

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

FILE NO.: CDUA HA-3474
REF: OCCL: MC
Acceptance Date: July 28, 2008
180 Exp. Date: January 24, 2009

January 9, 2009

REGARDING: Single Family Residence

APPLICANT: Edward Utyro & Gary Hauler
Washington DC, 20009

AGENT: Stephen Lim, Counsel
Carlsmith Ball, LLP
211 Wai`ānuenue Avenue
Hilo, HI 96720

LOCATION: Kau`eleau, Puna, Hawai'i

TMK: (3) 1-3-02:71

AREA OF PARCEL: 7.180 acres

AREA OF USE: 4859 square feet

SUBZONE: Resource

DESCRIPTION OF AREA:

The proposed project area is located at Kau`eleau, Puna, Hawai'i, TMK (3) 1-3-02:71. This 7.180 acre coastal property is located in the Resource Subzone of State Land Use Conservation District. **Exhibit 1** shows the subject area's location.

The parcel is located on the Kapoho-Kalapana Road, southwest of `Ophikao and northeast of the Kau`eleau lava flow. The mauka boundary is along the road, while the makai boundary of the property follows along the top of a 30-50 foot high pali. There is an irregular state-owned parcel separating this parcel from the shoreline. The state owned parcel extends to the north of the

property, while there are a small handful of private coastal properties to the south. **Exhibit 2** shows the parcels in the Kau`eleau and neighboring Kamā`ili area.

The parcel is distinguished by a relatively intact pūhala (*Pandanus odoratissimus*) grove. A few introduced and invasive species are present in this section, including `ulu (*Artocarpus altilis*), coconut (*Cocos nucifera*), guava (*Psidium guajava*), and cecropia (*Cecropia schrebiana*). The parcel is also one of the few where `ōhi`a lehua (*Metrosideros macropus*) grow along the coast. Invasive ironwoods are competing with the `ōhi`a for space. An unpaved jeep road cuts through the grove; this road appears to be a non-conforming use.

Approximately 1.5 acres of the site has been previously graded and landscaped. The landscaped area is dominated by introduced decorative and fruit trees. It is unknown when this area was graded; the maturity of many of the trees in this area indicate that it was done a number of decades ago.

Community members have identified the pūhala grove as an important cultural resource. It is the last intact pūhala grove along the Puna coast as one approaches the volcano from Kapoho. Members of `Aha Pūhala O Puna, the local lauhala weavers' organization, state that lau hala from this area is known for its soft texture and unique red color. They state that the grove has been actively nurtured and managed for over a century, and that it is still in use by cultural practitioners today. The main part of the grove has been cleared of a`a lava stones, resulting in a forest floor that is smooth and less treacherous to walk on than in nearby unimproved areas.

The Pua`akanu Cemetery and burial field lies immediately north of the parcel. The cemetery dates from modern times, and is associated with the nearby `Opihikao Congregational Church. The burial field is a ten-acre coastal site containing an unknown number of burial platforms. Community members speculate that it was, at one point, the burial center for the entire ahupua`a. Residents state that most of the graves have been plundered in modern times. The burial field is hidden from the road by thick brush, and many newer members of the Puna community do not appear to be aware of its existence.

There is a man-made berm running along the top of the pali. There are no records indicating when it was built; it appears to be non-conforming. Community members speculate that it was built of a`a and other rubble that was cleared from the grove, and that it was supplemented with fill from modern activities such as the building of the road and the clearing of the southern portions of this and neighboring properties. OCCL has not been shown any evidence that the berm has any cultural or historical significance.

A twenty-foot wide public easement runs along the makai boundary of the property. The easement is used by fishermen and `opihi gatherers to access the small, rugged coves along the shore. This is a very dynamic coast, and there are no formal or improved trails here. There are small sections with unimproved footpaths, but for the most part transverse access involves scrambling along the cliff face.

There are no known *built* archaeological features on the property.

Exhibit 3 contains photos staff took during a field visit to the site in September, 2008. The photos include:

- A. The Pua`akanu burial platforms to the north of the parcel;
- B. The approximate path of the public easement;
- C. Coastal ōhi`a;
- D. A throw-net fisherman on the state-owned parcel makai of the subject parcel;
- E. The center of the pūhala grove;
- F. An old jeep trail running through the grove;
- G. The berm bounding the brove on the makai side;
- H. The previously landscaped area.

PROPOSED PROJECT:

The applicants propose to build a 4859 square foot single family residence¹. The single-story building will contain three bedrooms, three bathrooms, a swimming pool, spa, and an above-grade lanai. Portions of a terrace will rest on an artificially created grade, thus including it in the computation of the developed area. The developed area was calculated to be:

• Residence	2631 square feet
• Lanai	588 square feet
• Terrace	110 square feet
• Swimming Pool	650 square feet
• <u>Garage</u>	<u>880 square feet</u>
Total	4859 square feet

Exhibit 4 shows the house plans.

The residence will be located at the southwest corner of the property, just makai of the previously landscaped area and outside of the pūhala grove. The majority of the project will be on grade. Part of the berm will be graded; there will be a total of 435 cubic yards of cut and 280 cubic yards of fill.

The setbacks *given by the applicant*² are:

mauka	236 feet
makai	50 feet (from property line)
southeast	78 feet
northwest	580 feet

¹ The applicants significantly modified their original proposal in response to community concerns. This will be covered later in the Discussion; this section will only address the final, submitted plans.

² OCCL disagrees with some of these figures and will address this in the discussion section.

The residence will not be visible from other residences or the road. It will be visible to gatherers and fishermen. The public access easement will run close to the project. The applicants state that they are aware of this and will not hinder access.

Exhibits 5 shows the site plans and locations.

The project will be accessed via a 290 feet long 20 foot wide gravel driveway. The applicants propose to construct a gate at the entrance off the main road.

The applicants are proposing minor landscaping improvements. The plan calls for low plantings of indigenous groundcover, shrubs, and trees around the residence. Construction will involve the removal of one coconut, five noni, one papaya, and five pūhala. No pūhala will be removed from the actual grove. **Exhibit 6** shows the landscaping plans.

The applicants also propose to manually remove approximately 15 ironwoods from the coastal area and pūhala grove.

The applicants propose to build a private septic tank and percolation field wastewater treatment system.

AGENCY AND PUBLIC COMMENTS:

The CDUA and Draft Environmental Assessment were referred for review and comment to the DLNR – Forestry, Land Division, Historic Preservation, Hawai'i Land Division, DOCARE; Hawai'i County Planning Department; the Office of Hawaiian Affairs; the Office of Environmental Quality Control; the Department of Health; the Kanaka Council; and the 'Ophikao Congregational Church

A copy of the CDUA and DEA were available for review at the Hilo Public Library.

A notice of the application was placed in the Office of Environmental Quality Control's *Environmental Notice* on August 8, 2008. OCCL issued a FONSI and noticed this in the November 23, 2008 edition.

OCCL also facilitated a meeting between the applicants and the community on October 1, 2008. The meeting was held on the grounds of the Kalani Honua Retreat in Puna, and was attended by over 50 community members, traditional practitioners, and local activists, as well as by the landowners, and their representatives.

The following written comments were received³:

³ OCCL notes that these comments were for the original application, which proposed a residence and driveway inside the pūhala grove. The applicants have since modified their proposal to address these concerns.

Community Comments

Kanaka Council

The Council expressed concern about the removal of 39 pandanus, as called for in the original plans. They note that this is a cultural resource, and that the proposal could, if carried out, create a serious and on-going rift between the landowners and the existing community. They point out that the Environmental Assessment discusses lauhala and ti gathering on the parcel, and yet still concluded that there were no cultural practices or cultural resources in the area.

The Council urges the landowner to meet with the community to discuss ways to preserve this important cultural resource, and offers to help facilitate this. They strongly oppose the issuance of any permit until it is clear that native and customary rights will be respected and protected.

`Ohi Lauhala, Inc. (Josephine Fergerstrom)

`Ohi Lauhala states that the hala on this property is high quality, and of a type that cannot be found elsewhere on the island. It is valuable growth stock for replanting other areas.

`Ike A`o (Dr. Manu Aluli Meyer)

The intact grove is not only valuable for weavers, but serves as a dynamic reminder of the whole environment, and must be protected as a reminder of the kupuna who planted and nourished the grove.

`Aha Pūhala O Puna (numerous)

OCCL received many letters from hala weavers. Points they raised are summarized below:

- The Puna lauhala is famous, and has been celebrated in many songs, stories, and myths.
- The pūhala in `Opihikao are thought to be over 100 years old, and that at least four to five generations of weavers have used this grove.
- It is rare to find a grove with the high quality of lau hala such as these. They are flat, soft, and have a wider range of colors than lau hala from other areas.
- It is difficult to find quality lauhala in Hawai`i; much is currently imported from the Philipines.
- Lauhala weaving has been enjoying a resurgence in the islands. It is important to protect the remaining groves.
- That most of the famous groves discussed in the literature have already been destroyed.
- That hala weavers often have informal agreements with landowners to care for groves, and that collecting the old leaves that are used for weaving cleans the trees so that they produce stronger fresh leaves.

Kahu Violet Makuakane, `Opihikao Congregational Church

Approximately 200 community members signed a petition backing the Kahu's request that the pūhala grove be preserved. The statement also included the following comments and recommendations:

- The Kahu asked whether two story building were allowed on Conservation Lands;
- That access to the shoreline also be provided;
- That the `io (Hawaiian hawk, *Buteo solitarius*) that frequent the area be protected;
- That the bushy (coastal) `ohi`ā be protected.

Applicant's Response to Community Letters

In response to community concerns the applicants amended their proposal to locate the proposed residence outside the pūhala grove, and they eliminated a proposed driveway through the grove. The applicants stated that they are committed to working with lauhala weaving organizations and educational institutions in the cooperative maintenance of the grove.

In addition, the applicants will establish a 10-foot wide pedestrian public access easement from the entry of the former jeep road on the northern end of the property which will connect with the existing lateral public access easement.

The applicants note that they have spent many weekends clearing out invasive vines that threatened to choke the pūhala, and wish for the community to accept this as evidence that they intend to be proper stewards of the land.

The applicant did not directly address the possible presence of `io; OCCL will cover this in our discussion and recommendations.

Agency Comments

Office of Hawaiian Affairs (OHA)

OHA feels that the Cultural Impact Assessment was incomplete, and that the community needs to be more involved in assessing the project's impacts. OHA also questions the need for a second driveway, the lack of sufficient professional information on the flora and fauna of the area, lack of information on seabirds, and vague information on the project's impact on the pūhala forest.

Applicant's Response

The applicants met with the community on October 1, 2008, and conducted a site visit of the property immediately afterwards. In response to the community concerns the applicant's significantly modified their proposal, and the landowners are committed to working with local cultural practitioners on cooperative maintenance of the grove.

OCCL notes that the applicant did not directly address OHA's concerns regarding the flora and fauna, although the relevant section in the FEA was amended.

County of Hawai'i Planning Department

The Department noted that the SMA site plans that were used to determine setbacks appears to be different than the ones included in the CDUA.

The Department also recommends that the permit includes a section prohibiting external lights from directly illuminating the shoreline.⁴

Applicant's Response

The applicant did not discuss the discrepancy in the various plans that were submitted in the draft EA and the SMA permitting process. As the final EA contains significantly revised plans, the applicant submitted them to the Planning Department with the understanding that the revised plans would also be considered exempt from the definition of development. The applicant will also comply with the regulations regarding artificial lighting.

OCCL notes that the Planning Department will still need to approve the final, modified plans.

DLNR Historic Preservation Division (HPD)

Based upon the archaeological survey, HPD concluded that no historic sites would be affected. OCCL requested that HPD revisit their conclusion in light of community concerns. HPD performed a second review; they concluded that the Kau'eleau Pūhala Grove should have been discussed in a cultural impact assessment, and that their cultural branch would be happy to review one. HPD confirmed their initial assessment that no archaeological sites would be affected.

DLNR – Land Division

No comments

DLNR – Division of Forestry and Wildlife

No comments

DLNR – Office of Conservation and Coastal Lands

In the acceptance letter OCCL raised the following concerns:

- The Developed Area appeared to have been calculated incorrectly, and noted that a structure is not considered “on-grade” when it rests on an artificially created grade;
- The project is sited in an undisturbed area when 1.5 acres of the property have been previously cleared and graded;
- The project does not seem to minimize impact on the hala;
- The project meets the minimum setback required by law, but rests only five feet away from the public easement;
- The application seemed to imply that the access was only for cultural practitioners, when it is in fact open to all members of the public.

OCCL agreed to continue processing the application, with the understanding that the outstanding issues would be addressed in the Final Environmental Assessment.

⁴ OCCL will also recommend that this be made a condition of the permit. See the discussion for the exact language.

Applicant's Response

The applicant felt that the OCCL acceptance letter contained erroneous information regarding the proposed setback⁵.

The applicant did not directly address OCCL concerns; however, the project was amended in such a way as to address many of them. OCCL will address the others in our discussion.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated July 31, 2008 that:

1. The SFR was 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-8 Single Family Residence, (D-1)*; that this use required a permit from the DLNR; and that the final decision as to whether to grant or deny the permits lay with the Board of Land and Natural Resources (BLNR).
2. Pursuant to HAR §13-5-40 *Hearings*, no public hearing was required.
3. Pursuant to HAR §13-5-31 *Permit applications*, the permit required that an environmental assessment be carried out.

HAR §13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed use is an identified land use in the Conservation District. Staff had concerns regarding the siting of the proposed use; these were addressed by the applicant and will be discussed in the following section.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

⁵ OCCL notes that the discussion in the application did not always match the site plans that were submitted. The setbacks we quoted were based upon the site plans that the applicant submitted.

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas

Staff notes that the state has established residential standards for residences in the Conservation District that are designed to promote proper management of Conservation lands. This plan meets those standards. Proper management also requires that a project be designed in accordance with site-specific characteristics in mind. The parcel is rich in cultural and environmental resources. The applicant modified their proposal to limit the impact on these resources.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The project complies with the policies and objectives of the Coastal Zone Management Program.

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

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented.

Staff notes that the proposed project will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the design of the proposed SFR will fit into the locality and surrounding areas, with the use of Best Management Practices and without significant or deleterious effects to the locality, surrounding area and parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has moved the proposed development to a part of the parcel that has been previously graded and landscaped. The natural areas will be preserved, and the landscaping plans allow for the maintenance of the existing resources.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

DISCUSSION:

The applicants original proposal triggered significant discussion in the community. Some strongly supported the application, while others were adamantly opposed to the residence's potential cultural and social impacts. The applicants agreed to meet with the community to discuss their concerns, and then significantly modified the proposal to address these concerns.

Rather than revisit the conflicts and evolution of the plans, OCCL will focus on the final proposal.

The applicants propose to build a 4859 square foot single family residence. The single-story building will contain three bedrooms, three bathrooms, a swimming pool, spa, and an above-grade lanai. The project will be accessed via a 290 feet long 20 foot wide gravel driveway. The applicants propose to construct a gate at the entrance off the main road.

The 7.18-acre parcel is bounded by the Kapoho-Kalapana Road and the coastal pali. A state-owned parcel separates this parcel from the shoreline. 1.5 acres of the property was graded at an unknown time, and is currently planted with exotic fruit and ornamental trees. The top of the pali contains a mix of invasive ironwoods and occasional stands of a relatively rare variety of coastal 'ohi'ā. A manmade berm separates the pali from the main part of the property.

The main part of the property is composed of a relatively intact pūhala grove that traditional practitioners have identified as an important cultural resource.

To the north of the property is the Pua'akanu Cemetery. Behind this is a large burial field containing hundreds of burial platforms.

The residence will be located at the southwest corner of the property, inside of and just makai of the previously landscaped area and outside of the pūhala grove.

Community and agency concerns regarding the development, and how they were addressed, were:

An Insufficient Cultural Impact Assessment in the Environmental Assessment (EA): The draft EA discussed many of the traditional, cultural, and recreational practices on the parcel, and then concluded that there were none that would be affected by the proposal. The community disagreed. OCCL facilitated a public meeting held on October 1, 2008, where community members were able to discuss their concerns regarding the development directly with the landowners. Although the proposal was amended, very little of the information that was shared in the public meeting was added to the actual final EA document. OCCL is satisfied that the final

proposal reflects an understanding of the cultural impacts, we are disappointed that the final EA did not cover this in more detail.

The modified proposal moves all the development away from the pūhala grove and `ohi`ā stands. The applicants have shown an additional willingness to work with cultural practitioners in maintaining the grove, which is under threat from invasive species. The applicants have already done a significant amount of maintenance in clearing the area of invasive vines that were threatening the trees.

Setback and Public Access: OCCL does note that we have had continuing disagreements with the applicant's consultants over how the setback was measured. While the application claims a 50' setback from the makai boundary, the site plan shows that this is closer to 30 feet (see **Exhibit 7**). While this is within the standards set by HAR 13-5, OCCL wishes to make it clear that setbacks are measured by the shortest distance between the property line and the developed area.

The public access easement will run close to the project, approximately ten feet from the outside spa and pool area. The applicants state that they are aware of this and will not hinder public access. **OCCL will recommend that this be made a condition of granting the permit.**

The applicants have proposed to establish an additional 10-foot wide pedestrian public access easement from the entry of the former jeep road on the northern end of the property which will connect with the existing lateral public access easement. **OCCL will recommend that this be made a condition of granting the permit.**

Impact on Fauna: Community members expressed concern that the project not impact habitat for the `io, or Hawaiian hawk. According to the Audubon Society⁶ *Hawaiian Hawks show a strong preference for nesting in native 'ohi`ā trees, but this tree species is almost completely absent on Hawai'i below an elevation of 2,000 feet, due to competition from introduced plants.* OCCL notes that the parcel contains rare examples of coastal `ohi`ā, and that these trees will be protected under the CDUP if granted. **OCCL will recommend that, should the landowners discover `io nesting on their property, the landowners contact the State Division of Forestry and Wildlife for assistance in protecting the birds.**

Shorebirds also frequent the area. The County Planning Department recommended that language be inserted into the permit prohibiting the use of artificial lighting directed at the ocean. **OCCL concurs, and will recommend that a condition of the permit be that the landowners will not use artificial external lighting to illuminate the shore or ocean.**

Landscaping: OCCL did not have concerns with the landscaping plans per se. We do note that the application allows for the removal of approximately 15 ironwoods from the coastal area and pūhala grove. Members of the lauhala weavers association have identified the ironwoods in the grove as nuisance trees. They also pointed out that there are other trees, including coconuts, in the pūhala grove that damage the integrity of the grove. **OCCL will recommend that the landscaping plans be expanded so that the manual removal of non-native species from the**

⁶ Source: www.audubon2.org/watchlist/viewSpecies.jsp?id=101. Accessed December 18, 2008.

pūhala grove and the coastal `ohi`ā stands be considered “maintenance.” This will mean that the landowners or their representatives will be able to maintain these valuable cultural and ecological resources without securing additional permits or site plan approvals from OCCL⁷.

- OCCL also notes that the landscaping plan calls for three ‘ulu, or breadfruit, to be planted in a group alongside the house. The landowners are certainly free to do this; however, we would informally recommend that they consult with a landscaper who is more familiar with native and indigenous Hawaiian plants than the one who developed the submitted plans⁸.

OCCL will recommend that the landscaping plan be accepted, with the understanding that the landowners will be able to modify it within limits. **Specifically, we would recommend that a condition of the permit be that the landscaping will not introduce any plants that have received a risk-factor score of 6 (High) or more from Pacific Islands Ecosystems at Risk project⁹, and that new plantings be limited to the 1.5 acres that have been previously cleared.** OCCL does not feel that new landscaping is warranted in the pūhala grove or along the coast, with the exception of the naupaka that the landowners propose planting immediately makai of their pool.

Impact of the Project on Nearby Burials: The project is set back 580 feet from the northern boundary, and there is additional thick forest between the boundary and the burial field. OCCL does not believe that the residence will impact the burial site.

OCCL feels that the applicants have addressed the concerns of both OCCL and the community, and that they have presented a proposal that is respectful of the cultural and ecological resources of the property.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE CDUA HA-3474 for the proposed Utyro & Hauler residence at Kau`eleau, Puna, Hawai`i, TMK (3) 1-3-02:71, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of §13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai`i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors,

⁷ OCCL also received a suggestion that older pūhala be cleared to allow room for younger trees to grow; however, the majority of practitioners we talked to believed that the older trees were more valuable and should be preserved.

⁸ A mature breadfruit can grow over 60 feet tall, and can produce over 50 to 100 10-pound fruits in a season. OCCL finds it unlikely that a homeowner would want these falling on their roof.

⁹ See www.hear.org/Pier/

- assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawai'i Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
 4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction and landscaping plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
 5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval. It is understood that the maintenance of the pūhala grove is an ongoing project;
 6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
 7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
 8. The applicant will use Best Management Practices for the proposed project;
 9. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
 10. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
 11. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
 12. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

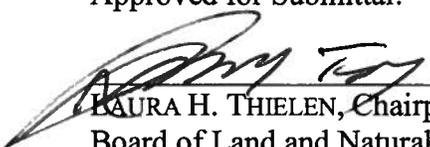
13. The single family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;
14. The applicant will contact OCCL for any permitting requirements should they change the scope of the project;
15. That the landscaping will not introduce any plants that have received a risk-factor score of 6 (High) or more from Pacific Islands Ecosystems at Risk project, and that new plantings be limited to the 1.5 acres that has been previously graded;
16. Should 'io nest on the property the landowners shall contact the State Division of Forestry and Wildlife for assistance in protecting the birds;
17. The landowners will not hinder the public from using the lateral public access easement that runs along the makai boundary of their property;
18. The applicants will establish an additional 10-foot wide pedestrian public access easement from the entry of the former jeep road on the northern end of the property, which will connect with the existing lateral public access easement;
19. The manual removal of non-native species from the coastal 'ohi'a stands and from the pūhala grove shall be considered 'maintenance', and will not require additional permits from the Department;
20. No artificial light from exterior lighting fixtures shall be directed toward the shoreline and ocean waters, except as may otherwise be permitted pursuant to §205A-71(b), Hawai'i Revised Statutes.
21. Other terms and conditions as may be prescribed by the Chairperson; and
22. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,



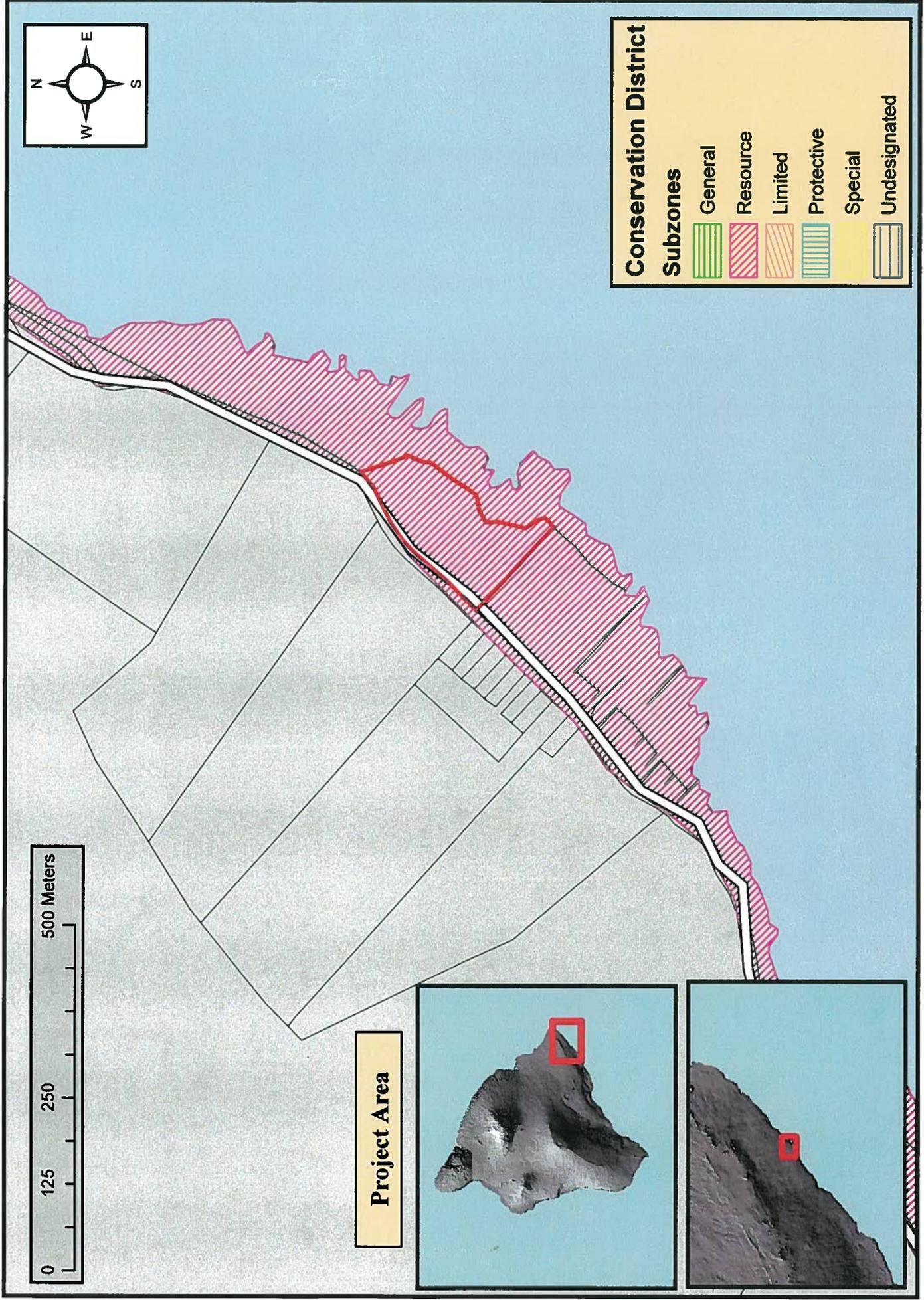
Michael Cain
Staff Planner

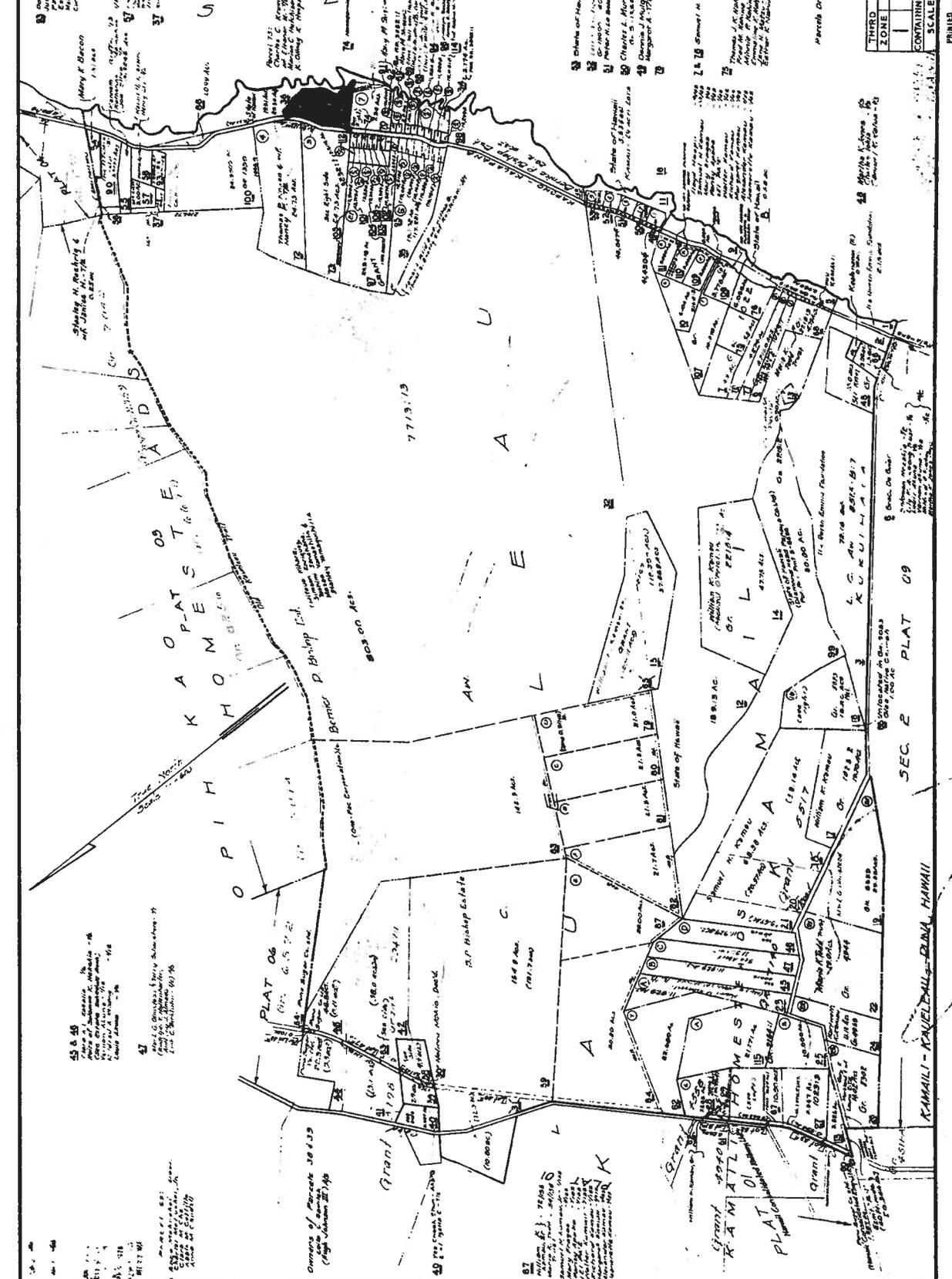
Approved for Submittal:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

TMK (3) 1-3-05:71 Kau`eleau, Puna, Hawaii`i





THIRD DIVISION	1	3	02
ZONE SEC. PLAT	1	3	02
CONTAINING PARCELS	SCALE 1/4" = 100'		

PRINTED

EXHIBIT 2

Map No. 700, Kamaile-Kaulea, Hawaii
 Date: Dec. 19, 1955
 Prepared by: [illegible]
 Checked by: [illegible]
 Approved by: [illegible]



Pointer 19°25'02.41"N 154°53'17.05"W elev 19m

© 2008 Tele Atlas
Image © 2009 DigitalGlobe
Streaming 100%

© 2007
Google
Eye all 10:13 AM

Exhibit 3 : Photos

EXHIBIT 3



Puaakannu Burial Platforms

EXHIBIT 3-A



Approximate Path of Public Easement

EXHIBIT 3-B



Coastal Ohio

EXHIBIT 3-C



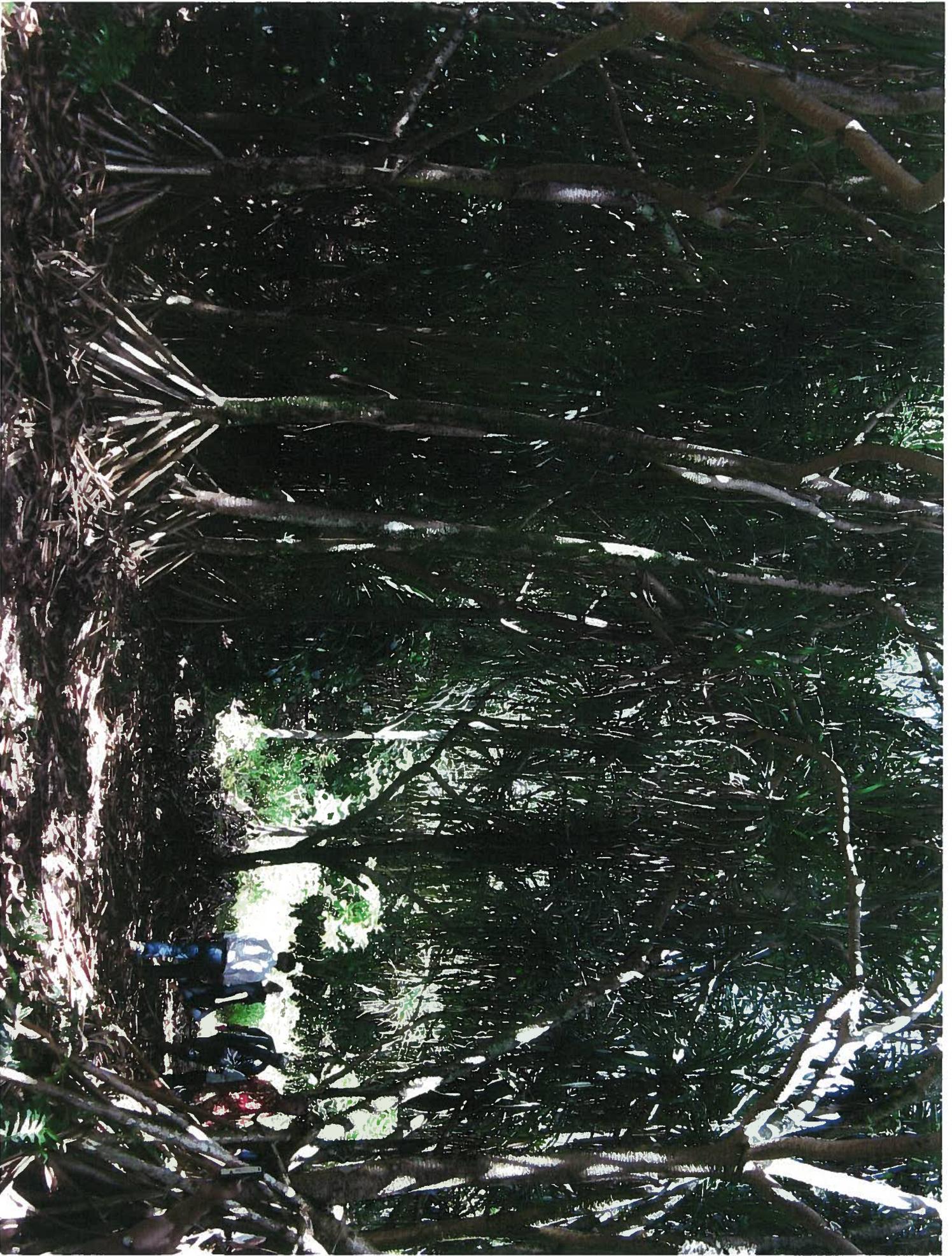
Throw Net Fisherman

EXHIBIT 3-D



Center of Hala Grove

EXHIBIT 3-E



Road Through Hala

EXHIBIT 3-F



Berm in Hala Grove

EXHIBIT 3-G



Previously Landscaped Area

EXHIBIT 3-14

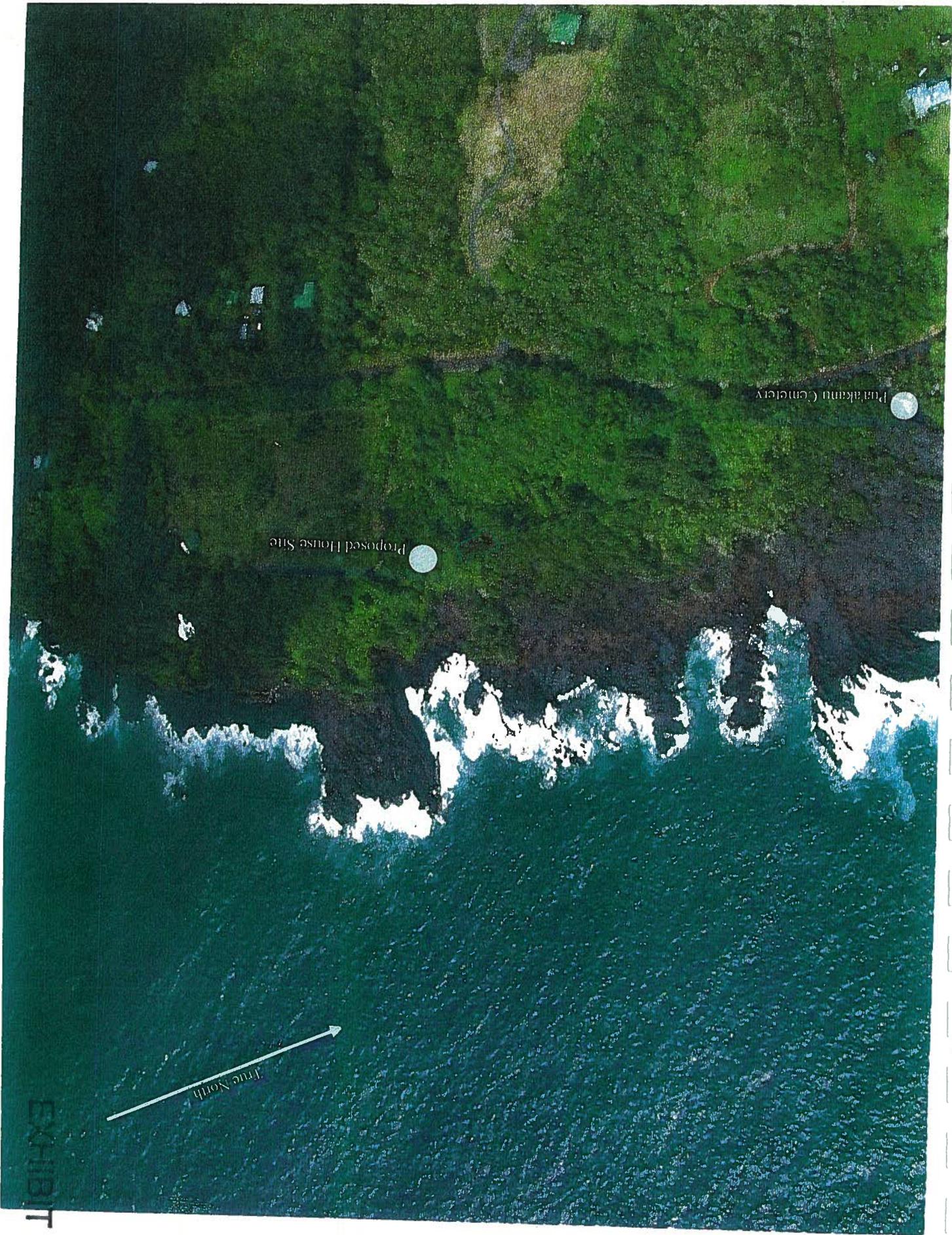
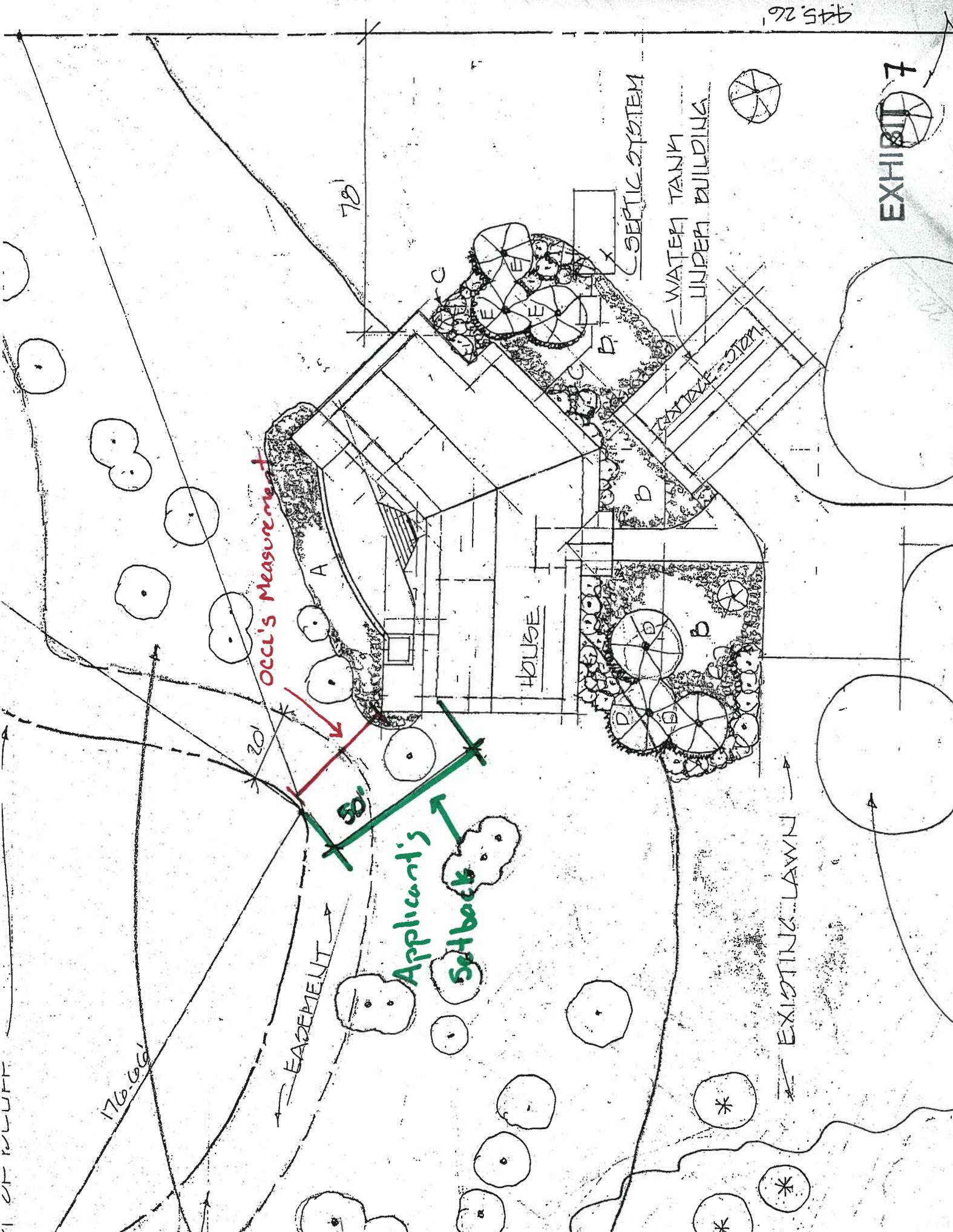


EXHIBIT 5

11 OF 12 PLUFF



445.26'

EXHIBIT 7