

Sent Via E-mail: [dockline3@yahoo.ca](mailto:dockline3@yahoo.ca)

SUBJECT: Conservation District Use Application HA-3764 for a Single Family Residence located at 29-3800 Mamalahoa Highway, Wailea, South Hilo, Hawai'i  
Tax Map Key (TMK): (3) 2-9-003:013, 029, 060

Dear Mr. Church,

The Department of Land and Natural Resources (DLNR) and the Office of Conservation and Coastal Lands (OCCL) is in receipt of your CDUA for a proposed Single Family Residence (SFR) to be located at 29-3800 Mamalahoa Highway in Wailea, South Hilo, Hawai'i and is further identified as Tax Map Key (TMK) (3) 2-9-003:060. The project area is located in the Resource Subzone of the State Land Use Conservation District.

Included as a part of your application was a request to exempt the proposed SFR from the preparation of an Environmental Assessment (EA) based on the fact that there is an existing EA/Finding of No Significant Impact (FONSI) that was prepared in 2008 as a part of the previous landowner's (the McCullys) CDUA for a SFR to be constructed on Lot 29. After review of the facts that you have presented, as well as review of the 2008 McCully EA/FONSI, the Department has determined that your proposed project is substantially different, in both design and location, than that of the SFR that was presented in the McCully EA/FONSI and, therefore, a separate EA for your proposed project will need to be prepared prior to the processing of your CDUA.

While we understand that you feel that your project is similar in size and scope to the SFR that was being proposed by the McCullys and appears to require less ground disturbance, the McCully SFR was proposed on a different site as clearly shown on Exhibit 12 of your CDUA. The McCully SFR is located on Parcel 29, while your current proposal places your SFR mostly within Parcel 60 (in reference to the "old" property lines. As your current proposal is for an SFR on a different site/parcel and is of a different design than that of the McCullys, the Department has determined that preparation of an EA is necessary. Therefore, at this time, your application is incomplete and the OCCL is unable to accept the application for processing.

In addition, OCCL offers the following comments regarding your application:

- You have identified your proposed use as a “farm dwelling.” However, based on the description that you have provided, it appears that you are proposing to construct an SFR. Our rules identify an SFR as an identified use. Our rules do not identify a “farm dwelling” as an identified land use. Therefore, we suggest that you identify your proposed use as an SFR in your application.
- We understand that you are proposing to construct a SFR with two bedrooms and two and a half baths, pool, carport, bali with hot tub and outdoor cooking structure. Additional improvements include repair of an existing access road, installation of a septic system for the SFR, installation of solar panels on the roof of the proposed SFR, and landscaping around the SFR. Please provide a description of your proposed “bali” as we are unfamiliar with this term. Please also provide a description and/or rendering of your outdoor cooking structure as it is unclear what this structure looks like (i.e. is it an open or covered area?) and show its location on the site plan.
- Please double check and clearly label your floor plan (Exhibit 14). It is unclear what the difference is between the dashed lines and the solid lines. You may wish to include a legend so that it is easy for the general public to understand. It is also unclear if the area labeled “swi” is the proposed swimming pool. If it is not the pool then you will need to clearly show it on the site plan (Exhibit 13). Also, in your project description, you stated that there are two and a half baths. Based on the floor plan, there appears to be only 2 baths. The floor plan also notes that the pond equipment, battery bank/generator backup is below seating lanai. Please clarify this statement as we are not sure if that means that the equipment will be below ground.
- On page 15, you state that “*The setbacks for Single-family Residential Standards for lots over one acre, as contained in Chapter 13-5, Hawai‘i Administrative Rules are 25 feet from the front, and 15 ft. on the sides and rear of the property line.*” Please correct this statement as HAR Chapter 13-5, Exhibit 4 *Single Family Residential Standards*, states that the minimum setbacks for lots over one acre are 25 feet from the front, 25 feet from the sides, and 25 feet from the back.
- On page 16, you state that “*All outdoor lighting will be located such as not to be seen from the ocean (east).*” OCCL has concerns regarding the design of your outdoor lighting as they may attract endangered Hawaiian Petrels and Newell’s Shearwaters which may become disoriented by the lighting, resulting in birds being down. According to the updated biological survey, the biologist recommends that all permanent lighting should be shielded in strict conformance with the Hawai‘i County Outdoor Lighting Ordinance (Hawai‘i County Code Chapter 14, Article 9), which requires shielding of exterior lights so as to lower the ambient glare caused by unshielded lights.
- You have proposed landscaping in an area under 2,000 square feet. A landscaping plan is required to be submitted along with your application. In addition, all plantings shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawai‘i. The introduction of invasive plant species is prohibited.
- Please update your Flora and Fauna section to reflect the findings of the updated biological survey. You state that “*the proposed project will have very little impact on the project*”

area," however, this is contrary to the updated survey which indicates there may be potential impacts to endangered species and recommends mitigation measures that should be taken into consideration.

Should you wish to retain your copies of your CDUA, you may pick up the documents at our Office located at 1151 Punchbowl St., Room 131 or please make arrangements to have a courier service pick up and deliver the documents to you within 30 days. Should no action take place within 30 days, we shall recycle the documents. Should you have any questions regarding this matter, you may contact Mr. Sam Lemmo at (808) 587-0377.

Sincerely,



SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

c: Hawai'i Board Member ✓  
HDLO ✓  
County of Hawai'i, Planning Dept. ✓



**EXHIBIT 21**

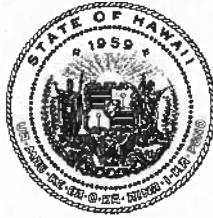
**Undated OCCL letter**

**“notice of acceptance for processing”**

**CDUA HA 3767**

**Church residence**

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

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

REF:OCCL:LY

CDUA HA-3767

Acceptance Date: March 29, 2016

180 Day Expiration Date: September 25, 2016

Mr. Ken Church  
Sent Via E-mail: [dockline3@yahoo.ca](mailto:dockline3@yahoo.ca)

Dear Mr. Church:

**NOTICE OF ACCEPTANCE AND PRELIMINARY ENVIRONMENTAL  
DETERMINATION  
Conservation District use Application (CDUA) HA-3767  
(Board Permit)**

This acknowledges the receipt and acceptance for the processing of your CDUA for a Single Family Residence (SFR) located in Wailea, South Hilo, on the island of Hawai'i and further identified as Tax Map Key (TMK) (3) 2-9-003:060. The approximately 2.252 acre lot lies within the State Land Use Conservation District, Resource Subzone. In addition, other related improvements, including the SFR access road/utilities corridor and the planting of agricultural crops will take parcels 013 and 029 (1.291 acres and 1.116 acres, respectively).

According to Hawai'i Administrative Rules (HAR) Chapter 13-5, Exhibit 4, Single Family Residential Standard, *for lots larger than one (1) acre, the maximum developable area is 5,000 square feet.* In addition, SFRs are an identified land use in the Resource subzone of the Conservation District, pursuant to §13-5-24, Hawaii Administrative Rules (HAR), R-7, SINGLE FAMILY RESIDENCE, (D-1) *A single family residence that conforms to design standards as outlined in this chapter.*

According to the information provided, you are proposing to construct a 4,649 square foot SFR on an existing, vacant lot. Currently, the area is grassed over. The property is bounded on its eastern bordered by a pali which is inaccessible by the public due the steep terrain of the area.

The proposed SFR is slab on grade construction and consists of two bedrooms, two and a half baths, a laundry room, a living room, and a covered deck area. There will also be a bale/hot tub area with an associated mechanical room, a swimming pool, a carport, and a detached outdoor cooking structure.

The remaining open space on all three (3) of your properties is being proposed for general landscaping and continued agricultural use.

Access to the site is provided via a 30 foot wide paved road and utility easement off of Mamalahoa Highway that leads to parcel 029. From parcel 029 to parcel 060, you are proposing to restore a section that was once a part of the former historic railroad that ran through the parcel, which was also historically used as a field

road. The road is currently overgrown with grass and has been maintained as a mowed lawn. The proposed access road will be approximately 300 feet long leading from the existing paved entrance on Lot 029 to the proposed SFR. In addition, you are proposing to construct a car turn-around area near the proposed car port area. The access road and car port will be laid with crush rock.

Water is supplied via a pipeline located under the existing easement to Parcel 29. This will be extended below the proposed access road to service the SFR. Electricity to the SFR will be provided by roof top mounted solar panels. No more than a maximum of 30 solar panels will be installed. Electricity will also be provided by batteries and a stand-by generator as back-up systems to the solar panels. Sewage will be handled by the installation of a gravity fed septic system (septic tank and leeching bed).

After reviewing the application, OCCL finds that:

1. The proposed project is an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24, *Identified land uses in the resource subzone, R-7 SINGLE FAMILY RESIDENCE (D-1) A single family residence that conforms to the design standards as outlined in this chapter*. The proposed use requires a Board Permit.
2. Pursuant to HAR §13-5-40 HEARINGS, a Public Hearing will not be required.
3. In conformance with Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, an Environmental Assessment (EA) for the project has been prepared and a Finding of No Significant Impacts (FONSI) is anticipated for the proposed project;
4. The subject area is within the Special Management Area (SMA). The applicant's responsibility includes complying with the provisions of Hawai'i's Coastal Zone Management law (Chapter 205A, HRS) that pertain to the Special Management Area (SMA) requirements administered by the various counties. Negative action on this application can be expected should you fail to obtain and provide us, at least forty-five (45) days prior to the 180-day expiration date, one of the following:
  - An official determination that the proposal is exempt from the provisions of the county rules relating to the SMA;
  - An official determination that the proposed development is outside the SMA; or
  - An SMA Use Permit for the proposed development.

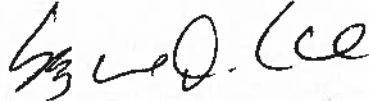
Further, the OCCL offers the following comments on the Draft EA and CUDA:

- In the final EA, please include a section discussing alternatives to the proposed project, such as the no build alternative;
- In the final EA, please include a list of the applicable permits and approvals that will be needed for the proposed project;
- Please provide the individual dimensions of the solar panels that are proposed; and
- Please clarify the width of the access road as well as whether the "repair" of the access road and creation of the turn-around area will involve clearing of the existing grass prior to laying down of the crushed rock;

In regard to your statement of your continued use of cultivating agriculture crops on all three (3) properties, prior to proceeding, a management plan, in conformance with HAR § 13-5, Exhibit 3 *Management Plan Requirements*, must be prepared and submitted for the Department's review and approval.

Upon completion of the application review process, the subject CDUA will be reviewed by the Board of Land and Natural Resources for consideration. Should you have any questions, please contact Lauren Yasaka at the Office of Conservation and Coastal Lands at (808) 587-0386.

Sincerely,



SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

c: Hawai'i Board Member  
DOFAW/ENG/HDLO/HP  
DOH/OHA/OEQC  
CoH, Planning Dept.  
Hilo Public Library

**EXHIBIT 22**

**DLNR/OCCL letter May 31, 2016**

**“end of comment period”**

**Notice and Instructions**

**With copies of comment letter received**

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2016 APR 22 P 3:27



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

April 21, 2016

Mr. Ken Church  
637 N. Victoria Park Road  
Ft. Lauderdale, FL 33304

Dear Mr. Church:

**Subject: Agricultural Use of Private Lands Designated as TMKs: (3) 2-9-003:  
013, 029, and 060**

We are in receipt of your letter dated April 13, 2016 regarding the above-referenced matter. Please note the Department of Land and Natural Resources, Land Division, does not regulate the use of private lands. If you have not already done so, we suggest you contact the Hamakua Water and Soil Conservation District through the Natural Resources Conservation Service at:

NRCS Hilo Service Center -- Federal Building  
154 Waiuanuenue Avenue, Suite 322  
Hilo, HI 96720

Phone: (808) 933-8350

Sincerely,

  
Russell Y. Tsuji  
Administrator

C: OCCL

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

KEKOA KALUHIWA  
DISTRICT DIRECTOR

2016 APR 20 A 10:32

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

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CURVE YACHTS  
COMMISSION ON WATER RESOURCE MANAGEMENT  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
ESTUARINE/FRESHWATER  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND AND NATURAL RESOURCES COMMISSION  
LAND AND NATURAL RESOURCES  
STATE PARKS

ref:OCCL:LY

MEMORANDUM:

CDUA HA-3767

Acceptance Date: March 29, 2016

180 Day Expiration Date: September 25, 2016

SUSPENSE DATE: 21 Days from stamped date

Suspense 05-02-16 APR 12 2016

To:

- DLNR, Division of Aquatic Resources
- DLNR, Division of Conservation and Resource Enforcement
- DLNR, Division of Forestry and Wildlife
- DLNR, Historic Preservation Division

- DLNR, Hawaii District Land Office
- Office of Hawaiian Affairs
- Department of Health
- CoH, Department of Planning

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

SUBJECT: REQUEST FOR COMMENTS

Draft Environmental Assessment (DEA) and Conservation District Use Application (CDUA) HA-3767 for the Church Single Family Residence

APPLICANT: Kenneth Church

LOCATION: Wailea, South Hilo, Hawai'i, Tax Map Keys: (3) 2-9-003:013, 029, and 060

Please find enclosed, a CD with an electronic copy of the subject DEA, CDUA HA-3767, and our notice to the applicant. We would appreciate your agency's review and comment on this application. If no response is received by the suspense date, we will assume there are no comments. The suspense date starts from the date stamp. Please contact Lauren Yasaka at (808) 587-0386, should you have any questions on this matter.

( ) Comments Attached

No Comments

Attachment  
Enclosure

*Alton Yasaka*

Signature

Bruce S. Anderson DAR Administrator

Print Name/Title

RECEIVED  
2016 APR 18 AM 10:13  
DIV OF AQUATIC RESOURCES  
HILLO, HAWAII

DAR # 5271

JK ✓  
TSV ✓

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  
KAIHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

ref:OCCL:LY

CDUA HA-3767

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APR 12 2016

MEMORANDUM:

FR: TO: *to*

- DLNR, Division of Aquatic Resources
- DLNR, Division of Conservation and Resource Enforcement
- DLNR, Division of Forestry and Wildlife
- DLNR, Historic Preservation Division

- DLNR, Hawaii District Land Office
- Office of Hawaiian Affairs
- Department of Health
- CoH, Department of Planning
- Engineering Div.

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

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Comments Attached

No Comments

*Carty S. Chang*  
Signature  
Carty S. Chang, Chief Engineer  
Print Name/Title

Attachment  
Enclosure

16 APR 13 PM 10:14 ENGINEERING



**DEPARTMENT OF LAND AND NATURAL RESOURCES  
ENGINEERING DIVISION**

**To: Land Division/ Russell Y. Tsuji**

**Ref: Draft Environmental Assessment (DEA) and Conservation District Use Application  
(CDUA) HA-3767 for the Church Single Family Residence**

**COMMENTS**

The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a designated Flood Hazard.

The owner or the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zone designations can be found using the Flood Insurance Rate Map (FIRM), which can be accessed through the Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiiinfip.org/FHAT>).

National Flood Insurance Program establishes the rules and regulations of the NFIP - Title 44 of the Code of Federal Regulations (44CFR). The NFIP Zone X is a designation where there is no perceived flood impact. Therefore, the NFIP does not regulate any development within a Zone X designation.

Be advised that 44CFR reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may take precedence over the NFIP standards as local designations prove to be more restrictive. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

- o Oahu: City and County of Honolulu, Department of Planning and Permitting  
(808) 768-8098.
- o Hawaii Island: County of Hawaii, Department of Public Works (808) 961-8327.
- o Maui/Molokai/Lanai County of Maui, Department of Planning (808) 270-7253.
- o Kauai: County of Kauai, Department of Public Works (808) 241-4846.

Signed:   
CARTY S. CHANG, CHIEF ENGINEER

Date: 4/18/16

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  
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CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
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HISTORIC PRESERVATION  
KAIYO-OLAWA ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

ref:OCCL:LY

CDUA HA-3767

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MEMORANDUM:

TO:

- DLNR, Division of Aquatic Resources
- DLNR, Division of Conservation and Resource Enforcement
- DLNR, Division of Forestry and Wildlife
- DLNR, Historic Preservation Division

- DLNR, Hawaii District Land Office
- Office of Hawaiian Affairs
- Department of Health
- CoH, Department of Planning

APR 12 2016

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2016 APR 13 A 11: 22

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

SUBJECT: REQUEST FOR COMMENTS

Draft Environmental Assessment (DEA) and Conservation District Use Application (CDUA) HA-3767 for the Church Single Family Residence

APPLICANT: Kenneth Church

LOCATION: Wailea, South Hilo, Hawaii'i, Tax Map Keys: (3) 2-9-003:013, 029, and 060

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Comments Attached

No Comments

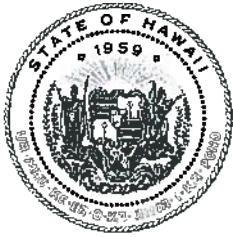
Signature

David A. Smith

Print Name/Title

Forestry & Wildlife Administrator

Attachment  
Enclosure



# OFFICE OF ENVIRONMENTAL QUALITY CONTROL

DEPARTMENT OF HEALTH | 235 South Beretania Street, Suite 702, Honolulu, HI 96813 | [oeqc@hawaii.gov](mailto:oeqc@hawaii.gov)

DAVID Y. IGE  
GOVERNOR

SCOTT GLENN  
DIRECTOR

(808) 586-4185

May 20, 2016

Lauren Yasaka  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
1151 Punchbowl St, Room 131  
Honolulu, Hawai'i 96813

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2016 MAY 25 P 12:23  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Dear Ms. Yasaka,

**SUBJECT:** Draft Environmental Assessment (EA) for Church Single Family Residence, Wailea, South Hilo, Hawai'i

The Office of Environmental Quality Control (OEQC) reviewed the Draft EA prepared for the proposed action and offers the following comments for your consideration.

We understand this Draft EA was prepared by the landowner/applicant who appears to have little experience preparing documents such as this; accordingly, the information is not always presented in the most readable or typical fashion. Nonetheless, we were able to discern most of the required content elements for EAs, codified in Section 10 of Chapter 11-200, Hawai'i Administrative Rules (HAR), i.e., the environmental impact statement rules.

However, missing from the Draft EA is the Significance analysis, as described in HAR Section 11-200-12. Corresponding to elements (8) & (9) of the EA content requirements, a narrative discussion of each of the 13 listed significance criteria must be included in the Final EA, along with a statement of the anticipated agency determination (either a Finding of No Significant Impact or, theoretically, an Environmental Impact Statement Preparation Notice). While the individual significance criterion may seem repetitive with other aspects of the EA, such as the embedded discussion (beginning on page 44) of Evaluation Criteria pertaining the Conservation District rules (Chapter 13-5, HAR), the Significance analysis is a critical and necessary element of the environmental review process.

Thank you for your participation in the environmental review process and the opportunity to comment on the Draft EA. OEQC looks forward to the response that also will be included within the project's Final EA. If you have questions about these comments, please consult myself or Tom Eisen in our office via email at [oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov) or telephone at (808) 586-4185.

Sincerely,

*Tom Eisen*

for Scott Glenn, Director

Cc: Ken Church

16-323

DAVID Y. IGE  
GOVERNOR OF HAWAII



RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

2016 APR 29 A 10:54  
In reply, please refer to:  
File:

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

EPO 16-141

April 26, 2016

Ms. Lauren Yasaka  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
1151 Punchbowl Street, Room 131  
Honolulu, Hawaii 96813  
Email: [Lauren.e.yasaka@hawaii.gov](mailto:Lauren.e.yasaka@hawaii.gov)

Dear Ms. Yasaka:

**SUBJECT: Draft Environmental Assessment (DEA) for the Church Single Family Residence  
Wallea, Hawaii  
TMK: (3) 2-9-003: 013, 029, and 060**

The Department of Health (DOH), Environmental Planning Office (EPO), acknowledges receipt of your DEA to our office via the OEQC link:

[http://oeqc.doh.hawaii.gov/Shared%20Documents/EA\\_and\\_EIS\\_Online\\_Library/Hawaii/2010s/2016-04-23-HA-5E-DEA-Church-Single-Family-Residence.pdf](http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Hawaii/2010s/2016-04-23-HA-5E-DEA-Church-Single-Family-Residence.pdf)

EPO strongly recommends that you review the standard comments and available strategies to support sustainable and healthy design provided at: <http://health.hawaii.gov/epo/landuse>. Projects are required to adhere to all applicable standard comments. EPO has recently updated the environmental Geographic Information System (GIS) website page. It now compiles various maps and viewers from our environmental health programs. The eGIS website page will be continually updated so please visit it regularly at: <http://health.hawaii.gov/epo/egis>.

EPO also encourages you to examine and utilize the Hawaii Environmental Health Portal at: <https://eha-cloud.doh.hawaii.gov>. This site provides links to our e-Permitting Portal, Environmental Health Warehouse, Groundwater Contamination Viewer, Hawaii Emergency Response Exchange, Hawaii State and Local Emission Inventory System, Water Pollution Control Viewer, Water Quality Data, Warnings, Advisories and Postings.

We advise that, if appropriate, the Hazard Evaluation and Emergency Response (HEER) Office's Site Discovery and Response (SDAR) Section be contacted. The SDAR section protects human health and the environment by identifying, investigating, and remediating sites contaminated with hazardous substances (non-emergency site investigations and cleanup). The HEER Office's SDAR Section can be contacted at: (808) 586-4249. For historical maps on lands where sugarcane was grown see: <http://health.hawaii.gov/epo/egis/sugarcane>

In order to better protect public health and the environment, the U.S. Environmental Protection Agency (EPA) has developed a new environmental justice (EJ) mapping and screening tool called EJSCREEN. It is based on nationally consistent data and combines environmental and demographic indicators in maps and reports. EPO encourages you

Ms. Lauren Yasaka  
Page 2  
April 26, 2016

to explore, launch and utilize this powerful tool in planning your project. The EPA EJSCREEN tool is available at: <http://www.epa.gov/ejscreen>.

We request that you utilize all of this information on your proposed project to increase sustainable, innovative, inspirational, transparent and healthy design. Thank you for the opportunity to comment.

Mahalo nui loa,



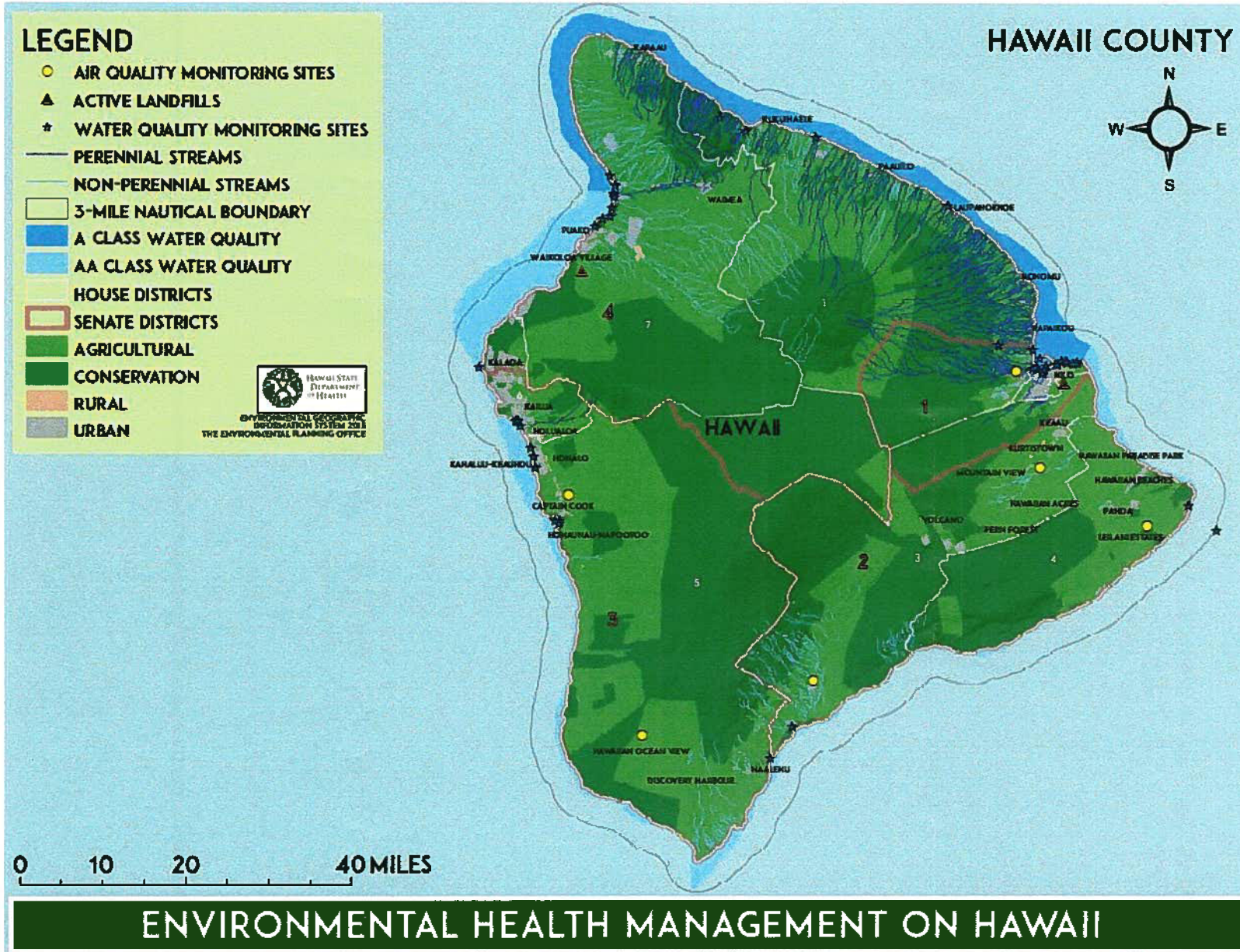
Laura Leialoha Phillips McIntyre, AICP  
Program Manager, Environmental Planning Office

LM:nn

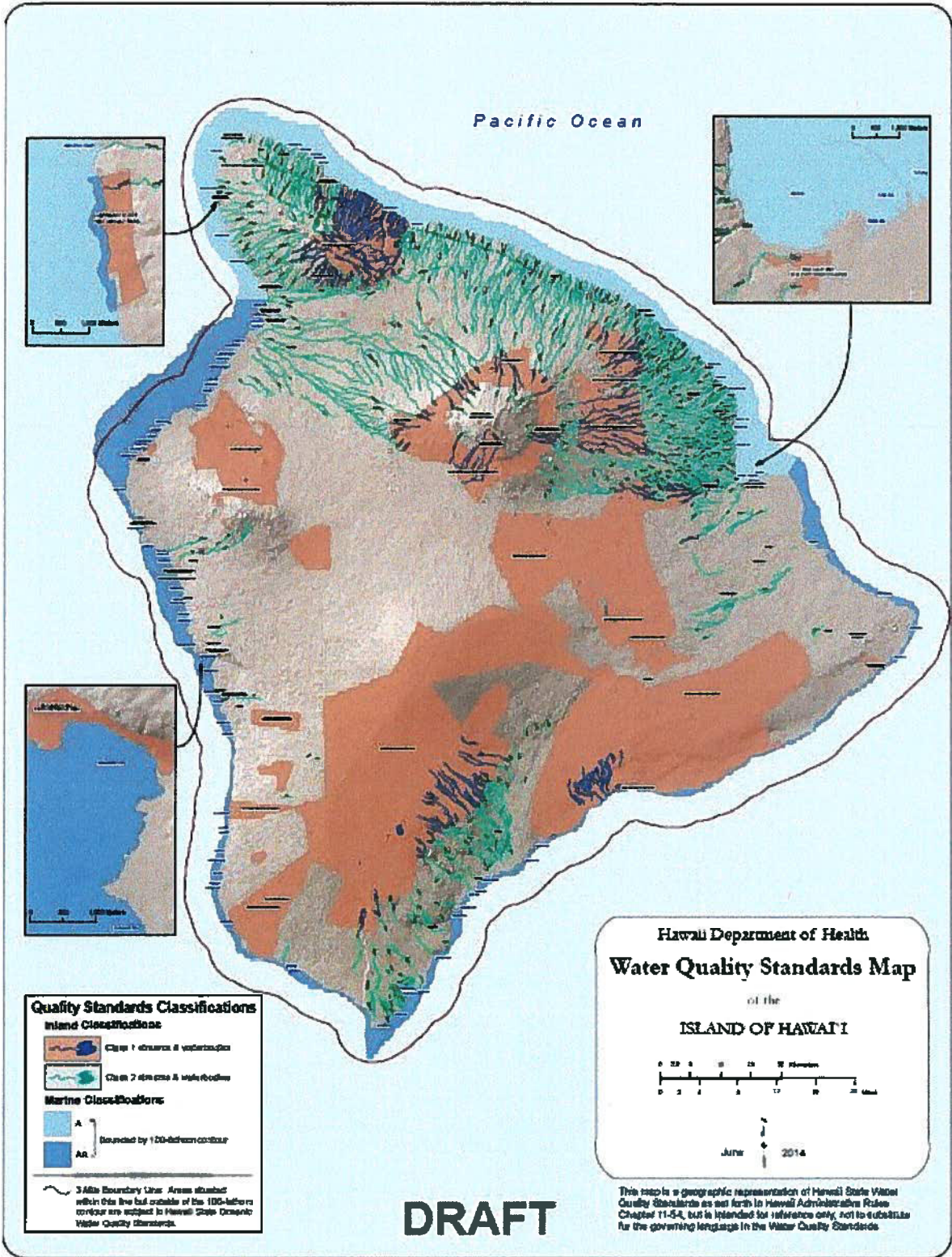
- Attachment 1: EPO Draft Environmental Health Management Map – Hawaii County
- Attachment 2: Clean Water Branch: Water Quality Standards Map – Hawaii County
- Attachment 3: Wastewater Branch: Recycled Water Use Map of Project Area
- Attachment 4: Historic Sugarcane Map of Project Area
- Attachment 5: U.S. EPA EJSCREEN Report for Project Area

c: Ken Church, applicant {via email: [Dockline3@yahoo.ca](mailto:Dockline3@yahoo.ca)}  
DOH: DHO HI, HEER {via email only}

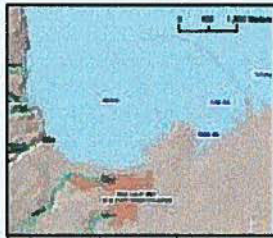
EPO Draft Environmental Health Management Map: <http://health.hawaii.gov/epo/egis>



MAP INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. SITE LOCATIONS ARE APPROXIMATE.



Pacific Ocean



**Quality Standards Classifications**

**Inland Classifications**

- Class 1 streams & waterbodies
- Class 2 streams & waterbodies

**Marine Classifications**

- A Bounded by 100-fathom contour
- AR

3 Mile Boundary Line: Areas situated within this line but outside of the 100-fathom contour are subject to Hawaii State Oceanic Water Quality Standards.

Hawaii Department of Health  
**Water Quality Standards Map**  
 of the  
**ISLAND OF HAWAII**

0 2.5 5 10 15 20 25 Miles

June 2014

**DRAFT**

This map is a geographic representation of Hawaii State Water Quality Standards as set forth in Hawaii Administrative Rules Chapter 11-54, but is intended for reference only, not to substitute for the governing language in the Water Quality Standards.

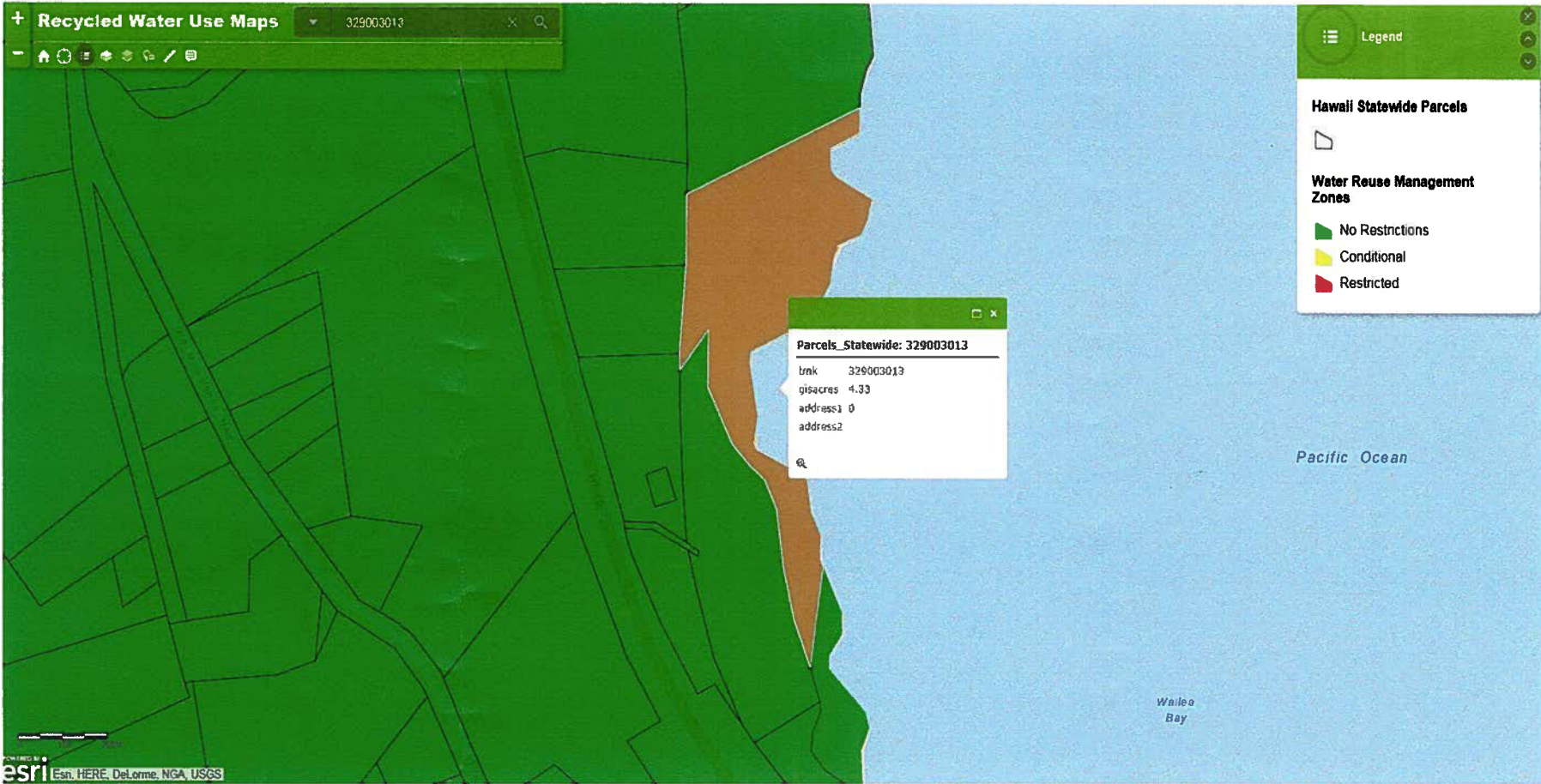
**Hawaii Statewide Parcels**

**Water Reuse Management Zones**

- No Restrictions
- Conditional
- Restricted

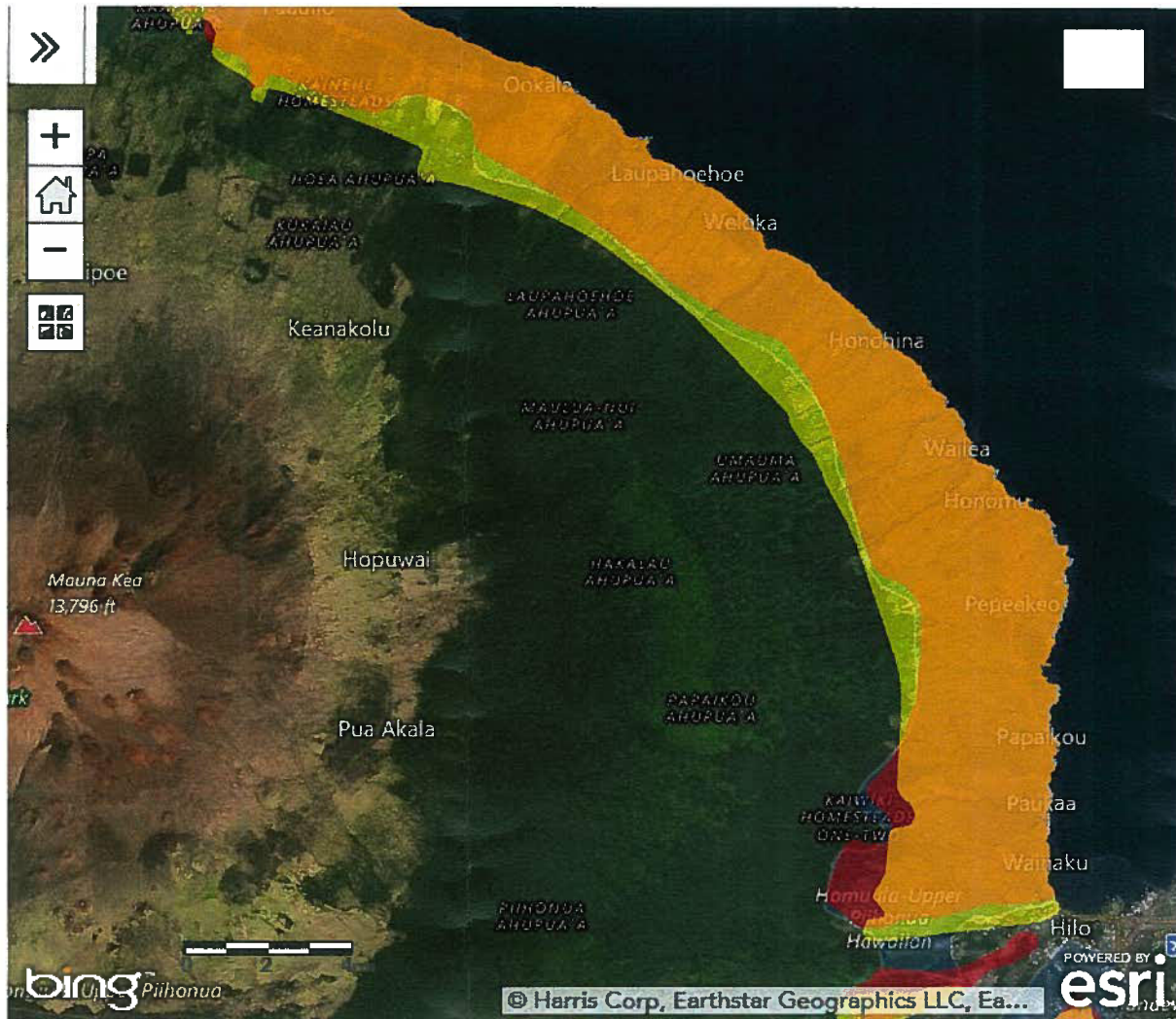
**Parcels\_Statewide: 329003013**

trnk	329003013
gisacres	4.33
address1	0
address2	





# HISTORIC SUGARCANE LANDS MAP VIEWER



Legend

Details

Sugarcane - Sugarcane\_1937



Sugarcane - Sugarcane\_1920



Sugarcane - Sugarcane\_1900



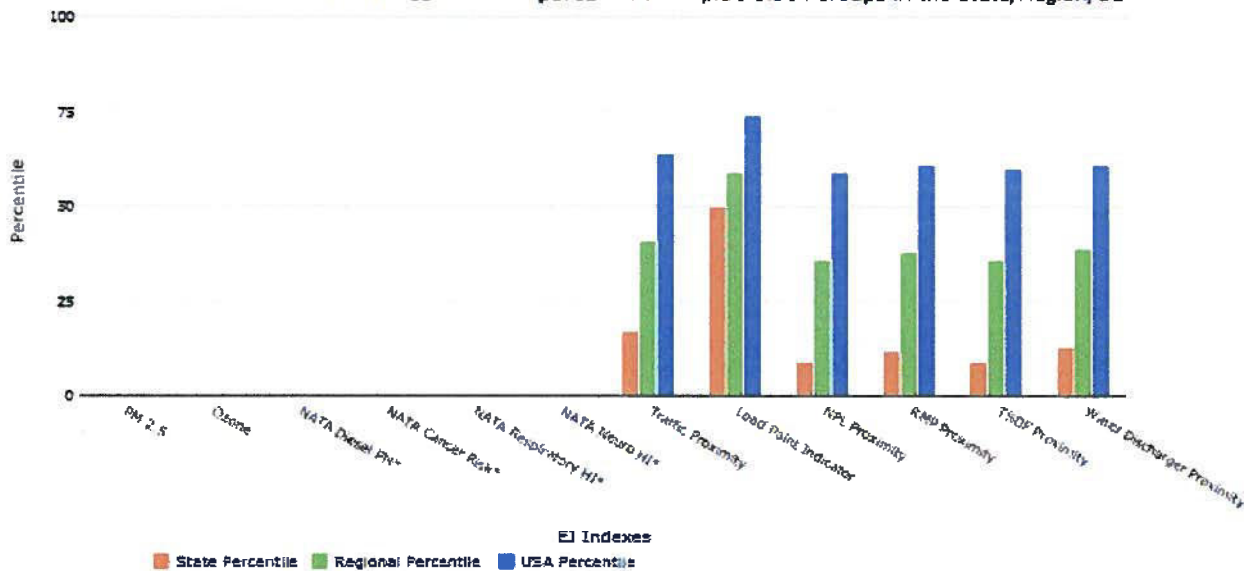


**1 mile Ring Centered at 19.887964,-155.120044  
HAWAII, EPA Region 9  
Approximate Population: 180**



Selected Variables	Percentile in State	Percentile in EPA Region	Percentile in USA
<b>EJ Indexes</b>			
EJ Index for Particulate Matter (PM 2.5)	N/A	N/A	N/A
EJ Index for Ozone	N/A	N/A	N/A
EJ Index for NATA Diesel PM*	N/A	N/A	N/A
EJ Index for NATA Air Toxics Cancer Risk*	N/A	N/A	N/A
EJ Index for NATA Respiratory Hazard Index*	N/A	N/A	N/A
EJ Index for NATA Neurological Hazard Index*	N/A	N/A	N/A
EJ Index for Traffic Proximity and Volume	17	41	64
EJ Index for Lead Paint Indicator	50	59	74
EJ Index for NPL Proximity	0	35	59
EJ Index for RMP Proximity	12	38	61
EJ Index for TSDP Proximity	0	35	60
EJ Index for Water Discharger Proximity	13	39	61

**EJ Index for the Selected Area Compared to All People's Block Groups in the State/Region/US**

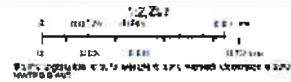


This report shows environmental, demographic, and EJ indicator values. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 55th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports.



April 26, 2016

+ Digitized Point



Selected Variables	Raw data	State Average	%ile in State	EPA Region Average	%ile in EPA Region	USA Average	%ile in USA
<b>Environmental Indicators</b>							
Particulate Matter (PM 2.5 in $\mu\text{g}/\text{m}^3$ )	N/A	N/A	N/A	9.95	N/A	9.78	N/A
Ozone (ppb)	N/A	N/A	N/A	49.7	N/A	46.1	N/A
NATA Diesel PM ( $\mu\text{g}/\text{m}^3$ ) <sup>*</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NATA Air Toxics Cancer Risk (risk per MM) <sup>*</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NATA Respiratory Hazard Index <sup>*</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NATA Neurological Hazard Index <sup>*</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Traffic Proximity and Volume (daily traffic count/distance to road)	28	280	28	190	27	110	44
Lead Paint Indicator (% pre-1960s housing)	0.51	0.17	91	0.25	78	0.3	75
NPL Proximity (site count/km distance)	0.0027	0.002	7	0.11	0	0.096	0
RMP Proximity (facility count/km distance)	0.05	0.18	13	0.41	7	0.31	13
TSDF Proximity (facility count/km distance)	0.0028	0.002	7	0.12	0	0.054	2
Water Discharger Proximity (count/km)	0.053	0.33	13	0.19	15	0.25	13
<b>Demographic Indicators</b>							
Demographic Index	42%	51%	19	46%	46	35%	67
Minority Population	46%	77%	8	57%	38	38%	66
Low Income Population	38%	25%	79	35%	59	34%	61
Linguistically Isolated Population	2%	6%	38	9%	29	5%	57
Population with Less Than High School Education	8%	10%	49	18%	33	14%	36
Population under Age 5	2%	6%	7	7%	9	7%	9
Population over Age 64	24%	14%	89	12%	92	13%	91

<sup>\*</sup>The National-Scale Air Toxics Assessment (NATA) environmental indicators and EJ indexes, which include cancer risk, respiratory hazard, neurodevelopment hazard, and diesel particulate matter will be added into EJSCREEN during the first full public update after the soon-to-be-released 2011 dataset is made available. The National-Scale Air Toxics Assessment (NATA) is EPA's ongoing, comprehensive evaluation of air toxics in the United States. EPA developed the NATA to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that NATA provides broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. More information on the NATA analysis can be found at: <https://www.epa.gov/national-air-toxics-assessment>.

For additional information, see: [www.epa.gov/environmentaljustice](http://www.epa.gov/environmentaljustice)

EJSCREEN is a screening tool for pre-decisional use only. It can help identify areas that may warrant additional consideration, analysis, or outreach. It does not provide a basis for decision-making, but it may help identify potential areas of EJ concern. Users should keep in mind that screening tools are subject to substantial uncertainty in their demographic and environmental data, particularly when looking at small geographic areas. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports. This screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location. EJSCREEN outputs should be supplemented with additional information and local knowledge before taking any action to address potential EJ concerns.

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Joaquin Gamiao-Kunkel  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

April 27, 2016

Ms. Lauren Yasaka  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
P. O. Box 621  
Honolulu, HI 96809

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2016 MAY -2 A 9 44  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Dear Ms. Yasaka:

**SUBJECT: Request for Comments: CDUA HA-3767  
Construction of a Single-Family Residence  
TMK: 2-9-003:013, 029 and 060, Wailea, South Hilo, Hawai'i**

This is in response to your April 12, 2016, request for comments on the proposed construction of a single-family dwelling on Parcel 060 with access and related improvements crossing Parcels 013 and 029.

We note the following:

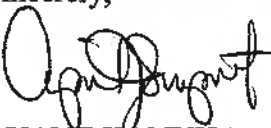
1. We concur with the State Land Use designation of Conservation and the County General Plan Land Use Pattern Allocation Guide Map (LUPAG) designation of Open. However, although County zoning is Agricultural (A-20a), the Conservation districts are governed by the Department of Land and Natural Resources.
2. It is in the Special Management Area. On April 21, 2016, a Special Management Area Use Permit Assessment Application (SAA 16-001389) was submitted for the construction of the 4,690 square foot single-family dwelling and related improvements.
3. As the project location is over 100 feet from the top of the coastal pali, no improvements are proposed in the "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).

Ms. Lauren Yasaka  
April 27, 2016  
Page 2

4. In 1.5.3 Listing of Permits and Approvals, please note that Plan Approval for the proposed project is not required. Also, although listed twice, building permits and grading permits are only issued by the Department of Public Works.

Thank you for the opportunity to provide comments on the subject application. Should you have any questions, please contact Esther Imamura at (808) 961-8139.

Sincerely,



DUANE KANUHA  
Planning Director

ETI:ja

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**Yasaka, Lauren E**

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**From:** Robin Rudolph <rudolphr@hawaii.edu>  
**Sent:** Monday, May 02, 2016 10:53 PM  
**To:** Yasaka, Lauren E  
**Subject:** public comment on DEA-AFNSI Church Residence

Dear Ms. Yasaka,  
my name is Robin Rudolph, I am a student at the University of Hawaii at Hilo and I was reviewing the DEA of the proposed Church residence. I was looking at the 'environmental setting' of the existing flora and fauna and noticed that there was only one native plant present, the "popolo berry bushes". The extensive agriculture from the late 1800's until 1992 has changed the original environment into one primarily dominated by introduced plants. I was curious if there might be any efforts to plant native species and/or remove invasive ones? I feel that the different impacts and mitigation to resources addressed in the "Environmental Setting" are sufficient in maintaining or improving the proposed location. What was the predominant crop of agriculture during the 1900's and what legacies might that have left?

Thank you for your consideration,

-Robin

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  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF: OCCL:LY

CDUA: HA-3767  
Acceptance Date: March 29, 2016  
180 Day Expiration Date: September 25, 2016

Mr. Ken Church  
Sent Via E-mail: dockline3@yahoo.ca

**MAY 31 2016**

Dear Mr. Church:

SUBJECT: End of Comment Period

Conservation District Use Application (CDUA) HA-3767  
Church Single Family Residence  
Wailea, S. Hilo, Hawai'i  
Tax Map Key (TMK): (3) 2-9-0036:013, 029, and 060

This letter is regarding the processing of CDUA HA-3767. The public and agency comment period on your application and Draft Environmental Assessment (EA) has closed (May 24, 2016). Attached to this letter are copies of the comments received by the Office of Conservation and Coastal Lands (OCCL) regarding your CDUA and Draft EA.

Please send copies of your responses to the questions and comments raised in these letters directly to the authoring agency as well as to the OCCL. Responses to comments received directly should also be forwarded to the OCCL. The Final Environmental Assessment (EA) must include a copy of the comment letters received as well as your responses to those letters and may be attached as appendices to the Final EA. Questions, comments and concerns must also be addressed within the body of the Final EA itself for the Department to make a determination in regards to declaring a Finding of No Significant Impact (FONSI).

Please send 2 hard copies and 2 CDs in pdf format of your Final EA to the OCCL. In addition, please send an electronic copy of the Office of Environmental Quality Control (OEQC) Publication Form to OCCL staff at lauren.e.yasaka@hawaii.gov. If the project summary has changed, include a new summary. Please include a hard copy of the submitted publication form with the Final EA copies.

Should the Department decide to issue a FONSI, the Final EA and publication form shall be forwarded on to the OEQC for publication in *The Environmental Notice*. Should you have any questions, please contact Lauren Yasaka of our Office at 587-0386.

Sincerely,

A handwritten signature in blue ink, appearing to read "Samuel J. Lemmo".

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

## **EXHIBIT 23**

**Applicant's response to DLNR/OCCL letter of acceptance**



June 8, 2016

State of Hawaii  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Ms. Yasaka,

Subject: Undated acceptance letter for CDUA HA 3767 (rec'd March 31)  
and  
your letter dated May 31, 2016 Subject: End of Comment Period

I noted at the bottom of page 2 of your letter you list 4 comments therein pointing to requested inclusions and specific definitions to be submitted in the final EA.

Particularly you state.....

- *In the final EA, please include a list of the applicable permits and approvals that will be needed for the proposed project;*

This section is now included at the back of the Final EA.....

**Listing of Permits and Approvals.**

- Federal..... None
- State of Hawaii.....  
Department of Land and Natural Resources.....approval of CDUA  
Department of Health-Approval of individual Waste-water system; and Building Permit  
Department of Quality Control.....FONSI
- County of Hawaii  
Planning Department.....Approval of SMA Assessment Application  
Building Permit  
Electrical permit  
Plumbing permit  
Occupancy permit

- *Please provide the individual dimensions of the solar panels that are proposed;*

Please find this at Page 21 of the Final EA

☐ **Solar electric and water heating panels.** It is proposed that the *'single family residence'* will be off-grid and rely on solar energy, batteries and a stand-by generator for solar supplemental electricity. The solar energy panels will be provided on the East, South and West sides of the roof of the *'single family residence'* in order to capture morning, afternoon and early evening solar power. No more than a maximum of 30 solar panels will be utilized in the Project. The panel dimensions will be approx. 36-42" X 65-76" long.

It is difficult at this point to describe the exact size of the panels as they have yet to be purchased. The size ranges specified in the Solar panel description in the EA are generally the sizes currently available in the wattage per panel that I intend to purchase.

- *In the final EA, please include a section discussing alternatives to the proposed project, such as the no build alternative;*

This is included at page 41 of the Final EA

#### **Alternative Actions Considered**

Under the no action alternative, The Applicant would not submit the CDUA for the proposed Project. The Applicant does not own a residence in Hawaii. The Applicant is conducting agricultural uses of the Project area and requires a *'single family residence'* particularly in order that the Applicant can provide good stewardship of the upkeep of the property and the Historical Agricultural uses of the Property. The Applicant believes that not having a *'single family residence'* on the property is neither financially viable nor would it allow the best use of the Property. A residence will assist in the management of the naturally open and scenic nature of the Property. The site selection and design of the residence is believed by the Applicant to require the least soil disturbance, place the residence at a maximum distance from the ocean and preserve the scenic views from the two other residences in the subdivision.

- *Please clarify the width of the access road as well as whether the "repair" of the access road and creation of the turn-around area will involve clearing of the existing grass prior to laying down of the crushed rock;*

This is included on Page 18 and exhibit 30 in the Final EA

In order to minimize the short term impacts of the project the Applicant intends to use Best Management Practices by minimizing fill and ensuring the useful recycling of organic materials harvested as a result of the cutting of sod/grass in project areas. Ref. Exhibit 21 wherein it is described that a portion, 70 cubic yards of the 650 cubic yards (leaving 580 cubic yards of soil for fill cut from the Residence and parking/turn around area), and an additional 50 yards from the roadway repair) will be sod and will be composted and utilized in placement around the various agricultural use areas of the Property instead of in the fill areas. Such compost placed around the trees and the like that may have soil intermixed will either be suitably mulched or grassed to prevent soil erosion during heavy rainfall events.

And

Exhibit 30 which states.....

**ROAD REPAIR**

The grass along the road path and car parking and turn around area adjacent to the residence will first be sprayed to and kill the grass with Roundup and subsequently cutting the grass/sod layer 12 – 14 ft. wide to a depth of approx 2-4” depth resulting in a volume of approx. 25-50 cubic yards of cut soil/sod. This material is substantially composed of organic material mixed with a modest amount of soil. The organic material has value as a composting material useful in support of the Applicant's farming operations on the Property (specifically fruit, nut and bean trees that have already been planted on the Property). The sod pieces will therefore be placed in areas (dead grass layer facing up) surrounding these agricultural use, planted trees, so that the gradual composting of the sod will benefit the nutrient support of the trees. The areas will be subsequently mulched to control plant growth below the trees and prevent erosion of any soil that becomes exposed during the composting/rotting of the grass mat over time.

The placement of the sod around each tree will be variable depending on the slope of the land surrounding the tree. Generally a circle placement of the sod will be in the order of a 4'-8' dia. around each tree however smaller trees may have a smaller circle of sod placed around them and larger trees may have larger circles of sod. Also down-slope areas within each circle of sod may be layered 2 or 3 levels deep with sod effectively leveling the area under each tree.

It is believed that there currently exist sufficient agricultural use trees to use all of the cut sod resulting from both the roadway and the residence site in this way. In the event that there exists left over sod it will be placed in the same fashion as the fruit trees described herein surrounding the substantial bamboo line planting which is along the Southern boundary of lot 060 and a planned garden area on Lot 029.

After the sod removal the roadway will then be roto-tilled to a depth of about 6” resulting in the mixing of any remaining soil into the road bed of the former railroad bed/field road. 4” of crushed rock will be applied to the described roadway and car turn around area adjacent to the planned residence and again roto-tilled into the previously roto-tilled area mixing the added crushed rock into the road base. In areas where it is determined that the road base requires further enhancement a fabric layer typically used for roadway construction will be applied over the mixed base materials of the road.

Thereafter an additional layer of 4-6” of crushed rock will be applied as a final topping to the roadway and parking area.

Finally

You asked in your letter to describe the width of the repaired road. The road is planned to range between 12 and 14 ft. wide.

I trust that you find these clarifications sufficient to your comments on page 2 of the undated letter of acceptance for CDUA HA 3767.

Turning to your letter dated May 31, Subject End of Comment Period wherein you advise to update the Final EA document with relevant concerns that were raised during the comment period I have updated the document generally and included a new section "Significance criteria 13 points" and "Findings" requested by the Office of Quality Control.

Thank you in advance for your assistance.

Respectfully Submitted by,

Ken Church

## **EXHIBIT 24**

**Applicant's response to DLNR land division**

June 5, 2016

State of Hawaii  
Department of Land and Natural Resources  
Land Division  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Tsuji (Administrator)

**Subject: Your letter to me regarding “*Agricultural Use of Private Lands Designated as TMKs: (3) 2-9-003: 013, 029, 060*” dated April 21, 2016**

I am in receipt of your letter dated April 21, 2016 regarding the above-referenced matter. Thank you so much for the guidance/referral that you have offered. Since I purchased these properties (3 TMK parcels) I have sought guidance from the OCCL in regards to my proper use, according to law, of my property as allowed non-conforming agricultural uses according to HAR 13-5. As the TMK parcels are zoned within the Conservation Resource District I wanted to insure that my agricultural uses of the referenced 3 TMK parcels would not be in contravention of any state laws, particularly HAR 13-5, as the penalties for unpermitted land uses within the Conservation district are quite severe.

I have used every reasonable effort to communicate with the OCCL (many letters over the last 18 months and particularly more specific letters beginning in Sept. of 2015) seeking guidance whether the evidence that I submitted to the OCCL of past use of these parcels for agriculture, which seemed to me to grandfather (allow) my present use. The guidance, if any, that I received from the OCCL was not sufficiently complete to meet the standard of acceptance/comfort that I anticipated from the OCCL.

Now after I identified that I have already extensively planted substantial portions of the parcels to various agricultural plantings and identified that in CDUA HA 3767 to the OCCL in April I did finally receive guidance/a request that I submit a

**“management plan”** according to the requirements of HAR 13-5 in an undated letter which I received around the end of April 2016 titled .....

*“NOTICE OF ACCEPTANCE AND PRELIMINARY ENVIRONMENTAL DETERMINATION” Conservation District use Application (CDUA) HA-3767”.*

The guidance stated in the late April letter of acceptance for processing from the OCCL for CDUA HA 3767.....

*“In regard to your statement of your continued use of cultivating agriculture crops on all three (3) properties, prior to proceeding, a management plan, in conformance with HAR § 13-5, Exhibit 3 Management Plan Requirements, must be prepared and submitted for the Department’s review and approval.”*

I already had identified to the OCCL in my CDUA HA 3767 that I had proceeded with my non conforming agricultural land uses as I never received the requested guidance from the OCCL during the 180 day period (according to HAR 13-5 beginning last Sept. wherein I requested of the OCCL a **“determination”** as to what type of permit, if any, would be required by the OCCL for “allowed non-conforming agricultural use” on my parcels. Ref. ....

*§13-5-30 Permits, generally. .... If there is any question regarding the type of permit required for a land use, an applicant may write to the department to seek a determination on the type of permit needed for a particular action.*

Now subsequent to the undated letter of acceptance for processing of CDUA HA 3767 wherein a management plan has been requested I have not prepared or submitted such a plan. While I have found *“Exhibit 3 Management Plan”* in HAR 13-5 it appears to me that the submission, **for approval by the OCCL, of such a plan** for *“allowed non conforming agricultural use according to HAR 13-5”* is not a requirement of HAR 13-5. I am left perplexed that the OCCL is requiring/requesting it now without citing a referenced authority for such a requirement? If the use is an **allowed use** *without any reference to submission of the prescribed management plan according to HAR 13-5* I am reluctant to submit

a management plan to the OCCL as their process of approval is very rigid, tedious, expensive and time consuming and the legislated schedule of fines is an enormous burden of fines possibly levied against property owners found in violation of HAR 13-5. Agriculture by its very nature is a dynamic land use. In my opinion the OCCL processes of approvals are not conducive to agricultural uses of my property.

By example before I was aware that non-conforming agricultural use of my property was allowed according to HAR 13-5 as a non conforming use without the requirement of a Site Plan Approval by the OCCL I submitted a modest SPA along with the \$50 filing fee to the OCCL described .....

*To plant 12 small potted fruit trees on the property, my application suffered a delay as I had not identified what I was going to do with the shovel full of dirt that I removed from each of the planting holes. Once I corrected that deficiency in my application to plant the 12 trees the permit was issued without further delay. The planting area was a mowed grass area which was formerly used for sugar cane farming. There already existed a 2004 Environmental study which included a Botanical and Archaeological study for the parcels. I was very fortunate that I did not encounter any large stones as my subsequent placement of them on my property (“solid object placed on the property”) may be viewed by the OCCL as a violation of HAR 13-5..... I have read numerous enforcement matters brought before the BLNR by the OCCL and I am quite wary of doing anything that may be brought before the BLNR as an enforcement recommendation as I am rather suspect that my file already carries considerable “RED FLAGS” within the OCCL department.*

In parallel to my efforts to insure that my agricultural uses of my parcels were not in violation of any other HAR or HRS statutes resulted in my inquiry of your department on April 13, 2016 which you referenced in your letter of response dated April 21, 2016. I do sincerely appreciate the suggestion that you made in your letter that I contact the Hamakua Water and Soil Conservation District for guidance.



During this past week I telephoned the NRCS Hilo Service Center, ph # 808 933 8350 that you advised that I inquire of further in this matter. The switchboard referred me to the proper authorized person “Kanoë” with whom I discussed the matter at some length. It was her advice that her office offered a *voluntary program* wherein they would co-ordinate an ‘on site’ review of the parcels, if requested by me, which would include professionals from the University, free of charge. I would be encouraged to identify my planned agricultural land uses and they would give advice appropriate that may assist me to be a good steward of the agricultural use of my property.

As I am not presently on the islands and I do not have a planned date of return I advised Kanoë that I would contact her office following my return to the islands which is presumed presently to be this fall. Their assurances that my use of my property for agriculture (particularly identified by me to her as horticultural use) was generally allowed within the scope of the authority of her office and that I need not be particularly concerned that I was breaking any laws.

Again thank you for your letter of April 21. Your guidance and referral is very much appreciated.

Sincerely,

Ken Church

## **EXHIBIT 25**

**Applicant's response to Office of Quality Control**

June 6, 2016

State of Hawaii  
Office of Environmental Quality Control  
235 South Beretania St. Suite 702  
Honolulu, Hawaii 96813

Attn: Scott Glenn, Director

Dear Mr. Glenn,

Subject: Draft Environmental Assessment (Draft EA) for Church Single Family Residence, Wailea, South Hilo, Hawaii

I am in receipt of your letter dated May 20, 2016 to Lauren Yasaka of the OCCL/DLNR which was copied to me.

I have reviewed your letter. I am responding accordingly herein. I will copy your comments from that letter followed by my response in italics on a paragraph by paragraph basis herein....

Paragraph 2.

We understand this Draft EA was prepared by the landowner/applicant who appears to have little experience preparing documents such as this; accordingly, the information **is not always presented in the most readable or typical fashion**. Nonetheless, we were able to discern most of the required content elements for EAs, codified in Section 10 of Chapter 11-200, Hawai'i Administrative Rules (HAR), i.e., the environmental impact statement rules.

*While it is true that I do have little experience preparing documents such as this the law does provide that I may submit my own documents and I used every reasonable effort to comply with HAR 11-200 rules and your office's published guidebook describing, in more readable terms, the correct format and process for the submission of a Draft EA. **Frankly I submit herein that HAR 11-200 and the Guidebook supplied by your dept. is "not always presented in the most readable or typical fashion"!** Specifically I reviewed the.....*

*(1) guidelines document that I found on your website to assist in the preparation of a Draft EA*

*and*

*(2) HAR 11-200.*

*And*

*(3) HAR 13-5*

*When preparing my Draft EA I used every reasonable effort to gain assistance from the agencies involved.*

*Not everyone contemplating building a home in Hawaii can afford the high cost of professionals which is not excessive in light of the detail required and the tedium of presentation in the ‘**most readable or typical fashion**’ as you have stated in your letter. While I represent that such professional fees are not excessively high in light of the detail required they are high none-the-less and a substantial additional burden placed upon potential homeowners as they wind through the onerous legislated process prescribed in law. In particular the law is not an easy read regarding the submission of information for the Draft EA and inquiries that I made to the OCCL (the lead agency in my case) directed that I must file the Draft EA with their office for their review. The OCCL directed me to HAR 11-200 in regards to the content and format requirements of submission of my Draft EA to their office. I used every reasonable effort to sort through this copious document. Frankly a standard blank form would go a long way in assisting applicants but that is not provided.*

*In my opinion there is an obligation to Government and its appointed agencies, in Law, to make laws that citizens can read and reasonably understand and conduct themselves in a lawful manner. A citizen ought not to have to always consult/hire an expert/professional, as you implied that I ought to have, in order to conduct the use of his property in a lawful way. Furthermore public servants ought to suffer the obligation to assist applicants in every way reasonably possible, to ease this process, and not unreasonably be critical of the efforts of the unprofessional land owner which is my case.*

*You did say in your letter “**accordingly, the information is not always presented in the most readable or typical fashion. Nonetheless, we were able to discern most of the required content elements**”*

*Frankly it would appear that you confirm that the information was there. The law does not appear to me to prescribe the order of presentation specifically. In this particular case the lack of clarity in the law and a lack of adequate support of the*

*agencies involved has resulted that I not only had to suffer through a confusing process, ambiguity, obfuscation, tedium, delay and added cost as well now I face criticism in your letter, now a public document, for perceived deficiencies in the readability of my Draft EA and application of the law.*

*In my opinion the responsibility ought to fall first to the regulators to speak clearly in the law and supporting guides and the administrators of the law ought to have been more helpful **‘in the early stages of my planned use/development of my property’** as the law provides. The responsibility for such clarity, which you have indicated that you expect, in my application ought not to be so readily **transferred to me and my submitted information referred to as ‘unclear or deficient’** because you recognized my lack of professional presentation.*

*“We understand this Draft EA was prepared by the landowner/applicant who appears to have little experience preparing documents such as this”*

*Again I used every reasonable effort to get the assistance and guidance of the regulators, including your office, in the preparation of my Draft EA which was obviously deficient. I would have thought that a compliment rather than such a negative comment ought to have been included in your letter celebrating that an ‘ordinary citizen’ can actually draft such a document.*

*Finally I will point out that official documents such as this have a **‘living history’** long after acceptance for processing or filing that may serve more purpose than what was evident to you, the reviewer and filing agency. For clarity, as an explanation, it was my intention to properly describe what may have been misinterpreted in comments made in your letter of review as generally formed from a **‘lack of experience on my part’** a somewhat comprehensive (but in no way close to a full disclosure) description of my planned land use and explanations of the history leading up to the submission of the Draft EA.*

*Notwithstanding the deficiency in the presentation of information noted in your letter (the 13 point significance analysis) which has now been corrected I stand by the content and order of presentation of information in the Draft EA as accurate and revealing and relevant to my submission.*

***Formally unnecessarily criticizing my ‘lack of experience’ in your letter (a public document) is frankly, insulting!** This was a huge work for an ordinary citizen to undertake without reasonable assistance from the regulating agencies*

*and I believe that my efforts in formulating my Draft EA ought not to be identified in the negative way that your letter states/implies. Your letter back to Ms. Yasaka in regards to this particular comment seems to me to serve little purpose as both of you already are knowledgeable of the fact that I am an ordinary citizen and it need not have been referred to in such a formal document as it seems to me to serve no purpose relevant to the Draft EA.*

### Paragraph 3

However, missing from the Draft EA is the Significance analysis, as described in HAR Section 11-200-12. Corresponding to elements (8) & (9) of the EA content requirements, a narrative discussion of each of the 13 listed significance criteria must be included in the Final EA, along with a **statement of the anticipated agency determination** (either a Finding of No Significant Impact or, theoretically, an Environmental Impact Statement Preparation Notice). While the individual significance criterion may seem repetitive with other aspects of the EA, such as the embedded discussion (beginning on page 44) of Evaluation Criteria pertaining the Conservation District rules (Chapter 13-5, HAR), the Significance analysis is a critical and necessary element of the environmental review process.

*I appreciate that your letter was directed to the ‘lead agency’, the OCCL, and perhaps the criticism was not particularly directed at me. However you did c.c. me the letter as well and the OCCL has required that I correct the deficiency and it is a public document. I have noted that HAR 13-5 requires that I submit a Draft EA to them with my application without definition of what a Draft EA is within HAR 13-5.*

*A ‘common sense’ read of the law and your department’s guide appeared to me to indicate that the reviewing agency (presumably the lead agency) is required to be the author of this section of a Draft EA and not the applicant of a CDUA and submitter of a Draft EA. After all it is described in law as an “**Analysis**” and not a “**self Analysis of my own presentation**”. I feel that the burden ought not to fall on me to apologize for the seeming ambiguity in the law and correct this deficiency in my Draft EA.*

*Quoting here an excerpt from your office’s own on-line document “Guide to the Implementation and Practice of the Hawaii Environmental Policy Act 2012 Edition”*

This Guidebook is a revision of the “Guidebook for the Hawaii State Environmental Review Process” published in 2004 by the Office of Environmental Quality Control (OEQC), and is intended to provide a **clear and comprehensive explanation** of Hawaii Environmental Policy Act (HEPA), its practice, and its implementation.....

*I encourage you to review your guidebook and HAR 11-200 as I have. I felt, and continue to feel, that I had gone more than the required distance in meeting the*

*requirements of the law even though identifying, in law, where the burden of preparing such a document rests is clearly not with me.*

*While I have suffered temptation to challenge the process of submission according to HAR 11-200, as I feel the burden of presentation was unfairly placed on me, I have determined to press on and simply provide the requested information. **I therefore request that my protest, which I register herein, not be used in any way to add further delay to my realization of my dream to have a home on my property in Hawaii.** The process of transforming the purchase of my property some two years ago into a home on my property so I can enjoy such a basic human right is still in the planning stages while I wind through the regulation process. I still have a considerable series of regulated hurdles to go through despite my using every reasonable effort in the timely submission of documents to the various regulating bodies.*

*None-the-less, after discussing this further with Tom Eisen, of your office on the telephone, I now will be including with my Final EA submission the following corrections to the identified deficiencies in my Draft EA and now I am proposing it for review as my final EA which, in my opinion, meets the criteria sufficient for a FONSI by the lead reviewing agency for filing with your office.*

## **DETERMINATION, FINDINGS AND REASONS FOR SUPPORTING DETERMINATION**

### **Significance Criteria**

According to the Department of Health Rules (11-200-12, HAR), an applicant or agency must determine whether an action may have a significant impact on the environment, including all phases of the project, its expected consequences both primary and secondary, its cumulative impact with other projects, and its short and long-term effects. The Rules establish “Significance Criteria” to be used as a basis for identifying whether a proposed action will have **a significant environmental impact on the environment.**

### **1. Involves an irrevocable commitment to loss or destruction of any *natural or cultural resources.***

Neither *natural* or *cultural resources* appear to be defined in the definition section of HAR 11-200. Applicant proposes to construct a single-family residence within the Conservation District. The subject property was previously utilized for sugar cane production (agricultural use) for approximately 100 years. The specific area on the property proposed for the construction of the single family residence was formerly cultivated for this agricultural use as well the proposed access road was formerly first a railroad road bed and subsequent field road and thus to potential disturbed soil areas resulting from the proposed land use does not contain any particular existing natural or cultural resources that will be destroyed or irrevocably lost by the proposed dwelling and road construction.

However, having said that, the MDA (maximum developable area according to HAR 13-5) site area and former field road areas are presently mowed ‘a planted crop of introduced’ grasses. While *Natural Resources*’ in HAR 13-5 is identified as including “plants” and grass is a plant there will undoubtedly be some destruction of an existing ‘*natural resource*’ as the grass (a plant which is a natural resource by definition in HAR 13-5) in the developed area will now be removed and supplanted by a residence. Again HAR 11-200 does not define the term ‘natural resource’ so the destruction of a modest amount of grass will not have a significant effect on the environment of the project site.

Grass is technically a field crop, in the case of my property, which is an allowed ‘non conforming agricultural use’ of the property. Since cultivation of the area is also a continuing allowed non-conforming use of the property it is reasonable to find that the residence will not result in the destruction of a natural resource (grass) that is not already allowed to be destructed in an agricultural use of the property through the allowed cultivation of the land.

Finally similar projects are routinely supported by FONSI(s) . As ‘natural resources’ are not defined in HAR 11-200 the destruction of the grass is proposed to be minimal in scope and thus this land use is proposed to not **have a significant environmental impact**. Similarly ‘Cultural Resources’ are not defined in HAR 11-200 nor does it appear to be defined in HAR 13-5. A study was conducted respecting ‘cultural resources’ on the property and none were found and thus the project will not impact the cultural resources on the project site. In summary, therefore, the project does not involve an irrevocable commitment to the loss or destruction of any natural or cultural resources that are contemplated by HAR 11-200.

## **2. Curtails the range of beneficial uses of the environment.**

Applicant’s proposed action will not curtail the range of beneficial uses of the environment. As the Property is presently within the Conservation District, the allowable uses are generally restricted and regulated by DLNR. The approval of the Project will not curtail the range of beneficial uses of the environment, rather, the approval of the Project will allow the Applicant to commence an allowable use within the Conservation District, R Subzone. The proposed project is on private land in a gated community with restricted access. There is no access from the ocean side which is the only public side of the property as there exists a high, near vertical cliff above the ocean below, on the Eastern side of the property. There exists no public views of the property from the other sides. Therefore there exists no significant range of beneficial uses of the environment intended in HAR 11-200 that are curtailed but rather benefits enjoyed by the owner of this property contemplated as a result of this project.

## **3. Conflicts with the State's long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS; and any revisions thereof and amendments thereto, court decisions, or executive orders.**

The proposed action is consistent with the Environmental Policies and Guidelines established in Chapter 344, HRS, and the National Environmental Policy Act. Therefore the proposed project is not in conflict with such policies or goals.



**4. Substantially affects the economic or social welfare of the community or state.**

The proposed action will have little impact on the economic and social welfare of the community. Other properties in the immediate vicinity are utilized for both residential and agricultural purposes. The construction of a single-family residence on TMK No.: (3) 2-9-003: 060 and the repair of the access road crossing lot 029 will not have any significant effect on the socio-economic characteristics of the area.

**5. Substantially affects public health.**

The proposed action will not have any substantial impact on public health. Potential noise, air, water and drainage impacts associated with the construction of the proposed residence and the subsequent single-family residential use will be minimal and will be addressed by complying with Federal, State and County requirements.

**6. Involves substantial secondary impacts, such as population changes or effects on public facilities.**

The proposed action will not involve any increase in the number of existing lots and will not generate any substantial secondary impacts. The proposed action is consistent with the socio-economic transition that is occurring in the region and therefore substantial secondary impacts, contemplated in HAR 11-200, will not be impacted by the planned project.

**7. Involves a substantial degradation of environmental quality.**

The proposed dwelling and residential use will not result in a substantial degradation of environmental quality. Any significant environmental resources that might have previously existed on the Property were likely destroyed during the cultivation of sugar cane that spanned nearly one hundred years. The proposed residential use will be generally consistent with the character of the adjoining parcels as well as the neighboring Hakalau and Honomu communities. The Project will not add any new lots or increase the density of the Property. Therefore the planned project will not involve a substantial degradation of environmental quality.

**8. Is individually limited but cumulatively has considerable effect on the environment, or involves a commitment for larger actions.**

The proposed action will not involve any increase in the number of existing lots and will not generate any substantial secondary impacts. No additional land uses that are regulated/restricted by HAR 13-5 are contemplated by the applicant thus there is unlikely to be a cumulative effect of additional regulated land uses on the environment. The residence will allow the Applicant to better manage his existing agricultural use of his property. The applicant has already planted substantial areas of the 3 TMK parcels to agricultural crops. This agricultural use of the lots is an allowed use (an allowed non-conforming land use) according to HAR 13-5. The property was utilized for agriculture at the time that it was taken into the Conservation District. As such, the approval of the proposed action does not involve a commitment for larger actions and will not induce other regulated actions having a cumulative effect on the environment. The applicant will be better able to manage his existing agricultural use of his property by having a residence on his property. The agricultural use is already a formerly allowed, and now an **‘existing,**

*larger action* ' and does not represent a **new commitment** for larger actions. Thus the planned project will not have a cumulative nor considerable effect on the environment nor is it a commitment for larger actions

**9. Substantially affects a rare, threatened or endangered species or its habitat.**

The project site has been extensively disturbed by earthmoving equipment due to the former agricultural and railway/roadway use and does not have any candidate, proposed, or listed threatened or endangered species on the Property. As such, the proposed action will not have any substantial adverse effect on any rare, threatened or endangered species or its habitat.

**10. Detrimentally affects air or water quality or ambient noise levels.**

Short term impacts will result from the proposed residential use including increased noise levels, dust and exhaust from machinery involved in the construction phase. Given the temporary or intermittent nature of these activities, the potential impacts from any construction should be minimal. Potential water quality impacts will be mitigated by strict adherence to State and County rules and regulations, which mandate that all runoff be disposed of on site. Thus the planned project will not detrimentally affect air or water quality or ambient noise levels contemplated in HAR 11-200.

**11. Affects or is likely to suffer damage by being located in an environmentally sensitive area, such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, freshwater, or coastal waters.**

Despite a past assertion by a representative of the OCCL in correspondence to the applicant that "*all conservation lands are sensitive by their very nature*" the Applicant's subject property is not particularly identified on government maps and the like as being in an environmentally sensitive area such as a flood plain, tsunami zone, beach, geologically hazardous land, estuary, freshwater. However the property is adjacent to coastal waters. The applicant notes that similar projects in apparent more "sensitive" areas within the Conservation District are routinely approved for the use as single family residences.

Shoreline areas in Hawai'i, particularly those on the northeast side exposed to the prevailing winds and heaviest wave attack, are subject to shoreline retreat. The rate of retreat in Hawai'i has been estimated at an average rate of a couple of inches a year. (Macdonald and Abbott, 1977.) Some locations may experience sudden and rapid retreat due to landslides which may be associated with sea cliff collapse. A 125-foot structural setback from the bluff/pali has been implemented in order to minimize the effects of potential shoreline retreat. In addition, a geotechnical study was conducted which found that the existing slope is grossly stable and can be expected to remain so under reasonably foreseeable conditions. Therefore the project will not result in a negative impact on a particularly sensitive environment as contemplated in HAR 11-200.

**12. Substantially affects scenic vistas and view planes identified in county or state plans or studies.**

The open space and scenic resources in the vicinity of the House Site will not be adversely affected by the proposed action. No County or State plans or studies have been identified by the

applicant which identifies the project area as a scenic vista or view plane. The House Site is not visible from the Hawai'i Belt Road and the Project will have no impact on the natural beauty of Kolekole Gulch and Hakalau Bay/Gulch, which are identified as examples of natural beauty in the Hawai'i County General Plan. Therefore the planned project will not substantially affect scenic vistas and view planes identified in county or state plans or studies.

**13. Requires substantial energy consumption.**

The proposed residential use will not require substantial energy consumption. Applicant intends to utilize solar energy and LP Gas in support of the single-family dwelling. The use of large shaded lanai areas which will limit solar heat gain into the residence and the use of roof top ventilation of heat trapped inside as well as large sliding glass doors facing Eastward into the trade winds will minimize energy consumption. The residence is intended to be 'off the grid' and not rely on the supply of electrical energy from a public source. Therefore the residence on the property will not require substantial energy consumption as contemplated in HAR 11-200.

***Findings***

*Based on the foregoing information presented, it is determined that the construction of a single-family residence in the Conservation District on the subject property will not have a significant effect. As such, a determination of a Finding of No Significant Impact for the proposed action is appropriate.*

***Reasons Supporting Determination***

*The nature and scale of the proposed action is such that no significant environmental effects are anticipated. Potential impacts, if any, can be mitigated through compliance with all governmental requirements including those of the State Department of Health and the County Dept. of public works*

I anticipate that this 'self analysis and finding' sufficiently finds acceptance by the 'Reviewing Agency' of this EA and a FONSI will result.

Respectfully submitted by,

Ken Church

## **EXHIBIT 26**

**Applicant's response to Department of Health**

June 6, 2016

State of Hawaii  
Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

Dear Laura Leialoha Phillips McIntyre, Program Manager, Environmental Planning Office

Subject: Your file EPO 16-141, Draft Environmental Assessment (DEA) for the Church Single Family Residence.

Thank you for your April 26, 2016 letter which was sent to Lauren Yasaka at the DLNR and which she subsequently forwarded to me for comment. I will respond herein to the various comments/requests which you raised in that letter. My response will be in italics following a copy of the various advice given.

#### Paragraph 2

EPO strongly recommends that you review the standard comments and available strategies to support sustainable and healthy design provided at: <http://health.hawaii.gov/epo/landuse>. Projects are required to adhere to all applicable standard comments. EPO has recently updated the environmental Geographic Information System (GIS) website page. It now compiles various maps and viewers from our environmental health programs. The eGIS website page will be continually updated so please visit it regularly at: <http://health.hawaii.gov/epo/eqis>.

*I have reviewed the standard comments and available strategies to support sustainable and healthy design provided at the web sites provided. I will incorporate reasonable required strategies in my applied for land use.*

#### Paragraph 3

EPO also encourages you to examine and utilize the Hawaii Environmental Health Portal at: <https://eha.cloud.doh.hawaii.cjov>. This site provides links to our e-Permitting Portal, Environmental Health Warehouse, Groundwater Contamination Viewer, Hawaii Emergency Response Exchange, Hawaii State and Local Emission inventory System, Water Pollution Control Viewer, Water Quality Data, Warnings, Advisories and Postings.

*Thank you for the encouragement offered and the web address to advice regarding e-filing etc. I will submit appropriate permit applications as advised/required.*

**Paragraph 4**

We advise that, if appropriate, the Hazard Evaluation and Emergency Response (HEER) Office's Site Discovery and Response (SDAR) Section be contacted. The SDAR section protects human health and the environment by identifying, investigating, and remediating sites contaminated with hazardous substances (non-emergency site investigations and cleanup). The HEER Office's SDAR Section can be contacted at: (808) 586-4249. For historical maps on lands where sugarcane was grown see:

<http://health.hawaii.gov/epo/eqis/sugarcane>

*I did contact Joslynne, [joslynne.camlin@doh.hawaii.gov](mailto:joslynne.camlin@doh.hawaii.gov) following your advice. I followed that up with an email (copy of text below). To date I have not received a response. Generally it is my impression, after speaking with Joslynne it is unlikely that there exists an arsenic hazard on my property. Thank you for the contact telephone # to the HEER Office's SDAR Section and the link to historical maps.*

*Text copy of email sent May 20<sup>th</sup> is below. As of June 6<sup>th</sup> no response was received by myself to that email.*

May 20, 2016

Dear Joslynne, [joslynne.camlin@doh.hawaii.gov](mailto:joslynne.camlin@doh.hawaii.gov)

We spoke earlier by telephone. I am a property owner of the Big Island of Hawaii, TMK's (3) 2-9-003: 013, 029, 060. The property is located in the Conservation District Resource zone. I have applied for a CDUP to build a single family residence on lot 029. Lot 029 was formerly used for sugar cane farming for some 100 years. During our telephone conversation I identified that I received a letter from the State of Hawaii, DLNR. They forwarded to me a letter that they received from the Dept. of Health (attached hereto) wherein it was stated.....

We advise that, if appropriate, the Hazard Evaluation and Emergency Response (HEER) Office's Site Discovery and Response (SDAR) Section be contacted. The SDAR section protects human health and the environment by identifying, investigating, and remediating sites contaminated with hazardous substances (non-emergency site investigations and cleanup). The HEER Office's SDAR Section can be contacted at: (808) 586-4249. For historical maps on lands where sugarcane was grown see: <http://health.hawaii.gov/epo/eqis/sugarcane>

After discussing this with you today I am a little confused. The letter

obviously directs me to inquire of your office before proceeding with building my residence so that is what I did. While I am aware that sugar cane was farmed on the property I am not aware that any residual amounts of arsenic exist on the property today. I am not particularly interested in conducting soil tests before proceeding unless that is a requirement in law.

Please advise??

Regards,

Ken Church

Paragraph 5, page 1 & 2

In order to better protect public health and the environment, the U.S. Environmental Protection Agency (EPA) has developed a new environmental justice (EJ) mapping and screening tool called EJSCREEN. It is based on nationally consistent data and combines environmental and demographic indicators in maps and reports. EPA encourages you to explore, launch and utilize this powerful tool in planning your project. The EPA EJSCREEN tool is available at: <http://www.epa.gov/eiscreen>.

*Thank you for the link to the EPA EJSCREEN tool and the encouragement to explore, launch and utilize this powerful tool in planning my project. I will do as you have encouraged me to do.*

Paragraph 6, page 2

We request that you utilize all of this information on your proposed project to increase sustainable, innovative, inspirational, transparent and healthy design. Thank you for the opportunity to comment.

*Your request has been noted.*

Sincerely,

Ken Church

**EXHIBIT 27**

**Applicant's response to County of Hawaii**



June 6, 2015

County of Hawaii  
Planning Department  
101 Pauahi St, Suite 3  
Hilo, Hawaii 96720

Dear Mr. Kanuha

Subject: Your letter, dated April 27, 2016 to Lauren Yasaka, DLNR regarding  
Request for Comments: CDUA HA 3767 Church single family residence on TMK  
2-9-003 060.

Thank you for reviewing my project application. I have been in contact with  
Esther Imamura several times over the past 2 years since I purchased the property.  
I have every confidence in her assistance and reviews of my projects including the  
SMA for the residence.

Thank you again for reviewing and responding to our CDUA and related  
documents.

Sincerely,

Ken Church

**EXHIBIT 28**

**Applicant's response to citizen**

**Robin Rudolph**

June 4, 2016

To: Robin Rudolph [rudophr@hawaii.edu](mailto:rudophr@hawaii.edu)

From: Ken Church

Subject: public comment on DEA-AFNSI Church Residence

Dear Robin,

Ms. Yasaka of the Office of Conservation and Coastal Lands forwarded your email to her, dated May 02, 2016, to me for my response as that is part of the Conservation District Use Application and Environmental Assessment process for a project such as my planned residence construction on my property.

You asked if there *“might be any efforts to plant native species and/or remove invasive ones?”*. You may not be aware but the process for a land owner such as myself to apply for permits for land uses on my own private property, which is zoned in the Conservation District, with the Department of Land and Natural Resources, Office of Conservation and Coastal Lands is a very onerous, lengthy and tedious process and can also involve substantial permit fees. This includes the possible removal of invasive species and the planting of native species on a property the size of mine (4.6 acres).

In my case I have already spent 2 years in the application process and several hundreds of pages of communications just to get to the point of the CDUA that triggered your email. As a result of the onerous process most land owners are reluctant to even try or they break the law and do such things without proper permitting which may result in substantial fines if they are found out. As an example of the delay and tedium that I experienced I refer to - when I applied to plant 12 small potted fruit trees on the property the application suffered a delay as I had not identified what I was going to do with the shovel full of dirt that I removed from each of the planting holes. Once I corrected that deficiency in my application to plant the 12 trees the permit was issued without further delay.

Another example of expense, delay and tedium in application process that I suffered regarding my land uses early after purchasing the property I applied to combine and re-subdivide the property. Before purchasing the property I had been

given assurances, in writing, that my plan to combine and re-subdivide the property was *'technically do able'*. Initially there were 6 lots (comprising 3 TMK parcels). I applied to combine and re-subdivide into 3 lots (three TMK parcels). Basically it was intended by me that the former 3 railway lots that crossed the property would be absorbed into and become part of the 3 lots. The process suffered tedium, expense and delay.

First the application process suffered delay and tedium as the earlier written assurances to me by the authorities seemingly were ignored and I had to start from scratch. Finally when the authorities were reminded of their earlier assurances that my plans to combine and subdivide the property would be viewed as an allowable land use on terms acceptable to me it was required that I then update the existing 2004 botanical study on the property which was a very expensive undertaking that required several months to research and prepare.

When I first responded to the request by the regulating authority that I update the existing botanical study I stated that the combining and subdividing of the property would not result in any disturbance to the identified existing botanical species on the property. In short nothing was directly going to impact the physical nature of the property but rather simply its description at the county and land titles.

Anyway after subsequent further delays and more letter writing I was advised that *'a bird(s) may have deposited seed(s) of endangered plants on the property since the earlier study that needed to be identified'* and therefore an updated botanical study was insisted upon before I advanced my land use application to combine and re-subdivide my property. This was not-with-standing that nearly all of the area had grass growing on it that was regularly mowed (an allowed land use) and again the combining and re-subdividing would not result in the disturbance of any such plants anyway.

Finally I pointed out that reducing the number of lots from 6 to 3 would seem to be a result highly desired by the regulating authorities as it would reduce the future potential intensity of land uses. None-the-less I complied with the regulators at considerable expense and resulting in a substantial delay in my intended land use.

I have used my best efforts to secure proper permitting for all of my land uses. While the law requires government employees to assist a landowner such as myself

*'in the early planning stages of my planned coastal land uses'* the amount and quality of the support that I received early on, despite repeated requests for such support) did not meet the standard that the law appears to me to require. None-the-less after considerable effort and expense and the passing of 2 years in process I expect that I am now in the final stages of approval sufficient that I can get on with my life living on and using my property.

Frankly it appears to me that a positive turning point for me began following the appointment of a new Board Chairperson at the DLNR around one year ago. Since that time my applications appear to me to have been processed with greater efficiency by both the DLNR and the OCCL.

Coming back to your question about the possibility of me *"planting native species and/or removing invasive ones?"* I do plan to address this particular land use over time but my first priority will be to build my home and a storage and processing structure. I am wary however that if I introduce native and or endangered/endemic species will likely result in the DLNR/OCCL taking a more active interest in scrutinizing my future use of my property thereafter as the property will then be partially restored to its natural condition. I find the regulators present interest onerous already and inviting additional scrutiny by restoring the natural nature of the property may not be wise on my part.

You have asked *'what crops were formerly grown on the property?'* 3.2 of the 4.6 acres of my property was formerly used for the production of sugar cane for over 100 years (another portion was also used for a railway that crossed the property and a very small remaining portion was jungle and bluff above the ocean). The formerly cultivated and railway area is presently maintained as mowed grass interspersed with fruit, bean and nut trees which I planted. There also exists some coconuts, bananas and breadfruit scattered around the property. The remaining portions have invasive species as you noted in your email. If the permitting process does not prove to be too difficult, expensive or onerous I do expect, in time, to consider weeding out the invasive species and planting native species but that will not be in the near term.

Your final question asked *'what legacies might the previous land uses have left behind?'* I expect not much. The former railway left behind a crushed rock

roadbed which currently is overgrown with grass. This specific property was used as a seed development plot by the sugar cane company. As such access was strictly prohibited so native persons and non natives have almost no recent familiarity/history regarding this property as access was highly restricted. Since its days as a seed farm it has been a private gated community with restricted access.

Finally thank you for your letter of inquiry and interest.

Sincerely,

Ken Church

## **EXHIBIT 29**

**Applicant's response to DLNR Engineering**

June 7, 2016

Department of Land and Natural Resources  
Engineering Division  
P.O. Box 373  
1151 Punchbowl St #221, Honolulu, HI 96813  
Honolulu, Hawaii 96809

Attn: Carty Chang, Chief Engineer

Subject: Draft Environmental Assessment (DEA) and Conservation District Use  
Application CDUA HA 3767 for the Church Single Family Residence

Dear Mr. Chang,

I am in receipt of your response dated April 18, 2016 regarding Flood Hazard Zone designation regarding my planned residence construction.

The NFIP classification for the subject project site is Zone X.

Thank you for the reference to the Hawaii Island: County of Hawaii, Department of Public Works. They advised that the County has no particular ordinances regarding the potential for flooding of the subject project site. Also a SMA assessment has been applied for with the County Planning Department and a determination that the project will be SMA exempt is anticipated.

Thank you for your consideration in this matter.

Sincerely,

Ken Church



## **EXHIBIT 30**

### **Road description**

## **Exhibit 21**

### **ROAD REPAIR**

The grass along the road path and car parking and turn around area adjacent to the residence will first be sprayed to and kill the grass with Roundup and subsequently cutting the grass/sod layer 12 – 14 ft. wide to a depth of approx 2-4” depth resulting in a volume of approx. 25-50 cubic yards of cut soil/sod. This material is substantially composed of organic material mixed with a modest amount of soil. The organic material has value as a composting material useful in support of the Applicant's farming operations on the Property (specifically fruit, nut and bean trees that have already been planted on the Property). The sod pieces will therefore be placed in areas (dead grass layer facing up) surrounding these agricultural use, planted trees, so that the gradual composting of the sod will benefit the nutrient support of the trees. The areas will be subsequently mulched to control plant growth below the trees and prevent erosion of any soil that becomes exposed during the composting/rotting of the grass mat over time.

The placement of the sod around each tree will be variable depending on the slope of the land surrounding the tree. Generally a circle placement of the sod will be in the order of a 4'-8' dia. around each tree however smaller trees may have a smaller circle of sod placed around them and larger trees may have larger circles of sod. Also down-slope areas within each circle of sod may be layered 2 or 3 levels deep with sod effectively leveling the area under each tree.

It is believed that there currently exist sufficient agricultural use trees to use all of the cut sod resulting from both the roadway and the residence site in this way. In the event that there exists left over sod it will be placed in the same fashion as the fruit trees described herein surrounding the substantial bamboo line planting which is along the Southern boundary of lot 060 and a planned garden area on Lot 029.

After the sod removal the roadway will then be roto-tilled to a depth of about 6” resulting in the mixing of any remaining soil into the road bed of the former railroad bed/field road.

4” of crushed rock will be applied to the described roadway and car turn around area adjacent to the planned residence and again roto-tilled into the previously roto-tilled area mixing the added crushed rock into the road base. In areas where it is determined that the road base requires further enhancement a fabric layer typically used for roadway construction will be applied over the mixed base materials of the road.

Thereafter an additional layer of 4-6” of crushed rock will be applied as a final topping to the roadway and parking area.

**Listing of Permits and Approvals.**

- Federal..... None
- State of Hawaii.....
  - Department of Land and Natural Resources.....approval of CDUA
  - Department of Health-Approval of individual Waste-water system; and Building Permit
  - Department of Quality Control.....FONSI
- County of Hawaii
  - Planning Department.....Approval of SMA Assessment Application
  - Building Permit
  - Electrical permit
  - Plumbing permit
  - Occupancy permit

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