

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i
October 23, 2009

Acceptance Date: June 5, 2009
180-Day Expiration Date: December 2, 2009

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

REGARDING: Conservation District Use Application (CDUA) HA-3514 for Hale Piula Haina Native Forest and Bird Habitat Restoration Activities and Research Facility

APPLICANT: Henk and Akemi Rogers

LANDOWNER: Henk and Akemi Rogers

LOCATION: Pu'u Wa'awa'a, North Kona, Hawai'i

TMK: (3) 7-1-001:003 and 7-1-001:006 & 007 (road)

AREA/PARCEL: 2.755 acres

AREA/USE: 2.755 acres

SUBZONE: Resource Subzone

DESCRIPTION OF AREA/CURRENT USE:

The proposed native forest restoration and scientific research project site is located on a 2.755-acre property in Pu'u Wa'awa'a, North Kona, Hawai'i, TMK: (3) 7-1-001:003 (**Exhibits 1 & 2**). The property is currently owned by Henk and Akemi Rogers, and lies within the Resource subzone of the Conservation District (**Exhibit 3**).

The property, known as Hale Piula Haina, is at about 4,650 feet elevation and is surrounded by State land controlled by the Division of Forestry and Wildlife (DOFAW). The property was developed in the mid-1930s to early 1940s to provide catchment water for surrounding leased land. The catchment facilities were components of a larger system that spread onto State property (**Exhibit 4**). Although a portion of the catchment system on adjacent State land still delivers water to unused water tanks, the catchment system within the subject parcel is no longer operational.

Although privately owned, the subject parcel is located within the boundaries of the 3,806-acre Pu'u Wa'awa'a Forest Bird Sanctuary (PWWFBS), which was established by the Board of Land and Natural Resources in October 1984.

PROPOSED USE:

The applicant plans to restore and scientifically study native forest and bird habitat on the subject property. The project is intended to restore a native forest habitat for the native birds of Pu'u Wa'awa'a, and will include: demolition of remnants of a catchment system; removal of alien plants; planting of native trees, shrubs, and herbs; construction of an advanced predator excluder fencing; and installation of a 576-square foot research station.

The first project activity will be the demolition of the existing catchment system and selective hand-clearing of the underlying land of undesirable plants and debris (**Exhibit 5**). The applicant plans to re-use some material from the demolition. Then, the predator fencing will be constructed (**Exhibit 6**).

In order to plant native plants, a small outdoor nursery with shade cloth and storage will be built, as well as a catchment structure and 10,000-gallon water tank for irrigation water. Environmentally sound alien plant, mammal, and insect control will be applied.

The 576-square foot research station will be a pre-fabricated, self-contained shelter (**Exhibit 7**). The station will have equipment storage areas, lab space, a simple kitchen and dining area, and sleeping quarters.

No infrastructure hookups are needed. The station will be off-the-grid and powered by solar and wind power. The solar panels and wind turbine will be mounted on the roof, below the forest canopy. Sealed gel cell batteries will provide storage of electricity for use between solar cycles. The station will include a composting toilet. The sanitation system will be provided by the water catchment system and solar water heater.

Research at the project site will include studying the following focal species: 'Akepa (*Loxos coccineus*), 'Iiwi (*Vestiaria coccinea*), Hawai'i Creeper (*Oreomystis mana*), 'Akiapola'au (*Hemingnathus munroi*), 'Oma'o (*Myadestes obscures*), and Nēnē (*Branta sanvicensis*), as well as native invertebrates such as moths and flies that are food items vital to bird nestlings. Lists of existing species and proposed species for habitat restoration are provided in **Exhibit 8**.

The research program will involve solicitations and approval of research proposals from qualified scientists to utilize the facility. The applicant plans to select the researchers with advice from interested agencies and Pu'u Wa'awa'a Advisory Council members. Typical expected research proposals will deal with characterizing and evaluating native insect re-population on rare plants under various cover and density conditions, native bird response to varying flowering and insect conditions availability on rare plants, microclimatic changes within a restored canopy, and differences in nutrient cycling with various cover types.

It is expected that once the native forest is successfully restored at the project site, and if research activities are no longer necessary, the facility could be removed from the subject property and moved to another location, if desired.

The project will also involve minor repairs along an existing four-wheel-drive road located on TMKs: (3) 7-1-001:006 and 007 (**Exhibit 9**). The road is on land owned by the State. The applicant is requesting the formalization of an easement route and permission to do minor repairs to the road from the State.

SUMMARY OF COMMENTS:

CDUA HA-3514 was referred to the following agencies for review and comment: DLNR – Hawai‘i District Land Office, Division of Forestry and Wildlife (DOFAW), Historic Preservation Division (SHPD); County of Hawai‘i Planning Department; Office of Hawaiian Affairs (OHA); Office of Environmental Quality Control (OEQC); Department of Health (DOH); U.S. Fish and Wildlife Service; and the Kailua-Kona Public Library. The following comments were received:

DLNR-Hawai‘i District Land Office

No comments.

DLNR-DOFAW

Because the proposed project is located on 2.775 acres of private land surrounded by the 3,806-acre DOFAW-managed Pu‘u Wa‘awa‘a Forest Bird Sanctuary (PWWFBS), DOFAW had numerous comments regarding this project, which are attached in their entirety as **Exhibit 10**, but summarized below. DOFAW comments include, with applicant’s response (**Exhibit 11**), the following:

1. The research component for the project is rather vague; the justification for a living facility on-site seems unnecessary; there is no mention of the Hawai‘i Experimental Tropical Forest (HETF), a formal partnership with the U.S. Forest Service to administer research within Pu‘u Wa‘awa‘a.

Applicant’s Response: The research will be specified by proposals that will be developed and reviewed. Regarding HETF, the applicant’s consultant asked several officials for program information, but has not received any.

2. Reforestation/replanting/landscaping should be done with seed stock acquired from Pu‘u Wa‘awa‘a when possible, and consultation with DOFAW for suitable substitutes of extirpated species for consistency throughout the PWWFBS. Gathering of seeds from common and any endangered species restoration requires a permit from DOFAW.

Applicant’s Response: Seeds will be from local stock to the extent possible, DOFAW will be consulted, and all appropriate permits will be obtained.

3. DOFAW has concerns regarding the applicant’s request for a formal road easement to the site. For nearly two years, there have been 6-month access permits granted to the applicant to cross State lands to visit the property, and last minute-requests to access have been honored on numerous occasions. Suggested access routes would require a substantial amount of road repairs to make them adequate routes for construction and

subsequent visitation access. There is no explanation as to the need to “formalize” an easement to the parcel, and the restrictions that are in place now will need to be included in any access agreement to protect State lands.

There are locked gates that will need to be kept locked to prevent unauthorized access to not only the subject property, but to thousands of acres of State land. Issuing keys to the applicant for open access is contrary to the protection of the State assets, especially since there will be researchers that may not be aware of the permitted route, or to the hazards and threats to the ecosystem that are present. There will be times when access is restricted, even to State employees, due to heightened fire threat; therefore, control of access across State lands will need to be maintained as it is now. Most of the damage caused by a vehicle fire would undoubtedly be to State lands, and therefore, a liberal access agreement is not a prudent decision for the State. DOFAW does not recommend a permanent, perpetual easement to cross State lands to the project site.

Applicant's Response: A formal easement to this privately-owned parcel is essential to insure that the applicant and his research team can reach the facility. The applicant understands that restrictions and rules applied to all individuals using this access roadway will apply to the applicant as well. State control of access during emergency situations such as extreme fire danger is reasonable and understood. However, the State is not allowed to deny permanent access to properties in Hawai'i. The larger issue is which particular access route is most beneficial to all parties. In regard to the exact route, the route depicted on Figure 1b [of DEA] is meant to be an approximation. To clarify, there is no intention to build a new road, but to use the existing commonly used route. Prior to application for an easement, the applicant will GPS the route and meet any other requirements of the Land Division and the BLNR to establish and record the easement.

4. The EA/CDUA does not effectively assess how the applicant will prevent and monitor the introduction of non-native species to the project site, and prevent introduction of new weeds to the thousands of acres of the PWWFBS surrounding the project site.

Applicant's Response: Plant propagation, which would be guided by native plant horticulturalist Jill Wagner, would be very controlled. The plants would be grown in sterile media and be weed free. The nursery would be certified with the Department of Agriculture and follow strict guidelines for hygiene. Table heights, sterilization, sterile media, and weed control would be followed and inspections conducted several times a year. Ms. Wagner has extensive experience working with the National Park Service, which has strict rules about weed free plants, and there have been no problems or issues.

5. The EA/CDUA does not adequately evaluate wildfire protection. Currently, roads are very substandard, which prevents overuse and ensures low volume of traffic. Increased traffic and people not trained in wildland firefighting to the area poses additional fire risk.

Applicant's Response: A Fire Plan will be developed after CDUP approval and the applicant expects that there will be various agencies that the BLNR will require to approve such a plan. The applicant has already been in touch with the Hawai'i Wildlife Management Organization regarding plan preparation.

6. The EA/CDUA does not provide adequate details regarding pest control.

Applicant's Response: Pest control will be done in an environmentally sound manner in compliance with all State and Federal laws and regulations, which are designed to protect, among other values, water quality, and there is no risk of damage to the aquifer.

7. The slope of the site is noteworthy. The average slope of the project site is 25%. The vulnerable soils will be the exposed area of the catchment structure, which is assumed to be demolished all at once. The slope under the catchment is 38%, which is substantial considering the precipitation of this location. Erosion control is not adequately addressed in the EA/CDUA.

Applicant's Response: Detailed erosion control plans will be developed after CDUP approval. The amount of grading needed for the catchment and any other structures is very small and the erosion risk is slight. Grading will be undertaken during a time of low precipitation.

8. Will anyone else utilize the facilities other than bonafide researchers?

Applicant's Response: Other than maintenance of the research facilities, there will be no other use than research.

9. DOFAW wants to control access to the PWWFBS by denying access during high fire danger, and limiting the number of people allowed to use road per day/week/month.

Applicant's Response: The applicant understands and is agreeable to reasonable conditions regarding access during fire danger periods.

10. If access is granted, it should be only through one entrance to the PWWFBS. The applicant should install raised ungulate proof 18-foot cattle guard to protect against the gate being left open unintentionally and compromising future ungulate free status of PWWFBS.

Applicant's Response: The applicant is agreeable to these conditions.

11. Will there be a windmill constructed? If so, how high above the forest canopy will it protrude and what is the anticipated impact of such a structure for native species? What about visual impact?

Applicant's Response: The windmills used would be the Helical Turbine type. These are not dangerous to birds. Furthermore, they are very quiet, since the top speeds do not approach those of propeller type windmills. Since the rotors turn opposite to their curvature, any contact will just be pushed away. Also, because of their size and slow speed, they are highly visible to birds, in contrast to propellers, which are mostly invisible. Refer to **Exhibit 12**.

12. The DEA states that the proposed project will directly assist the Pu‘u Wa‘awa‘a Management Plan via accomplishment of certain objectives. The DEA states that objective 24 (Fund and hire permanent field staff to implement natural resource management objectives) will be accomplished by this project. How will this project accomplish this?

Applicant's Response: At a minimum, the project will pay for staff to reforest and maintain a degraded area within Pu‘u Wa‘awa‘a. The project also lays the groundwork for wider cooperative efforts that the applicant and the State may wish to discuss.

DLNR-SHPD

SHPD is currently reviewing the inventory survey report for the project site. At this time, SHPD believes that the report accurately reflects the nature and extent of historic properties within the project area.

One historic property, consisting of the water catchment system, was identified (Hale Piula, SIHP Site 50-10-19-26171). The various component features of this site cover approximately half of Parcel 003. The statement found in the application: “The proposed action will not affect any historic properties” – is not accurate. The project will adversely affect Site 26171, which is a historic property. SHPD agrees that this early 20th century site is significant under multiple criteria (HAR §13-284), and concurs with the recommendation found in the report that this site undergo data recovery recordation to include scaled drawings and archival quality photographs of all component features, prior to demolition and removal.

SHPD requests that mitigation measures minimally include a commitment to complete a data recovery plan for review and approval by SHPD, and a commitment to implementing the approved data recovery plan prior to demolition of the Hale Piula catchment system.

Applicant's Response: The FEA contains the statement that mitigation for the project will include, at a minimum, a commitment to complete a data recovery plan for review and approval by SHPD and a commitment to implementing the approved data recovery plan prior to demolition.

DOH-Clean Water Branch

Any project and its potential impacts to State waters must meet the following criteria: 1) anti-degradation policy (HAR §11-54-1.1); 2) designated uses (HAR §11-54-3); and 3) water quality criteria (HAR §11-54-4 through 11-54-8).

The applicant is required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of wastewater, including storm water runoff associated with construction activities, into State surface waters (HAR §11-55). This includes the demolition and construction activities at the subject property, and the construction activity for the repairs to the existing 4WD road from the Rogers Ranch headquarters to the subject property. An NPDES permit is required before the start of the construction activities.

All discharges related to the project construction or operation activities, whether or not NPDES permit coverage is required, must comply with the State's Water Quality Standards (HAR §11-54).

Applicant's response: No NPDES is anticipated, due to the very small scale of disturbance and the lack of other applicable activities. The project will comply with all DOH rules.

OHA

OHA has concern about the proposed fencing. OHA requests that a site plan or footprint be provided along with accompanying specifications for the fence. OHA asks if a survey has been conducted for the proposed fence routes. Any sensitive biological resources, such as rare plants, bird nesting sites, or archaeological, historical, cultural resources, should be identified and alignments shifted to avoid such sensitive features. Fencing alignments should also avoid trees greater than six inches in diameter.

OHA requests that during all construction activities if any archaeological sites, artifacts, or burials are encountered, fencing construction will halt and the appropriate agencies will be notified to discuss further action, including re-routing the fence line to avoid these elements. Additionally, if the fence is to enclose a large area, crossovers or self-closing gates should be considered along fencing at trails or other accessible locations to allow for movement of people into and/or between fenced areas.

Applicant's response: The fence encloses only the small property itself and would thus be only about 1,500 feet in length. This area was heavily disturbed to establish the catchment and has been fully surveyed for historic properties. It has been informally surveyed for rare plants on several occasions, and a formal survey is upcoming. If any valuable resources are present, the fence will be adjusted. No trails are present, and one can easily walk around the small property.

Hawai'i County Planning Department

Parcel 7-1-001:003 is designated Conservation by the Hawai'i County General Plan. The parcel is not located within the Special Management Area.

The Hawai'i Planning Department's only concern with the project is where it states in the application that the research station will be "powered by safe and clean solar and *wind* power," emphasis added. Given that the purpose of the project is to provide habitat for native birds, a wind powered system may not be an appropriate option for generating power at the project site due to potential injury from wind turbines on the birds that the project aims to protect.

The Planning Department recommends an alternative energy solution be found if solar will not be sufficient for the needs of the station.

Applicant's response: The windmills used would be the Helical Turbine type. These are not dangerous to birds. Furthermore, they are very quiet, since the top speeds do not approach those of propeller type windmills. Since the rotors turn opposite to their curvature, any contact will just be pushed away. Also, because of their size and slow speed, they are highly visible to birds, in contrast to propellers, which are mostly invisible. Refer to **Exhibit 12**.

Hawai'i County Fire Department

No comments.

Christine Ahia

Ms. Ahia would like to see the State acquire this three-acre parcel of land upon any change in proposed usage or ownership. She supports the applicant's plan of restoration and research for the present land use with a couple of considerations.

Ms. Ahia comments included: 1) money needs to be directed towards road maintenance and repair; 2) introduction of invasive species and fires are threats from increased construction and usage of the parcel; 3) the need for State lease agreement for road easement in which money from lease would go directly into Pu'u Wa'awa'a forest restoration; and 4) the applicant should be required to support the current ongoing volunteer efforts at forest restoration.

Applicant's Response: If the State wishes to acquire the property, then it should make an offer. The applicant is willing to agree to fair-share funding of road maintenance. Although the applicant supports these volunteer efforts, the proposed project does not produce impacts that would require mitigation in the form of providing funding for this volunteer group.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated June 5, 2009 that:

1. The proposed use is an identified land use within the Resource subzone of the Conservation District, according to Chapter 13-5, Hawai'i Administrative Rules (HAR) §13-5-22, P-1, DATA COLLECTION, D-1;
2. Pursuant to §13-5-40(4), HAR, HEARINGS, a public hearing will not be required; and
3. In conformance with Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment (DEA) for the project will be submitted to OEQC to be published in the June 23, 2009 issue of the *Environmental Notice*.

CDUA MA-3514 was published in OEQC's *Environmental Notice* on June 23, 2009.

A FONSI for the project was issued on September 8, 2009 and published in the September 23, 2009 issue of the *Environmental Notice*.

The Hawai'i Planning Department confirmed that the project is not located in the Special Management Area.

CONSERVATION CRITERIA:

HAR Section 13-5-30 provides eight specific criteria that the Department or Board shall apply to proposed land uses within the Conservation District. Land uses must conform to the following criteria:

1. *The proposed land use is consistent with the purpose of the conservation district.*

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

The proposed project includes removing dilapidated structures, debris, and alien plants, and erecting a predator exclusion fence. The area will be replanted with appropriate native species mix and spacing for the trees, shrubs, and understory plants. It is expected that the area will be a bird habitat as well. In addition, the project includes research as a key component, and the information may be shared with the State to aid in restoration efforts on the surrounding DOFAW lands.

Staff notes that the project is consistent with the purpose of the Conservation District.

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

The property lies within the Resource subzone. The objective of the Resource subzone is to limit uses where natural conditions suggest constraints on human activities.

The proposed action is an identified land use within the Resource subzone of the Conservation District, according to Chapter 13-5, Hawai'i Administrative Rules (HAR) §13-5-22, P-1, DATA COLLECTION (D-1) *Basic data collection, research, education, and resource evaluation that involves a land use causing ground disturbance.*

The proposed action includes the reforestation of an area that has been previously disturbed by human activities. The project will establish management for the area that will sustain the natural resources of the area.

Staff notes that the project is consistent with the objective of the Resource subzone.

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

The applicant provided the following assessment of the ten objectives of Chapter 205A, HRS and the impacts the proposed action will have:

Recreational Resources: The property is located over 9 miles from the ocean, no coastal recreational resources are proposed or affected; there will be no negative impact to existing resources.

Historic Resources: An Archaeological Inventory Survey was reviewed by SHPD for concurrence with the finding of no adverse effect to historic properties given the specified mitigation.

Scenic and Open Space Resources: The project will have no effect on coastal scenic and open space resources. It is also not expected to have adverse impact on upland scenic resources.

Coastal Ecosystems: No surface watercourses are present on the property that could potentially transmit pollutants, valuable coastal ecosystems, including reefs. Therefore, no impact on coastal ecosystems is expected.

Economic Uses: The project is not coastal dependent; it is in an area dedicated to forest preservation and is therefore in a "suitable location."

Coastal Hazards: The subject area is in FIRM Zone X, outside the mapped 100-year or 500-year floodplain; there is no hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, or pollution.

Managing Development: Since no coastal resources will be affected by the project, no management of coastal resources would be required.

Public Participation: The public will be informed of the project through the Chapter 343, HRS and CDUA process.

Beach Protection: The project will not affect the use of beaches by the public for recreation uses.

Marine Resources: The project location insures there will be no impact to marine resources. The proposed action provides opportunity for researchers to study, conserve, protect, and preserve natural resources.

Staff notes the project complies with CZM objectives as identified in Chapter 205A, HRS.

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

The proposed action includes reforestation and habitat restoration, which will conserve, protect, and preserve the natural and historic features of the property. In addition, the portable research station will have minimal impact as it requires no permanent connection to the land and is self-sufficient for utilities, water supply, and wastewater treatment.

Staff notes that the proposed project will not have substantial adverse impact to existing natural resources within the surrounding area, community, or region.

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

Restoring the site to its natural state without the remnants of the water catchment system and alien species will help to re-establish the native forest there and provide habitat for native birds and invertebrates. The research facility will house researchers and their equipment so they can analyze the re-forestation process and develop protocols that possibly may be used on surrounding lands.

Staff notes the proposed project is compatible with the locality, and surrounding area, and is appropriate to the physical condition and capabilities of the subject 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.*

As stated before, restoring the site to its natural state without the remnants of the water catchment system and alien species will help to re-establish the native forest there and provide habitat for native birds and invertebrates.

The research facility is designed to be non-obtrusive as it is portable, needs no permanent connection to the ground, and is self-sufficient for utilities. The facility will be relocated from the subject property when research opportunities at the site have been exhausted.

Staff feels that reforestation and habitat restoration activities will improve upon the existing physical and environmental aspects of the land.

7. *Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district.*

The proposed project does not include subdivision.

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

Staff notes that the proposed project will not be materially detrimental to the public's health, safety, and welfare.

DISCUSSION:

The project is an identified land use within the Conservation District, pursuant to HAR §13-5-22, P-1, DATA COLLECTION (D-1) *Basic data collection, research, education, and resource evaluation that involves a land use causing ground disturbance.* The CDUA requires Board approval. It is staff's opinion that this proposed action meets the definition of the above cited identified use.

Staff notes that the applicant proposes to restore a native forest habitat for the native birds of Pu'u Wa'awa'a that will include: demolition of remnants of a catchment system; removal of alien plants; planting of native trees, shrubs, and herbs; construction of an advanced predator excluder fencing; and installation of a 576-square foot research station.

As discussed in the "Summary of Comments" section, because the proposed project is located on 2.775 acres of land within the 3,806-acre DOFAW-managed Pu'u Wa'awa'a Forest Bird Sanctuary (PWWFBS), DOFAW had numerous comments regarding this project, which are attached in entirety as **Exhibit 10**. DOFAW's concerns included: the applicant's request for a formal road easement; access through the PWWFBS; seed stock for the reforestation; weed prevention; pest control; fire management; erosion control; research intentions; and whether the property will be used for non-research activities.

The applicant has been agreeable to accepting conditions to mitigate DOFAW's concerns. Therefore, Staff recommends that conditions be attached to the CDUA requiring the applicant to: obtain a State disposition to utilize the access road and have only one access through the PWWFBS; install a raised ungulate proof 18-foot cattle guard to protect against the gate being left open unintentionally and compromising future ungulate-free status of PWWFBS; obtain State approval prior to doing repairs/maintenance to the access road; utilize DOFAW-approved seed stock for reforestation; develop a management plan, including weed and pest control techniques; develop a fire management plan; develop an erosion control plan; share data collection and research results with the Department; not use the facility for commercial purposes; and remove the portable research station and related structures should research opportunities be exhausted on the subject property.

SHPD requests that mitigation measures minimally include a commitment to complete a data recovery plan for review and approval by SHPD, and a commitment to implementing the approved data recovery plan prior to demolition of the Hale Piula catchment system. Therefore, Staff recommends a condition be attached to the CDUA requiring SHPD's above-noted request.

Staff notes that the actions will have positive impacts to the environment. The proposed project includes removing dilapidated structures, debris, and alien plants, and erecting a predator exclusion fence. The area will be replanted with appropriate native species mix and spacing for the trees, shrubs, and understory plants. It is expected that the area will be a bird habitat as well. In addition, the project includes research as a key component, and the information may be shared with the State to aid in restoration efforts on the surrounding DOFAW lands.

As such, Staff recommends the following:

RECOMMENDATION:

Staff recommends that the Board of Land and Natural Resources **APPROVE CDUA HA-3514** for the Hale Piula Haina Native Forest and Bird Habitat Restoration Activities and Research Facility project, subject to the following terms and conditions:

1. The applicant shall submit a management plan, including weed and pest control techniques, to the OCCL for review and approval prior to commencement of any work;

2. The applicant shall prepare a data recovery plan for review and approval by SHPD and will implement the approved plan prior to demolition of the catchment system;
3. Access to the subject property will be through only one entrance to the PWWFBS. The applicant shall obtain a disposition from the State to utilize this access road. The applicant shall install a raised ungulate proof 18-foot cattle guard to protect against the gate being left open unintentionally and compromising future ungulate free status of PWWFBS. In addition, any repairs/maintenance to this road by the applicant will require prior State review and approval;
4. The applicant shall submit a Fire Management Plan to the OCCL for review and approval prior to commencement of any work. The applicant understands that access through PWWFBS may be strictly controlled (possibly denied) during fire danger periods;
5. The applicant shall submit detailed erosion control plans to the OCCL for review and approval prior to commencement of any work;
6. The applicant shall utilize DOFAW-approved seed stock for reforestation, and the nursery will be certified by the Department of Agriculture;
7. The applicant is encouraged to share data collection and research results with the Department;
8. Use of the facility for commercial purposes is prohibited;
9. Should research opportunities be exhausted on the subject property, the research station and related structures shall be removed;
10. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State, and County governments, and applicable parts of Chapter 13-5, HAR;
11. 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, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
12. The applicant shall comply with all applicable Department of Health (DOH) administrative rules;
13. 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;

14. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within three (3) years of the approval of such use. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
15. The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
16. In issuing the permit, the Department and Board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of the 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 the Department may, in addition, institute appropriate legal proceedings;
17. 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 within a time frame and manner prescribed by the Chairperson;
18. Other terms and conditions as prescribed by the Board; and
19. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully Submitted,



Audrey Barker, Staff Planner
Office of Conservation and Coastal Lands

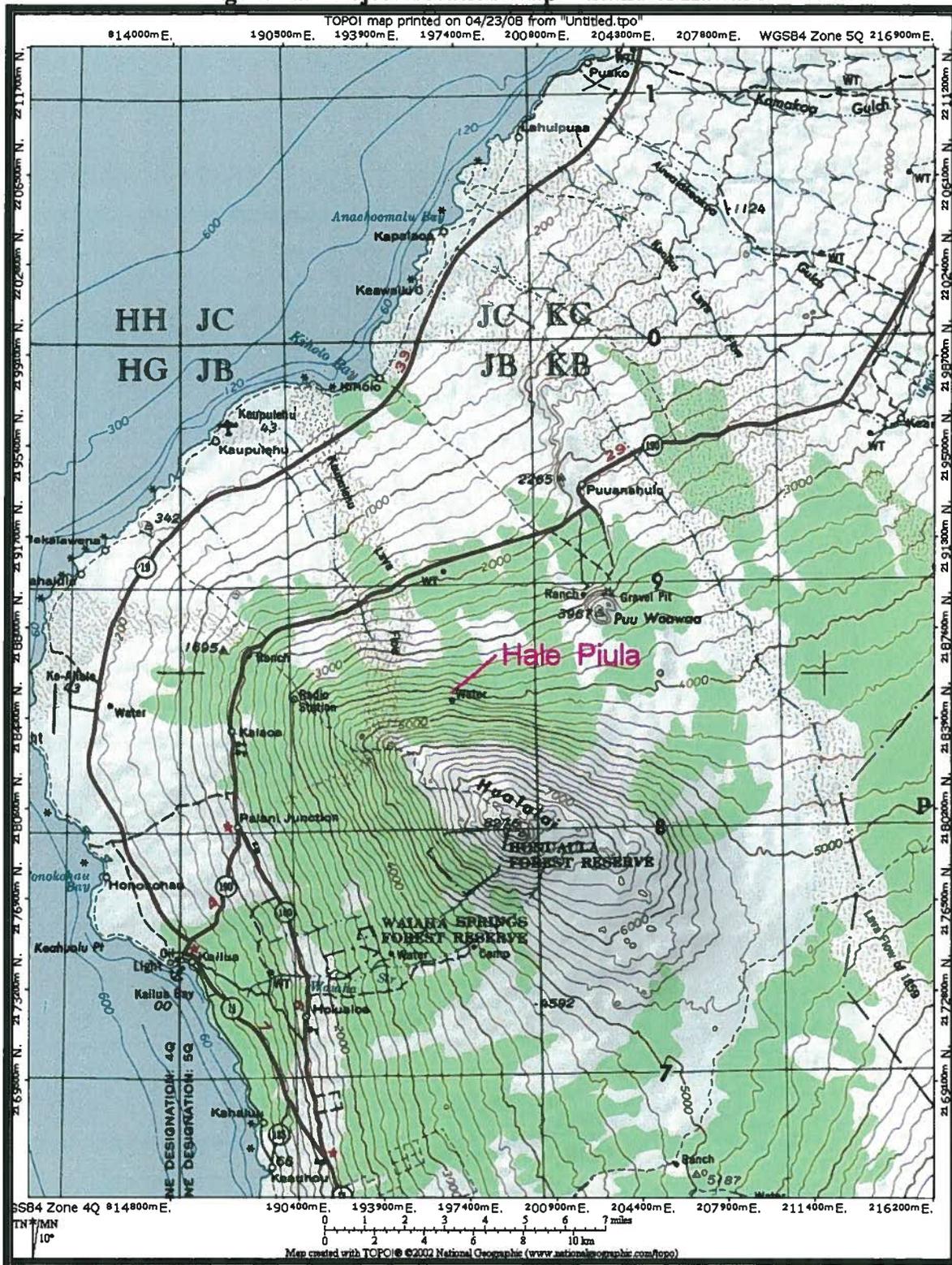
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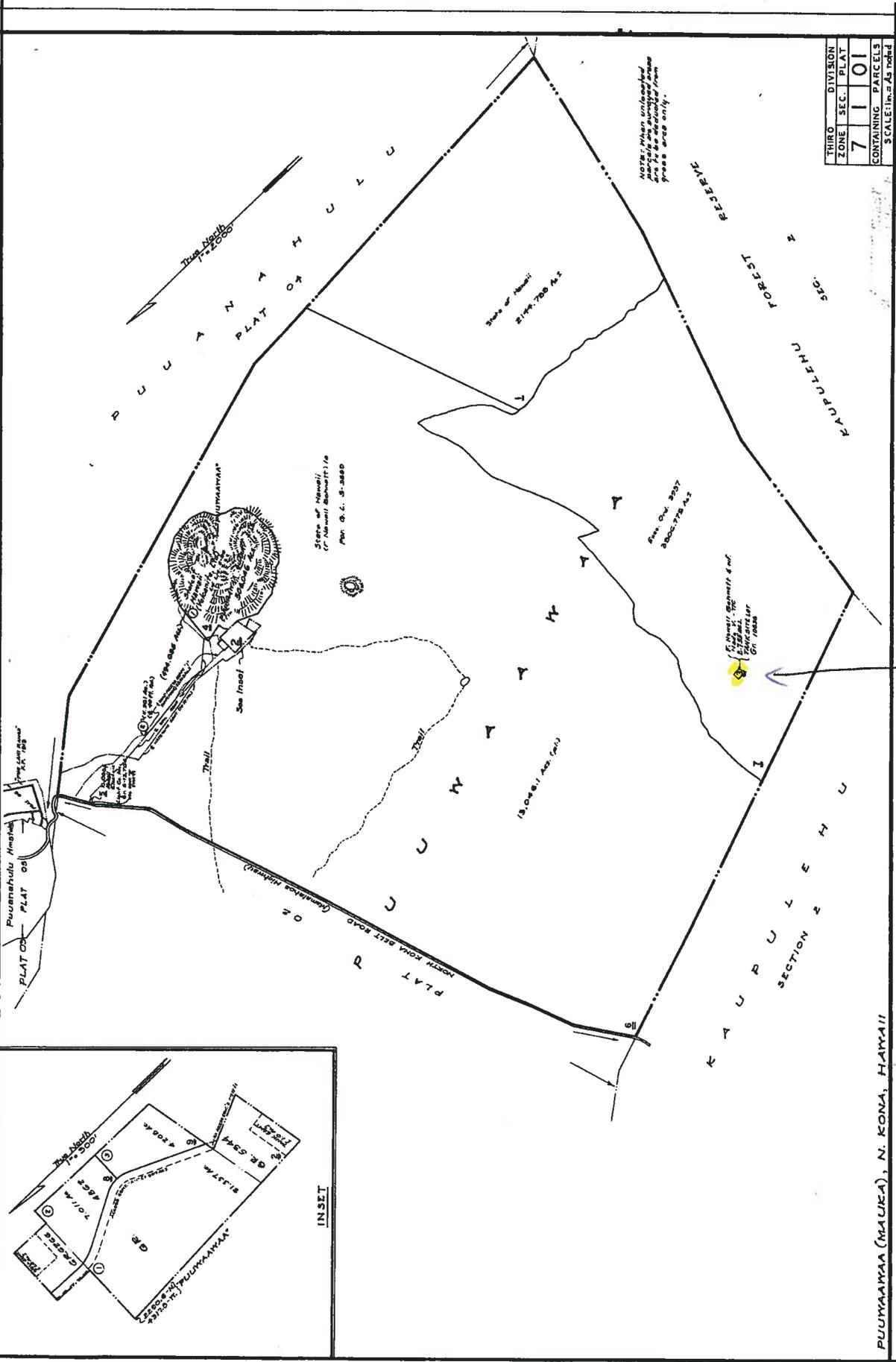
By:



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

Figure 1a. Project Location Map – Island of Hawai‘i





THIRD	DIVISION
7	101
ZONE	SEC. PLAT
CONTAINING	PARCELS
SCALE: 1" = 245' (rounded)	

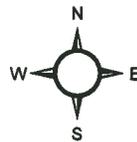
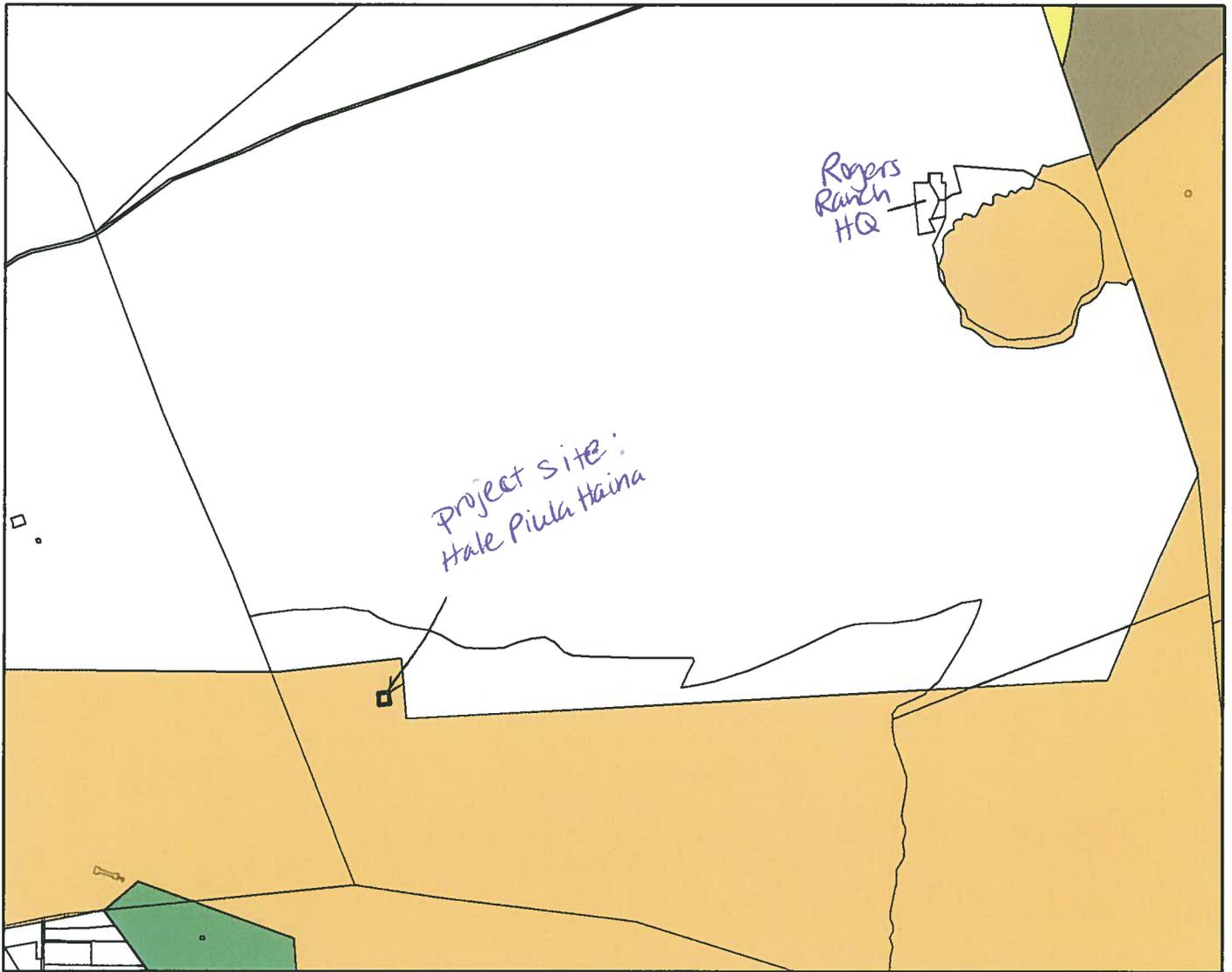
PRINTED

Project site
(3) 7-1-001:003

EXHIBIT 2

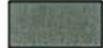
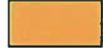
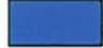
Dwg No 2607
 Source: Survey Office, Reg. Map 2003
 By: R.D. Feb. 98
 Puuwaawa (MAUKA), N. KONA, HAWAII

Subzone Map for TMK: (3) 7-1-001:003



Legend

Subzones

-  Undesignated
-  General
-  Limited
-  Protective
-  Resource
-  Special

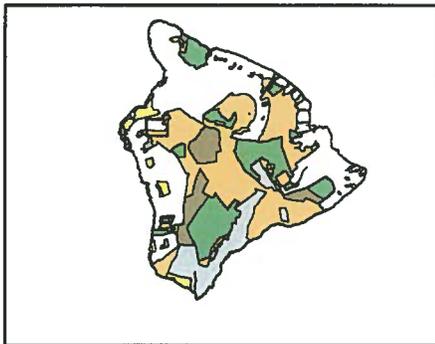


Figure 3a. Hale Piula Haina Photo – Iron Catchment



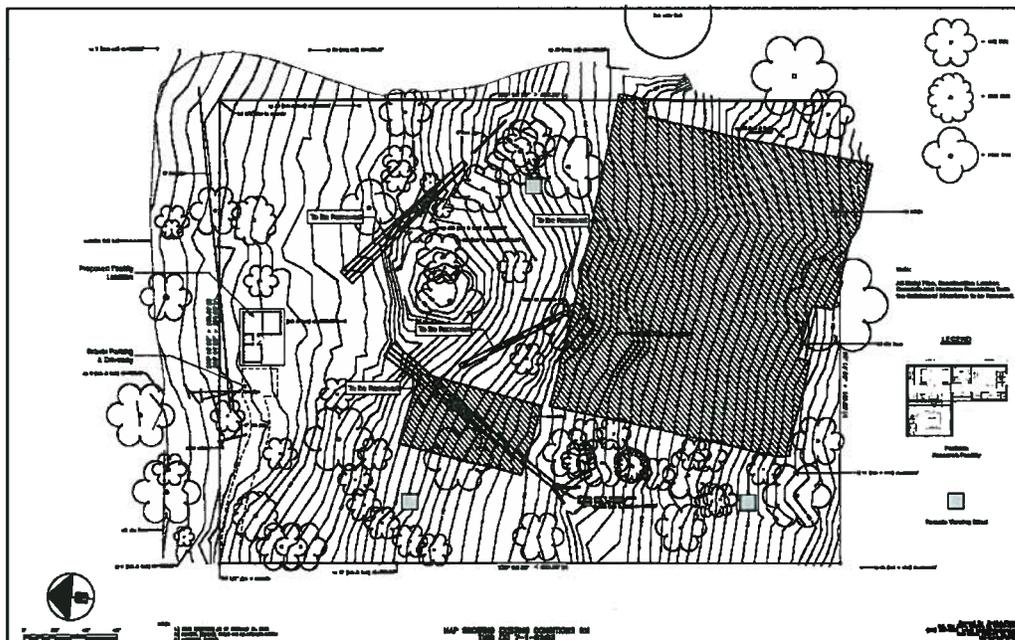
Figure 3b. Hale Piula Haina Photo – State Water Tank



Figure 3c. Hale Piula Haina Photo – Regenerating Koa Forest



Location and Direction of Site Photographs



Envision Design, LLC
2001 Kalia Road, Suite 200
Honolulu, HI 96815
808 955-0000
project@envisiondesign.com www.envisiondesign.com

MAP SHOWING CAMERA LOCATIONS ON
THE 10-1-2004
Hale Piula Haina
Pu'u Wa'awa'a Ranch
71-642 Waialae Avenue #10, Koloa, HI 96758
Copyright © 2004 ED

C-1
Proposed Site/Demo Plan

EXHIBIT 4b

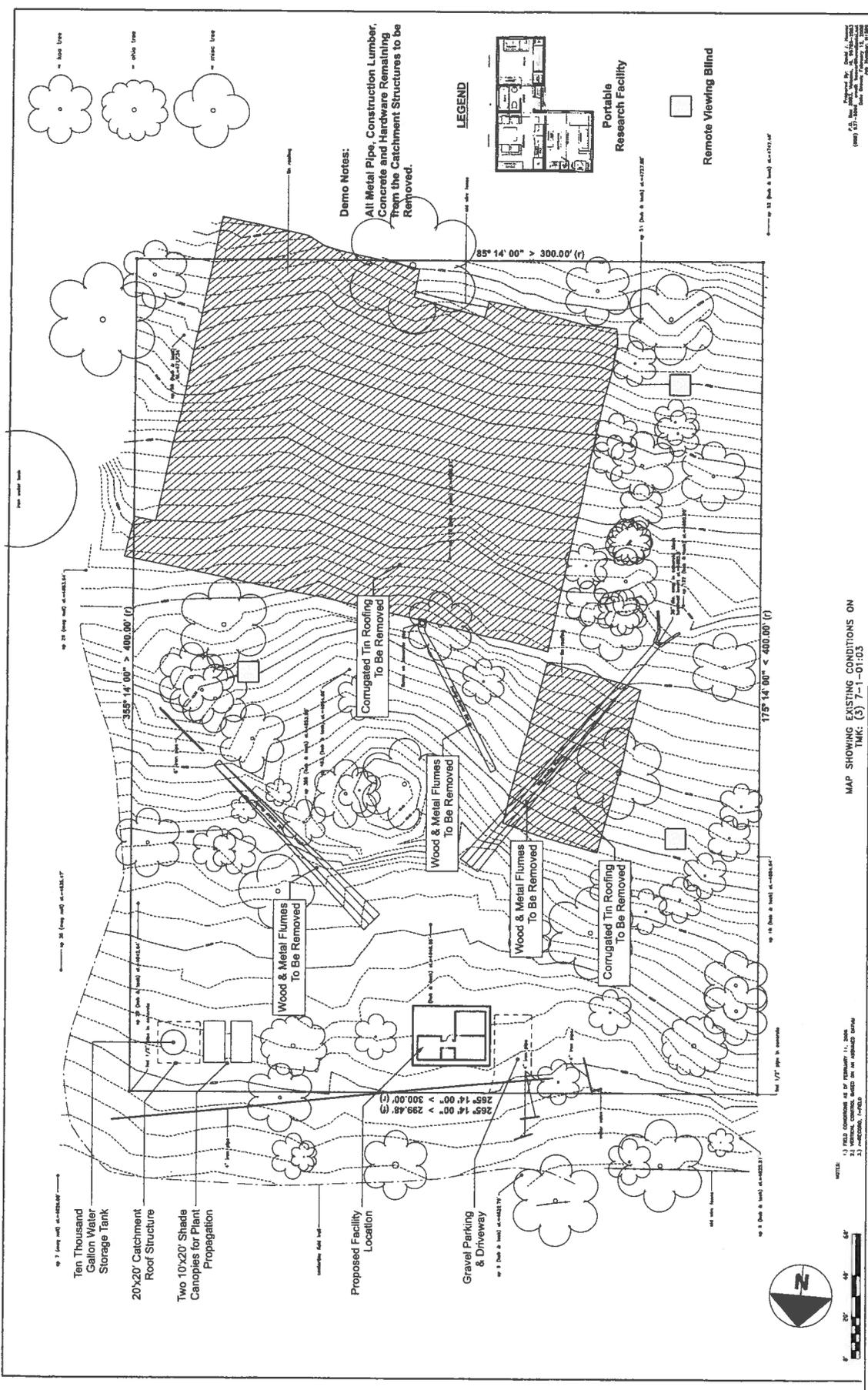
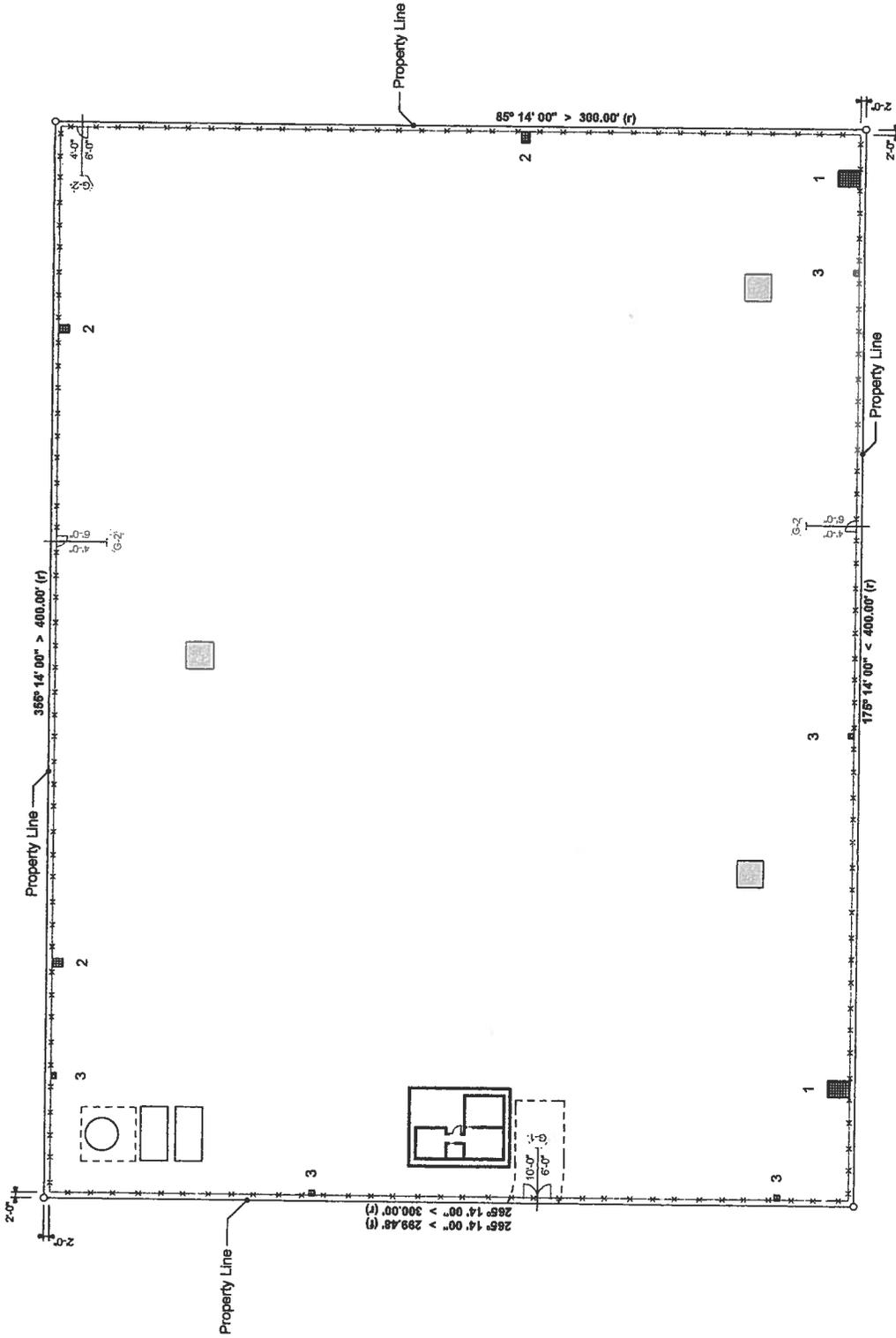


EXHIBIT 5

Proposed Site/Demo Plan

Hale Piula Haina
 Pu'u Wa'awa'a Ranch
 71-1645 Mamalahoa Highway #3, Kailua-Kona, HI 96740
 Proposed - 28 Apr 2009

Envision Design, LLC
 2041 Keasamoku St.
 Honolulu, HI 96822
 808 550-0185
 paul@envisiondesign.us www.envisiondesign.us

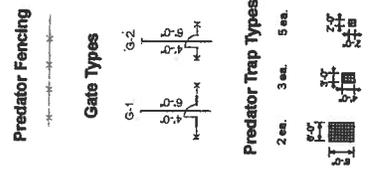


General Notes:
 Fencing to be set back 24" from Property Line to allow for a Burnt Apron as part of the Predator Fencing System.

Gate Usage:
 Type G1 (Vehicular)
 Type G2 (Pedestrian)

Predator Traps:
 Type 1 (Pigs)
 Type 2 (Sheep, Goats)
 Type 3 (Rats, Mongoose, Mice)

LEGEND



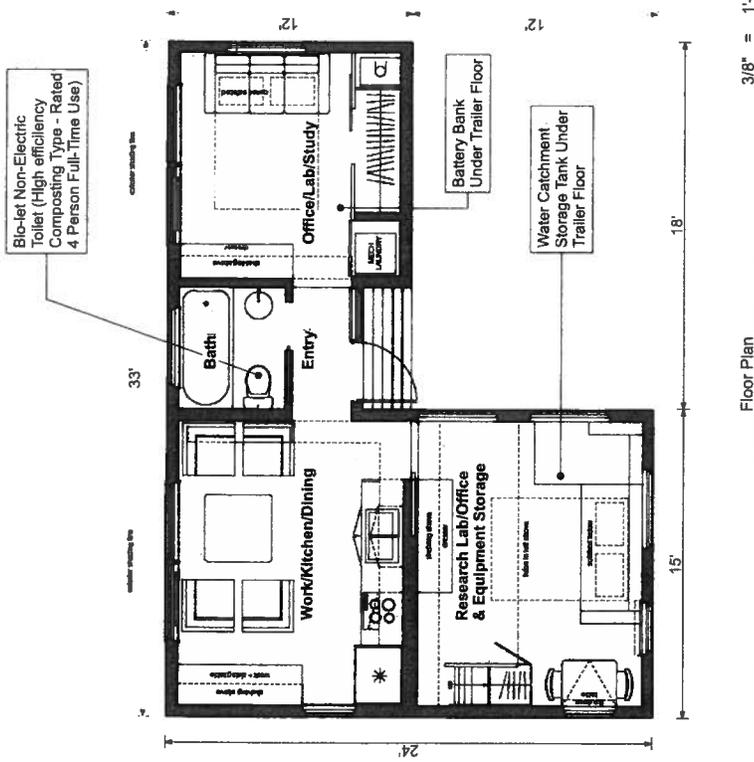
Envision Design, LLC
 2041 Koaanmoku St.
 Honolulu, HI 96822
 808 550-9765
 paul@envisiondesign.us www.envisiondesign.us

Hale Piula Haina
Pu'u Wa'awa'a Ranch
 71-1645 Mamalahoa Highway #5, Kailua-Kona, HI 98740
 Proposed - 28 Apr 2009 / 13 Jul 2009

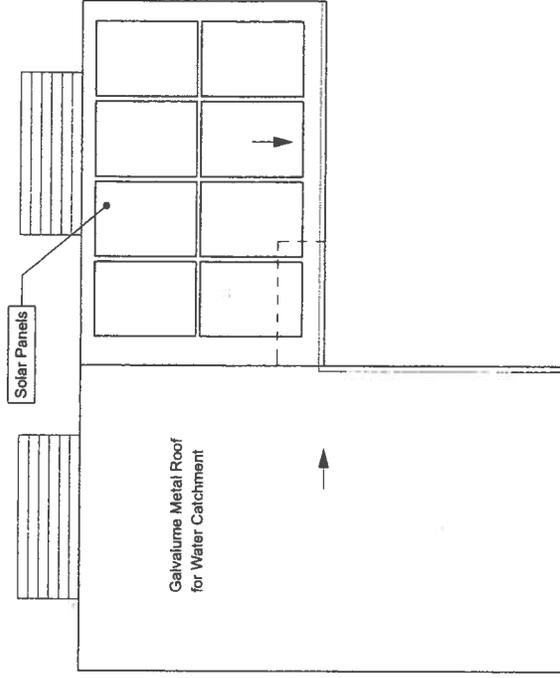
EXHIBIT 6
Proposed Site Predator Fencing &

Note: Water Catchment Storage Tank to be Stainless Steel or Food Grade Polyethylene Approved for Potable Water.

Sinks and Shower will be plumbed to a gray water holding tank under the trailer.



Floor Plan 3/8" = 1'-0"



Roof Plan 3/8" = 1'-0"

Envision Design, LLC
 2041 Keaunuku St.
 Honolulu, HI 96822
 808 550-0165
 paul@envisiondesign.us www.envisiondesign.us

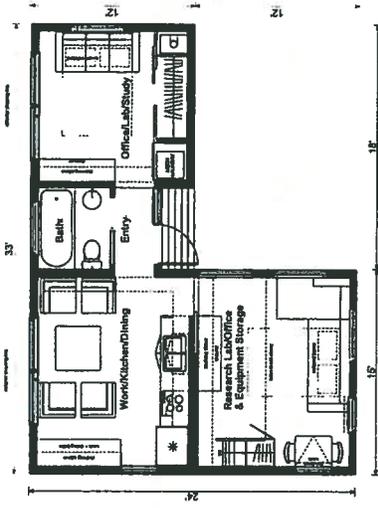
Hale Piula Haina
Pu'u Wa'awa'a Ranch
 71-1645 Mamalahoa Highway #3, Keolu-Kona, HI 96740
 Proposed - 28 Apr 2009

EXHIBIT 7a

Proposed Facility Plans



Rear Elevation



1. Floor Plan Key 1/4" = 1'-0"



Left Elevation



Right Elevation



Aerial View



Front Elevation



Aerial View

Envision Design, LLC
 2041 Kalia Ave. St.
 Honolulu, HI 96822
 808 550-0185
 paul@envisiondesign.us www.envisiondesign.us

Hale Piuta Haina
 Pu'u Wa'awa'a Ranch
 71-1645 Kiamatahoo Highway #3, Kailua-Kona, HI 98740
 Proposed - 28 Apr 2009

EXHIBIT 7b

Proposed Facility Elevations

Plant Species Detected at Hale Piula Haina

Scientific Name	Family	Common Name	Life Form	Status*
<i>Acacia koa</i>	Fabaceae	<i>Koa</i>	Tree	E
<i>Ageratina riparia</i>	Asteraceae	<i>Hamakua pamakani</i>	Herb	A
<i>Buddleia asiatica</i>	Loganiaceae	Buddleia	Shrub	A
<i>Chamaesyce olowaluana</i>	Euphorbiaceae	<i>Akoko</i>	Tree	E
<i>Cibotium spp.</i>	Dicksoniaceae	<i>Hapu'u tree fern</i>	Fern	E
<i>Conyza bonariensis</i>	Asteraceae	Hairy horseweed	Tree	A
<i>Cyperus spp.</i>	Cyperaceae	Sedge	Sedge	A
<i>Dryopteris dentata</i>	Polypodiaceae	Oak fern	Fern	A
<i>Dryopteris wallicheana</i>	Polypodiaceae	Shuttlecock fern	Fern	NI
<i>Geranium homeanum</i>	Geraniaceae	Cranesbill	Herb	A
<i>Grevillea robusta</i>	Proteaceae	Silver oak	Tree	A
<i>Leptocophylla tameiameia</i>	Epacridaceae	<i>Pukiawe</i>	Shrub	I
<i>Malus sylvestris</i>	Rosaceae	Apple	Tree	A
<i>Metrosideros polymorpha</i>	Myrtaceae	' <i>Ohi'a</i>	Tree	E
<i>Microlepia strigosa</i>	Dennstaedtiaceae	<i>Palapalai fern</i>	Fern	I
<i>Myoporum sandwicense</i>	Myoporaceae	<i>Nai</i>	Tree	I
<i>Myrsine lanaiensis</i>	Myrsinaceae	<i>Kolea</i>	Tree	E
<i>Passiflora mollissima</i>	Passifloraceae	<i>Banana poka</i>	Vine	A
<i>Pennisetum clandestinum</i>	Poaceae	Kikuyu grass	Grass	A
<i>Pennisetum setaceum</i>	Poaceae	Fountain grass	Grass	A
<i>Plantago lanceolata</i>	Plantaginaceae	Narrow-leaved plantain	Herb	A
<i>Prunus cericefra x P. salicina**</i>	Rosaceae	Plum	Tree	A
<i>Rubus rosifolius</i>	Rosaceae	Thimbleberry	Shrub	A
<i>Sadleria cyatheoides</i>	Blechnaceae	<i>Ama'u fern</i>	Fern	E
<i>Senecio mikanioides</i>	Asteraceae	German ivy	Vine	A
<i>Senecio madagascariensis</i>	Asteraceae	Fireweed	Vine	A
<i>Sophora chrysophylla</i>	Fabaceae	<i>Mamane</i>	Tree	E
<i>Sphenomeris chinensis</i>	Lindseaceae	<i>Pala'a fern</i>	Fern	I
<i>Verbascum sp.</i>	Scrophulariaceae	Mullein	Herb	A
<i>Verbena litoralis</i>	Verbenaceae	<i>O'iwi</i>	Herb	A

* A =alien, E =endemic, I =indigenous. ** Methley plum sterile hybrid

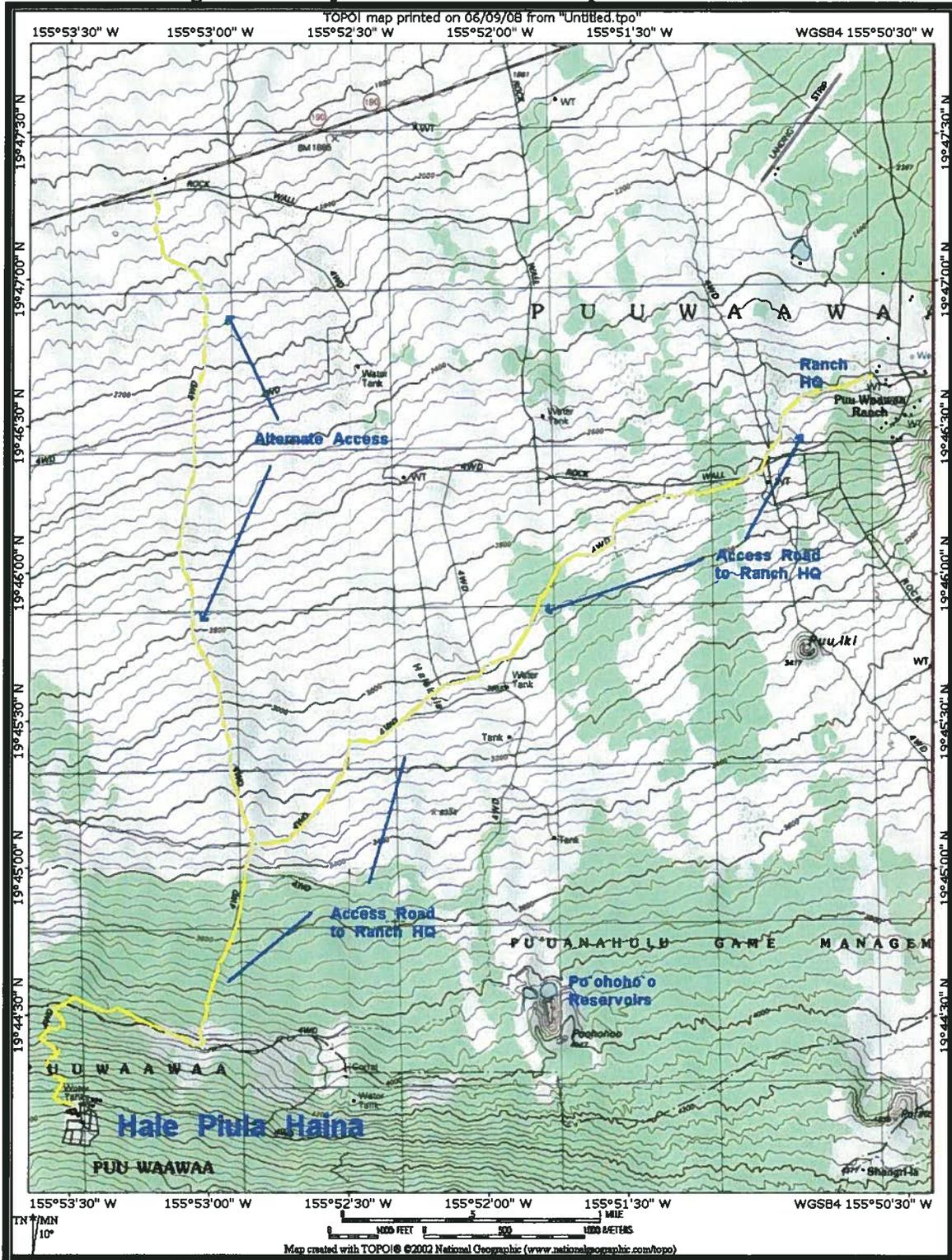
EXHIBIT 8a

Hale Piula Haina Plant Species Restoration List

Scientific Name	Family	Common Name	Status
<i>Acacia koa</i>	Fabaceae	Koa	
<i>Metrosideros polymorpha</i>	Myrtaceae	'O'hia	
<i>Pittosporum hosmeri</i>	Pittosporaceae	Ho'awa	
<i>Pyschotria hawaiiensis</i>	Rubiaceae	Kopiko	
<i>Myrsine lessertiana</i>	Myrsinaceae	Kolea	
<i>Myrsine sanwicensis</i>	Myrsinaceae	Kolea lau li'i	
<i>Sophora chrysophylla</i>	Fabaceae	Mamane	
<i>Myoporum sandwicense</i>	Myoporaceae	Naio	
<i>Coprosma rhynchocarpa</i>	Rubiaceae	Pilo	
<i>Hedyotis terminalis</i>	Rubiaceae	Manono	
<i>Cheirodendron trigynum</i>	Aquifoliaceae	Olapa	Rare
<i>Clermontia sp.</i>	Campanulaceae	Oha	Endangered
<i>Delissea undulata</i>	Campanulaceae	None	Endangered
<i>Cyrtrandra hawaiiensis</i>	Gesneriaceae	None	Rare
<i>Pipturus albidus</i>	Piperaceae	Mamaki	
<i>Osteomeles lessertiana</i>	Rosaceae	Ulei	
<i>Dodonaea viscosa</i>	Sapindaceae	A'ali'i	
<i>Urera glabra</i>	Urticaceae	Opuhe	Rare
<i>Peperomia sp.</i>	Piperaceae	Ala'ala wai nui	
<i>Microlepidia strigosa</i>	Dennstaedtiaceae	Palapalai	
<i>Rubus hawaiiensis</i>	Rosaceae	'Akala	
<i>Alyxia olivaformis</i>	Apocynaceae	Maile	
<i>Ophioglossum pendulum</i>	Ophioglossaceae	Puapuamoa	Rare
<i>Cibotium glaucum</i>	Dicksoniaceae	Hapu'u	
<i>Cibotium medziesii</i>	Dicksoniaceae	Hapu'u 'i'i	Rare
<i>Astelia menziesiana</i>	Liliaceae	Kaluaha	Rare

EXHIBIT 8b

Figure 1b. Project Location USGS Map – Pu‘u Wa‘awa‘a



Note: access routes are approximate

Hale Piula Haina Native Forest and Bird Habitat Restoration Activities and Research Facility E.A.

EXHIBIT 9

Division of Forestry & Wildlife

RECEIVED
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

1151 Punchbowl Street, Rm. 325 □ Honolulu, HI 96813 □ (808) 587-0166 □ Fax: (808) 587-0160

2009 JUN 25 P 4: 17

June 25, 2009

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

MEMORANDUM

TO: Audrey Barker, Planner
Office of Conservation and Coastal Land

FROM: Paul J. Conry, Administrator
Division of Forestry and Wildlife



SUBJECT: CDUA HA-3514 Native Forest and Bird Habitat Restoration and Research Facility by applicant Henk and Akemi Rogers TMK: 7-1-001: 003, Pu'u Wa'awa'a, North Kona, Hawaii.

We appreciate the opportunity to comment on this project. My Branch staff on the Big Island has submitted their comments regarding this project at Pu'u Wa'awa'a. DLNR, DOFAW is a major landowner of the Pu'u Wa'awa'a ahupua'a and appreciates the opportunity to comment on this CDUA application.

My DOFAW staff on the Big Island provides the attached comments. Although the comments may be repetitious, they offer management guidelines that the applicant can use to implement a plan that will not negate the on-going work of DOFAW at Pu'u Wa'awa'a (see attachments). Please call the individual staff on the Big Island if you have questions regarding our review of this project. Mike Donoho, Pu'u Wa'awa'a Ahupua'a Coordinator has provided the majority of the comments for this application. Thank you for allowing us to comment on this CDUA.

C: Mike Donoho, DOFAW Hawaii Branch
Steve Bergfeld, DOFAW Hawaii Branch
Lyman Perry, DOFAW Hawaii Branch
Nick Agorastos, DOFAW Hawaii Branch
Roger Imoto, DOFAW Hawaii Branch
Lisa Hadway, DOFAW Hawaii Branch

Attachments

EXHIBIT 10a

Michael Donoho
Pu'u Wa'awa'a Ahupua'a Coordinator
DOFAW, Hawaii Branch
(808) 937-2501

It was with great interest that I began reading the Conservation District Use Application and Environmental Assessment (CDUA/EA) for Henk and Akemi Rogers' ("Applicant") project at "Hale Piula Haina" within the Pu'u Wa'awa'a Forest Bird Sanctuary (PWWFBS). I was interested to learn more of the details of "how" as there have been periodic updates on "what" this project entails.

- In general, I don't feel that I was involved in a formal consultation as the DOFAW Coordinator for Pu'u Wa'awa'a, or to my knowledge anyone else in DOFAW. DLNR Chairperson Laura Thielen was listed as one of the consultations, but I am not aware that the Chairperson has been to Pu'u Wa'awa'a and can speak to the details of this project or the area. Nor can she be aware of the multitude of other efforts undertaken by DOFAW and its partners that the applicant is apparently also not aware of. This helps to explain my comments on the document's content and form are extensive.
- The project area is 2.755 acres of land within the 3,806-acre PWWFBS (.00724, or .07% of the total area of the FBS). This is a very small amount of the greater project area for the PWWFBS, which is not mentioned in the document. A formal consultation would have revealed this to the applicant and preparers of this document. This small area means that any impact to the environment would likely be small, either positive or negative.
- The research component is rather vague. Being a private endeavor, it would likely be made available to researchers (i.e., Steve Lee Montgomery, PhD, who is currently in violation of the Endangered Species Act) that are already acquaintances with the Rogers. There is certainly nothing wrong with this, but this seems to be a justification for a living facility that doesn't seem necessary several guest houses on the Rogers' main property, particularly if road improvements to the parcel are authorized. Furthermore, there is no mention at all of the Hawaii Experimental Tropical Forest (HETF), a formal partnership with the US Forest Service to administer research within Pu'u Wa'awa'a.
- I question how this project will promote the well-being of the community, as stated in Page 34 of the EA. Page 28 of the EA and that there will be "substantial benefits" to the public on the 2.755 acres of private land. To say that the intellectual gains from research on the 2.755 acre parcel will be of greater benefit than those from the HETF are highly presumptive, especially since some of the most respected dryland forest scientists are already at work in Pu'u Wa'awa'a and have been for years.
- Page 44 of the EA that states that the project will greatly improve the bird habitat and re-establish the bird population in the area. If this can be accomplished on 2.755 acres (again, seven hundredths of a percent) in the PWWFBS, then what would really be accomplished? Would the majority of the existing birds focus on this plot because of the availability of native insects and fruit-bearing plants? Perhaps this would negatively alter their natural range, which is considerably more vast than a parcel less than 3 acres. If this

EXHIBIT 106

concentration of native and likely non-native birds alike, the behavior of the 'io (Hawaiian hawk) would also be altered due to a high concentration of prey (native and non-native) in a limited area.

- There are repeated instances where reforestation/replanting/landscaping would be done with locally acquired seeds. For the sake of genetic integrity, seed stock should be acquired from Pu'u Wa'awa'a when possible, and consultation with DOFAW for suitable substitutes of extirpated species for consistency throughout the PWWFBS. Gathering of seeds from common and any endangered species restoration requires a permit from DOFAW.
- This application also requests that a formal easement be established to the site. There is no mention that there have been 6-month access permits granted to the applicant to cross state lands to visit the property for nearly 2 years, and that last minute-requests to visit the property have been honored on numerous occasions. The map on Page 10 of the CDUA is incorrect. There are no roads along these alignments, or they are not the most practical route to access the site. These routes would require a substantial amount of road repairs to make them adequate routes for construction and subsequent visitation access. There is no explanation why there is a need to "formalize" an easement to the parcel, and the restrictions that are in place now will need to be included in any access agreement to protect state lands. There are locked gates that will need to be kept locked to prevent unauthorized access to not only Hale Piula, but thousands of acres of state land. Issuing keys to the applicant for open access is contrary to the protection of the state assets, especially since there will be researchers that may not be aware of the permitted route, or to the hazards and threats to the ecosystem that are always present. There will be times when access is restricted, even to State employees, due to the heightened fire threat. Therefore control of access across state lands will need to be maintained, as it is now. Most of the damage caused by a vehicle fire will undoubtedly be to state lands, and therefore a more liberal access agreement is not a prudent decision for the state. While the state is encouraged that the intent is to restore lands on this private parcel, this does not mean that the state should commit to a permanent, perpetual easement to cross state lands to this site.
- While the documents state that it is important to prevent and monitor the introduction of non-native species into Hale Piula Haina, there are also needs to prevent introduction of new weeds onto the thousands of acres surrounding this small parcel. An effective EA will assess the "how" of the project, not just the "what." It is stated in the document what is needed as far as avoiding unintended introductions, it is the "how" that will be evaluated in an EA for effectiveness. How will this be done en route and at Hale Piula? I cannot determine any details for preventing weed introduction from this CDUA/EA.

EXHIBIT 10c

- The reference to wildfire prevention is another example of a vague plan and missing details that cannot be adequately evaluated in an EA. For instance, the applicant states that fuel breaks will be established – will they be on the private parcel, or on state land - to protect the private parcel? Will this be maintained by the state or the private landowner? How will it be maintained? How wide is it? Is it out of the PWWFBS or within it? For suppression, is the landowner assuming responsibility to fight fires on state land? Or just state land that is adjacent to the private property? What authority has the applicant been granted from DOFAW protection staff to undertake this responsibility? What expertise does the applicant have to assume this task? The elements of this unfinished but critical fire plan are not suitable for review as an EA. Stating that a plan is being prepared is not a plan. There is no indication of "how" these bulleted items of this plan will be accomplished.
- On Page 2 of the CDUA and other places state that the project area is over 9 miles from the coastline, but the USGS topographical map shows that it is 8.39 at minimum. Hale Piula was constructed, for obvious reasons, in the zone with the highest rainfall on this side of the island, which is about 55" annually. This makes it the primary aquifer recharge area for Pu'u Wa'awa'a and the Kiholo watershed. Part of the reasoning behind the ahupua'a concept is the awareness that activities in the mauka lands affect the shoreline makai. This includes pest control, which beyond "environmentally sound" methods, no further details are given. When it comes to using pesticides and herbicides, the intent of the Conservation Use Law and HRS 343 requires the disclosure of the "how," not just the "what" that will be done to address these issues as stated in the document. Without the "how," there is nothing to assess aside from good faith.
- Pardon my redundancy on the topic of soil erosion, but again the "how" is not clearly detailed. Page 23 of the EA lists a variety of Best Management Practices (BMPs) that could be used to address erosion during construction, or rather demolition, of the catchment structure. Without an understanding of exactly which methods will be used, there is nothing to be assessed. Certainly they are all generally acceptable, but which one(s) are most appropriate for this site?
- There is no mention of the slope of this site, which is noteworthy. According to the topographical map in the CDUA, the entire parcel is between 4,740' and 4,628', and elevation difference of 112' over 400 linear feet. This produces an average slope of 25%. However, vulnerable soils will be the exposed area of the catchment structure, which it is assumed will be demolished all at once. The structure is between 4,733' and 4,676' representing a somewhat consistent elevation change of 57' over 150 linear feet. The slope under the catchment is 38%. This is substantial, and considering the precipitation of this location there is a need to illustrate the exact method of erosion control for the demolition of this structure, especially since a Board permit for this action is requested.

EXHIBIT 10d

A list of possible options to address this is not adequate, and there is no mention of erosion control at all in the CDUA portion.

- One of the major strengths of any Environmental Assessment is the evaluation of a range of implementable alternatives. This EA gives only a cursory evaluation of alternatives that is not acceptable under HRS 343. The discussion is reduced to "what the applicant wants to do in the conservation district" and "no action." Other possibilities are mentioned, but are discarded as not being practical.
- Worthy of mention is acquisition of the parcel by the state to be managed as part of the extensive ecosystem within the PWWFBS. While the applicant stated that this is something that needs to be instigated by the State, and that it is not prudent to substitute state dollars for private funding, this has been brought up by DOFAW staff more than once with little attention given by the applicant. This parcel was carved out of the government lands by Robert Hind during the Territorial era, and has become (and will continue to be) a land management dilemma since the last lease expired. Access easement issues, the potential for development, threats to surrounding state lands, jeopardizing the great amount of work completed and in progress, and other impacts persist with the current and future landowners of the site. While the CDUA and EA state there are no connections between projects between Hale Piula and the main property, there are encroachment issues pertaining to structures there that may be resolved through a land exchange or other mechanism that would address all issues on either parcel. The state has accommodated a request by the applicant to temporarily address the encroachment issue on the main property, but beyond 15 years demolition of these encroaching structures is required. Therefore, a discussion to address this issue to the benefit of both parties needs to be attempted. While we are delighted that the current owner is interested in reforestation, however this speaks nothing to what his heirs may wish to do with the property, or what a future owner will do with the land. As long as this in-holding is privately owned, the door is open to the full extent of what development is allowable by law, which in this extremely rare ecosystem is deeply concerning. Let this be a formal action to enter into discussions about the long-term sustainability of this entire region.
- Part of the stated justification for this project includes aligning with the *Management Plan for the Ahupua'a of Pu'u Wa'awa'a and the Makai Lands of Pu'u Anahulu*, dated 2003. It states that it helps to accomplish several objectives of the Plan, and is a partnership to fund and accomplish such objectives. This project is funded and constructed as a private effort on private lands and not as a partnership with the State. This is the applicant doing what they want and then telling the state about it later when the direction of the project is already decided. The objectives in the Management Plan are not affected by this private project. To say that controlling predators and weeds,

EXHIBIT 10e

restoring native forest, hiring staff, conducting research, protecting native birds and invertebrates on 2.755 acres out of the entire Management Plan area (.0078%) is accomplishing any of these objectives is extremely understated. Rather, this mimics what we are doing on a much grander scale with a diminutive budget and clearly a lot more knowledge and experience than the applicant. As we have offered previously, we are standing by to assist with the numerous omissions of detail that have been revealed through this CDUA/EA review. As partners, the state would look forward to learning alongside the applicant through the many research activities, on both state and private land. This would begin by coordinating with the HETF in a much closer way.

- To say that DOFAW expects to determine that this project will have no significant affect on the environment is premature. We need to know details on how weed introductions will be prevented, "environmentally sound" pest and weed management, how fire prevention will be executed, and how soil erosion will be prevented. The information on these topics is too vague to provide an adequate determination on the impacts or lack thereof of any proposed action. Furthermore, there is a need in the EA itself to provide an evaluation of a range of reasonable alternatives besides "no action" to compare with the proposed project. Until these details are revealed it is irresponsible to the land and to the people of the State of Hawaii for the accepting authority to declare that there would be no significant impact derived from this project. It is recommended that the applicant submit a revised draft with the missing details clearly stated and undergo another public review process to justly comply with HRS 343. A formal consultation with DOFAW is strongly encouraged.

I saw several typographical and factual errors, but limited my comments to a few noteworthy instances:

- Page 5 of CDUA: the tanks on the state-owned lands in Hale Piula are currently in use by the cattle permittee, rather than unused as stated in the CDUA.
- Several places, CDUA and EA: Pu'u Wa'awa'a Advisory Council, not "Group." Page 16 discusses membership of the "group" as AC members, DOFAW staff, and guests to the meeting. The Council does not include Bob Masuda, Donna Ball (USFWS), Sally Rice, and Hannah Springer. DOFAW staff, not AC members, include Roger Imoto, Lisa Hadway, Miles Nakahara (retired), and Mike Donoho. The remaining names in this listing are indeed members of the Pu'u Wa'awa'a Advisory Council.
- Page 15 of CDUA: Portions of the catchment structure to be demolished encroach onto state land.
- Page 31: "BLNR," not "BLRN."
- Page 39: "Henk" rather than "Hank."

EXHIBIT 10f

- Page 43 CDUA, 25 EA: What does "N" stand for? Native? It's not on the key at the bottom.
- Page 44 CDUA: There have been three confirmed sightings of akepa in and adjacent to the PWWFBS in 2009. Appropriate consultation with DOFAW would have revealed this fact to the applicant.
- Page 46: No mention of the extensive feral pig removal project by the state that has been ongoing over the past 2+ years, and has successfully extracted nearly 850 animals to date. There are at least 2 traps visible from the access road to Hale Piula, including one that is within 100 feet of the private parcel boundary.
- Page 18 EA: Pu'u Lani Ranch was never a "ranch," it is a subdivision. The lands of Pu'u Wa'awa'a and Pu'u Anahulu comprised "Pu'u Wa'awa'a Ranch."
- Page 20 EA: 3rd para. "Hale Piula *Hina*."
- Several: Jon Giffin is a PhD?

I thank Henk Rogers and his consultants for the opportunity to review this document. I think that with proper consultation and an adequate EA, this project will indeed be an improvement over the current condition of this parcel. As always, I offer my assistance to our neighboring landowner in order to achieve our shared objectives for the benefit of the land.

EXHIBIT 10g

Steve Bergfeld
Forestry Program Manager, DOFAW, Hawaii Branch
(808) 974-4227



"Steve Bergfeld"
<sbergfeld@dofawha.org>
06/22/2009 01:10 PM

To "Nelson Ayers" <Nelson.L.Ayers@hawaii.gov>
cc "Roger H. Imoto" <rimoto@dofawha.org>
bcc
Subject Hale Piula

Aloha Nelson: Some comments I have are that access should be through the 25mm only. Not from the ranch headquarters. Access may be denied due to High fire danger. They must contribute to maint. Of the access road. No commercial use with out proper permits. Share their research with DOFAW. We may want to limit the number of people allowed to use the road and facility per day, week, month? I do not see any beds in their facility. Not planning on spending the night. Will they need a permit to walk through the PWW Wildlife sanctuary and lower Puu Waawaa? Thanks Steve.

Steve Bergfeld
Hawaii Branch Forestry Manager
Division of Forestry and Wildlife
19 E. Kawili St.
Hilo, HI 96720
808-974-4227, fax 808-974-4226
sbergfeld@dofawha.org

EXHIBIT 10h

Nick Agorastos
NARS Specialist, DOFAW, Hawaii Branch
(808) 974-4380

- Where specifically will the local seeds for planting and restoration come from, if state land need permit?
 - There are no `Akiapola`au in PWWFBS
 - Will there be any affects on current endangered birds or nesting sites?
 - Will all research happen on privately owned 2.75 acres, if not then permit required?
 - What is the easement and its location. Currently gates are locked for DOFAW mgmt purposes, how will access be gained, what days and what hours?
 - Some kind of written agreement with maintenance responsibilities should be, implemented prior to access with a bond, if access is granted.
 - If access is granted it should be granted to one entrance through the PWWFBS. Rogers should be made to install raised ungrate proof 18' cattle guard to protect against gate being left open unintentionally and compromising future ungrate free status of PWWFBS.
 - Roads in PWWFBS should not be damaged to the point of being unusable, and then needing heavy equipment at a later date to repair them. Currently roads are very substandard and this prevents over-use and low volume of traffic. Increased traffic poses additional fire risk by increased traffic as well as by people not trained in Wildland fire fighting
 - Pg 18- there already exists a native bird population at the site, however it maybe improved with the actions proposed in this plan if done properly
 - Pg 18- The state needs more manpower and funding to carry out reforestation of the surrounding area, there is a plan currently being implemented. We don't need arrogant plan writers or private property owners telling us how to do it based on work done on 2.75 acres when the FBS is almost 4,000 acres. Pretty arrogant and presumptive, perhaps a dedicated conservation fund by the owners or cooperative assistance we be of more use.
 - Page 18-19 it is referred that they will replant or reforest or landscape, these all imply different things- which is it?
 - The facilities are being deemed for research purposes, will anyone else utilize the facilities other than bonafide researchers
 - What will be terms of access agreement?
 - Delissea is mentioned as a plant to be planted, what is the source, do they have ESA permit?
 - All plant stock should be local and not from outside the area, but they will need a permit
- In general a well written plan. I believe that the overall intent of the project is good and well intentioned. I am concerned about access and the details of any negotiated easement. I am also concerned that while this project is budded as a research facility, that some day down the road it turns into a high priced get away for the wealthy. All appropriate permits for plant collection need to be in place and access controlled.

EXHIBIT 10;

Lyman Perry
Botanist, DOFAW, Hawaii Branch
(808) 974-4381

Comments on the Draft EA for Hale Piula (Henk Rogers Project)

L. Perry

1. Couldn't \$800,000 be spent directly supporting our existing management plan for the ahupuaa instead of sunk into a project with questionable management value to the overall ahupuaa??
2. How is meaningful forest bird research going to be accomplished on a 2.75 acre parcel?
3. How will the project be coordinated with HETF and DOFAW's plans for the forest bird sanctuary?
4. Where will the seed be collected from for the native forest restoration?
5. Isn't Hale piula an historic site? What is the definition of an historic site and what steps need to be taken prior to dismantling the catchment area?
6. The Draft EA mentions use of wind power in addition to solar. Will there be a windmill constructed? If so, how high above the forest canopy will it protrude and what is the anticipated impact of such a structure for native species. What about the visual impact?
7. The Draft EA states that the proposed project will directly assist the Puuwaawaa Management Plan via accomplishment of certain objectives. Draft EA states that objective 24 (Fund and hire permanent field staff to implement natural resource management objectives) will be accomplished by this project. How will this project accomplish this??
8. Draft EA mentions endangered plant restoration. Which species are they proposing to use??

Overall tone of the EA is presumptuous. These people have no experience doing what they are proposing. Despite this, I see no real reason to deny them their right to do what they want on their land. I am curious as to the motivation for this research station....The way the draft EA is written their proposal doesn't jibe with reality and a research station in this location is somewhat redundant what with the presence of existing DOFAW infrastructure in the vicinity.

EXHIBIT 10j

geometrician

ASSOCIATES, LLC
integrating geographic science and planning

phone: (808) 969-7090 PO Box 396 Hilo Hawaii 96721 rterry@hawaii.rr.com

August 17, 2009

Sam Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Lemmo:

Subject: Response to Comments on Conservation District Use Application and Draft Environmental Assessment for the Hale Pi'ula Haina Native Forest and Bird Habitat Restoration Activities and Research Facility at Pu'u Wa'awa'a, TMK 7-1-01:03, North Kona District, Island of Hawai'i

I am in receipt of your letter to project planner Greg Mooers of July 23, 2009, transmitting the agency and public comments that DLNR received on the project and providing instructions for submittal of the Final EA to your office.

In the interest of a complete record on comment letters to the EA/CDUA, I would like to acknowledge receipt of comments contained within your transmittal letter as well as form memos circulated by your office. Below are responses to your comments to the DLNR branches and divisions that supplied comments or no-comment checkmarks (DOFAW, Land Division, SHPD, and Engineering).

DOFAW

Mike Donoho, DOFAW Hawai'i Branch

1. *Donoho and other DOFAW staff not involved in consultation.* This statement is not all true. The following is a partial record of the consultation with Mr. Donoho, various DOFAW members, and the Pu'u Wa'awa'a Advisory Council.

A formal letter inviting input for the Draft EA was sent to twenty parties on April 23, 2008, including the following:

EXHIBIT 11a

- Pu‘u Wa‘awa‘a Advisory Council
- Lisa Hadway
- Sally Rice
- Miles Nakahara
- Bob Masuda
- Roger Imoto

Mr. Donoho was *personally* consulted, along with the Pu‘u Wa‘awa‘a Advisory Council, in a meeting of April 13, 2008. At this meeting Mr. Donoho was invited to provide any additional comments to me, Greg Mooers, or Paul Ponthieux. Mr. Donoho failed to contact me with any concerns after this meeting. Mr. Ponthieux discussed the project in person and by phone with Mr. Donoho on various occasions.

2. *No mention of the large size of the PWWFBS and limitation of the environmental impact and benefits.* The size of property and the context of the PWWFBS are noted several times, notably on page 1 of the Draft EA. The conclusion of the document indeed is that adverse environmental impacts are limited. The potential benefits of the reforestation and the research it can assist with of course remain to be seen, but to strictly equate potential benefits with acreage is short-sighted and inaccurate.

3. *Research component is vague and would be undertaken by acquaintances of the Rogers, including Steve Montgomery, who is currently in violation of the Endangered Species Act.* The research will be specified by proposals that will be developed and reviewed. The comment regarding research being limited to acquaintances of Henk Rogers is completely unfounded and inaccurate. Dr. James Juvik, who has never met Mr. Rogers, is already in discussion about research, and any credible researcher will be eligible to submit proposals. The aspersions cast on Dr. Montgomery are untrue – he is NOT in violation of the Endangered Species Act – and are an insult to this distinguished, published biologist and conservationist. There are few others who have done more to study and preserve Hawai‘i’s environment. Regarding the side comment on the HETF, we asked several officials involved in this project to provide us with specific information about the program, but did not receive any.

4. *Will not contribute to the well-being of community nor provide substantial benefits; “intellectual gains” will not “be of greater benefit than those from the HETF”.* We note the opinion regarding the benefits of the project. However, the assertion regarding a statement in the EA on the comparative benefits of the Hale Piula Haina research versus the HETF is again completely false. To our knowledge, nobody involved in the project believes this or has ever stated this.

5. *Greatly improve bird habitat.* The proposed reforestation is a great improvement on the current habitat on the property, which is covered with rusting iron roofing.

EXHIBIT 11b

6. *Birds in Pu'u Wa'awa'a will focus on the plot, which will negative affect them and 'Io.* No ornithologist with whom we have spoken concurs with this assessment. If improving habitat within small plots of forest adjacent to somewhat degraded areas is harmful to bird populations, why would DLNR itself often engage in such actions, such as at Kipuka 21 on the Saddle, the small preserves at Kaupulehu, or indeed the other exclosures within Pu'u Wa'awa'a itself?

7. *Gathering of seeds.* Seed will be from local stock to the extent possible (some historically present species may no longer be present), DOFAW will be consulted, and all appropriate permits will be obtained.

8. *Access to the property.* A formal easement to this privately owned parcel is essential to insure that the applicant and his research team can reach the facility. The applicant understands that restrictions and rules applied to all individual using this access roadway will apply to the applicant as well. State control of access during emergency situations such as extreme fire danger is reasonable and understood. However, the State is not allowed to deny permanent access to properties in Hawai'i. The larger issue is which particular access route is most beneficial to all parties. In regard to the exact route, the route depicted on Figure 1b is meant to be an approximation. To clarify, there is no intention to build a new road, but to use the existing commonly used route. Prior to application for an easement, the applicant will GPS the route and meet any other requirements of the Land Division and the BLNR to establish and record the easement.

9. *Prevention of weeds.* Plant propagation, which would be guided by native plant horticulturalist Jill Wagner, would be very controlled. The plants would be grown in sterile media and be weed free. The nursery would be certified with the Department of Agriculture and follow strict guidelines for hygiene. Table heights, sterilization, sterile media, and weed control would be followed and inspections conducted several times a year. Ms. Wagner has extensive experience working with the National Park Service, which has strict rules about weed free plants, and there have been no problems or issues. This information has been added to the Final EA.

10. *Wildfire Plan.* Should the applicant receive the CDUP for the proposed action, a Fire Plan will be developed and expects that there will be various agencies that the BLNR will require to approve such a plan. Mr. Rogers has already been in touch with the Hawai'i Wildfire Management Organization regarding plan preparation. This CDUA is asking for permission for a proposed use on private property within the CD. It is premature to prepare detailed plans for uses that may not be permitted if the proposed use is denied by the BLNR. Typically studies and plans such as the Fire Plan and grading plans are conditions of the CDUP, and will be developed at a later time in consultation with the appropriate agencies and individuals.

11. *Erosion control.* As with fire, should the applicant receive the CDUP for the proposed action, detailed erosion control plans will be developed and DLNR will be able to review them. Contrary to the commenter's impressions, detailed grading plans

EXHIBIT 11c

are not provided in the EA process. The amount of grading needed for the catchment and any other structures is very small and the erosion risk is slight. Grading will be undertaken during a time of low precipitation.

12. *Distance to coastline and aquifer.* This error in mileage, which was calculated to demonstrate that the project was not on or near the shoreline, has been corrected in the Final EA. Pest control will be done in an environmentally sound manner in compliance with all State and federal laws and regulations, which are designed to protect, among other values, water quality and there is no risk of damage to the aquifer.

13. *Slope.* The slope is moderately steep but it presented no problems in setting up an extensive catchment system in the 1940s and there will be no issues setting up a modular research station and reforestation infrastructure. The applicant would be happy to demonstrate construction techniques in this environment for your edification.

14. *Alternatives.* This assertion repeats the common fallacy that all possible alternatives for use of the property must be considered. Private property owners have a right to advance any legal alternatives for consideration in a CDUA. They do not have to consider actions which they do not want to implement. There is a virtual infinity of legal actions that could be conducted, but there is no reason to conceptualize them in detail and study them if the owner does not want to implement them.

15. *Acquisition of the property by the State.* If the State wants to acquire the property because the existence of this inholding is a dire jeopardy to the State holdings at Pu'u Wa'awa'a, as asserted, then it should make an offer. An EA for this action would be necessary and it should be prepared by the State, not the applicant. This is not the obligation of the applicant, who does not want this to occur, and furthermore believes that the proposed use would be a benefit, not a detriment, to State management at Pu'u Wa'awa'a. Land use at the ranch HQ is not relevant to this analysis.

16. *Project not in alignment with Management Plan.* We disagree with your assessment and note that the Plan specifically states on Page 5 that "the development of partnerships, cooperative agreements and grant proposals will constitute the primary means for [conducting proactive management]." The owners look forward to cooperating with the State on environmental restoration.

17. *Typographical errors.* Those instances of typographical errors that you cited that are contained in the EA itself have been corrected in the FEA.

18. *Use of Advisory Council (not Group), cattle permittee, list of members, Pu'u Lani Ranch.* Those instances of errors in the EA itself have been corrected in the FEA.

19. *'Akepa.* The CDUA and EA clearly state that this bird has been observed in recent years at Pu'u Wa'awa'a.

EXHIBIT 11d

20. *Pig removal.* Nothing in the EA, which was not meant to exhaustively cover actions that the State is undertaking, contradicts the information that the State is engaging in pig removal.

Steve Bergfeld, Forestry Program Manager, DOFAW Hawai'i Branch

1. *Access should be restricted from 25 milemarker only.* We note your opinion.
2. *Access can be restricted due to high fire danger and the applicant must contribute to maintenance and share research with DOFAW.* The applicant understands and is agreeable to reasonable conditions regarding access during fire danger periods and intends to share all research results. No commercial use will be undertaken.
3. *Overnight use of the facility.* The applicant does intend to allow researchers to sleep overnight at the facility.

Nick Agorastos, DOFAW Hawai'i Branch

1. *Source for propagation.* See answer to Donoho Question 7, above.
2. *Akiapola'au.* According to Page 40 of the Biological Assessment prepared by DOFAW to help manage its resources: "The 'akiapola'au (*Hemignathus munroi*) exists only on the Island of Hawaii, with the largest population centered on the windward side (Scott et al., 1986). This species was formerly abundant in Kona and inhabited mixed koa-mamane-naio forests. A single specimen was collected at Pu'u Wa'awa'a by Wilson in 1887 or 1888 according to Banko (1979). The most recent 'akiapola'au sighting on Hualalai was reported by van Riper (1973). He found a single individual on the western side of the mountain. Scott et al. (1986) attributed the absence of 'akiapola'au in north Kona to isolated and insufficient habitat." Therefore it is accurate to say that the bird is potentially present in the area; certainly if DOFAW's efforts to restore habitat are successful, it may return.
3. *Endangered birds.* The project takes place on highly disturbed land and should not adversely affect native birds.
4. *Location of research.* Currently all research is planned within the 2.75 acres, although the applicant looks forward to potential wider cooperation.
5. *Access easement location.* Access is requested directly from the Ranch HQ.
6. *Maintenance agreement.* The applicant is willing to enter into a maintenance agreement.
7. *One entrance and cattle guard.* The applicant is agreeable to these conditions.

EXHIBIT 11e

8. *Fire management.* If granted a CDUP, the applicant expects as part of the conditions to develop a fire management plan that would address these issues and improve conditions relative to the existing situation.
9. *Improvement in native bird population.* We agree.
10. *Arrogance of owner and plan writers.* We do not believe that personal insults to applicants or their representatives have any place in an official State response for a permit application for the legal use of a property.
11. *Reforestation versus landscaping.* The reference to landscaping is pursuant to DLNR rules which do not distinguish between reforestation to a quasi-natural state with native species and landscaping. The wording was stipulated as appropriate by the Office of Conservation and Coastal lands *of your agency, DLNR.* We encourage you to become involved in the rule amendment process currently taking place within your own agency, which will make it clearer for applicants who are attempting reforestation.
12. *Use for purposes other than research.* There will be no other such uses, other than maintenance of the facilities.
13. *Access.* See answers to 5 above, and responses to Steve Bergfeld Question 2, above,
14. *Delissea.* If a permit to plant this can be obtained, then it will be used. The applicant welcomes consultation with DOFAW on appropriate plants.
15. *Local plant stock.* See answer to Donoho Question 7, above.
16. *High-priced getaway for the wealthy.* Given the intention of the owners, the difficulty of access, and the level of scrutiny the project will receive, this is highly unlikely. There are many other properties available in mauka Kona that are far more suitable for such a use.

Lyman Perry, Botanist, DOFAW Hawai'i Branch

1. *Contributing \$800,000 to the Management Plan instead.* Henk and Akemi Rogers have the right to spend their money as they have proposed. As a matter of fact, however, they have already donated considerable amounts to the restoration efforts at Pu'u Wa'awa'a.
2. *Meaningfulness of the research.* Many biologists, Dr. Steve Montgomery among them, believe that there is potential for meaningful research.
3. *Coordination with HETF.* The applicant is willing to cooperate with HETF in a variety of ways, and welcomes dialogue on this potential.

EXHIBIT 11 f

4. *Source of local seed.* Seed will be from local stock to the extent possible (some historically present species may no longer be present), DOFAW will be consulted, and all appropriate permits will be obtained.

5. *Historic site status of Hale Piula.* Hale Piula Haina is not on the State Register of Historic Places, but due to efforts paid for by the Rogers, it has been determined to be significant for information content. The applicant is coordinating with the Historic Preservation Division to properly preserve this information to mitigate the effect to historic sites.

6. *Wind power and birds.* The windmills used would be the Helical Turbine type. These are not dangerous to birds. Furthermore, they are very quiet, since the tip speeds do not approach those of propeller type windmills. Since the rotors turn opposite to their curvature, any contact will just be pushed away. Also, because of their size and slow speed, they are highly visible to birds, in contrast to propellers, which are mostly invisible.

7. *Management Plan.* At a minimum, the project will pay for staff to reforest and maintain a degraded n area within Pu'u Wa'awa'a. The project also lays the groundwork for wider cooperative efforts that the applicant and the State may wish to discuss.

8. *Endangered plants.* Please see Table 3 of the EA for an initial list. The applicant welcomes DOFAW cooperation on the list.

9. *Presumptuousness of applicant and lack of experience of project personnel.* This comment in itself is presumptuous and insulting. A number of biologists, conservationists and horticulturalists with decades of education, experience and a proven history of protecting and restoring Hawai'i's flora are involved, including Dr. Steve Montgomery, Jill Wagner, and Leonard Bisel.

Nancy McMahon, Historic Preservation Division

General comments. Thank you for providing information on the status of your Division's review. The Final EA contains the statement that mitigation for the project will include, at a minimum, a commitment to complete a data recovery plan for review an approval by SHPD and a commitment to implementing the approved data recovery plan prior to demolition. We have corrected the inadvertent reference in the EA to the late 19th century.

Land Office, Hawai'i District

We acknowledge the No-Comment statement.

EXHIBIT 119

We have also provided you with copies of our responses to the letters you provided from the Department of Health and the Office of Hawaiian Affairs. Independently, we also received two comments from Christine Ahia and the Hawai'i Fire Department. I have attached to this letter a copy of these letters and our responses to them.

Thank you for circulating the EA and CDUA for review by DLNR agencies. If you have any questions about the EA, please contact me at (808) 969-7090; for questions about the project or CDUA, please contact Greg Mooers, Project Planner, at 880-1455.

Sincerely,

A handwritten signature in black ink that reads "Ron Terry". The signature is written in a cursive style with a large, sweeping flourish at the end.

Ron Terry, Principal
Geometrician Associates

cc: Greg Mooers

EXHIBIT 11 h

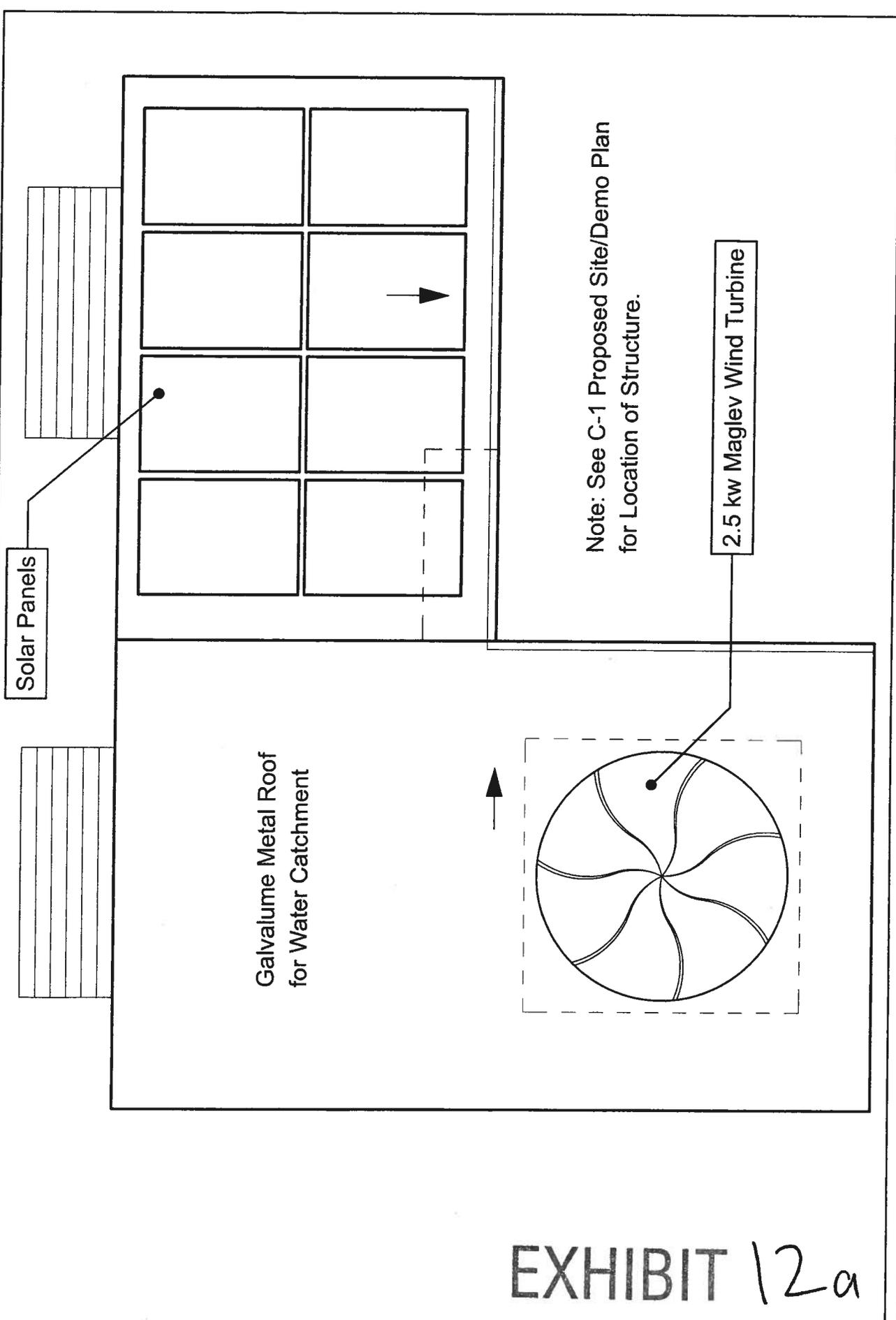


EXHIBIT 12a

Envision Design
 sustainable design & development
 2041 Keeaumoku Street • Honolulu, Hawaii 96822
 808 550-0165 phone • 808 550-0167 fax
 paul@envisiondesign.us

Date	Scale	Title
8/24/09	1/4" = 1'-0"	SKA-01 Roof Plan Showing Wind Turbine

Pu'u Wa'awa'a Ranch / Hale Piula Haina

2.5 kw Maglev Wind Turbine

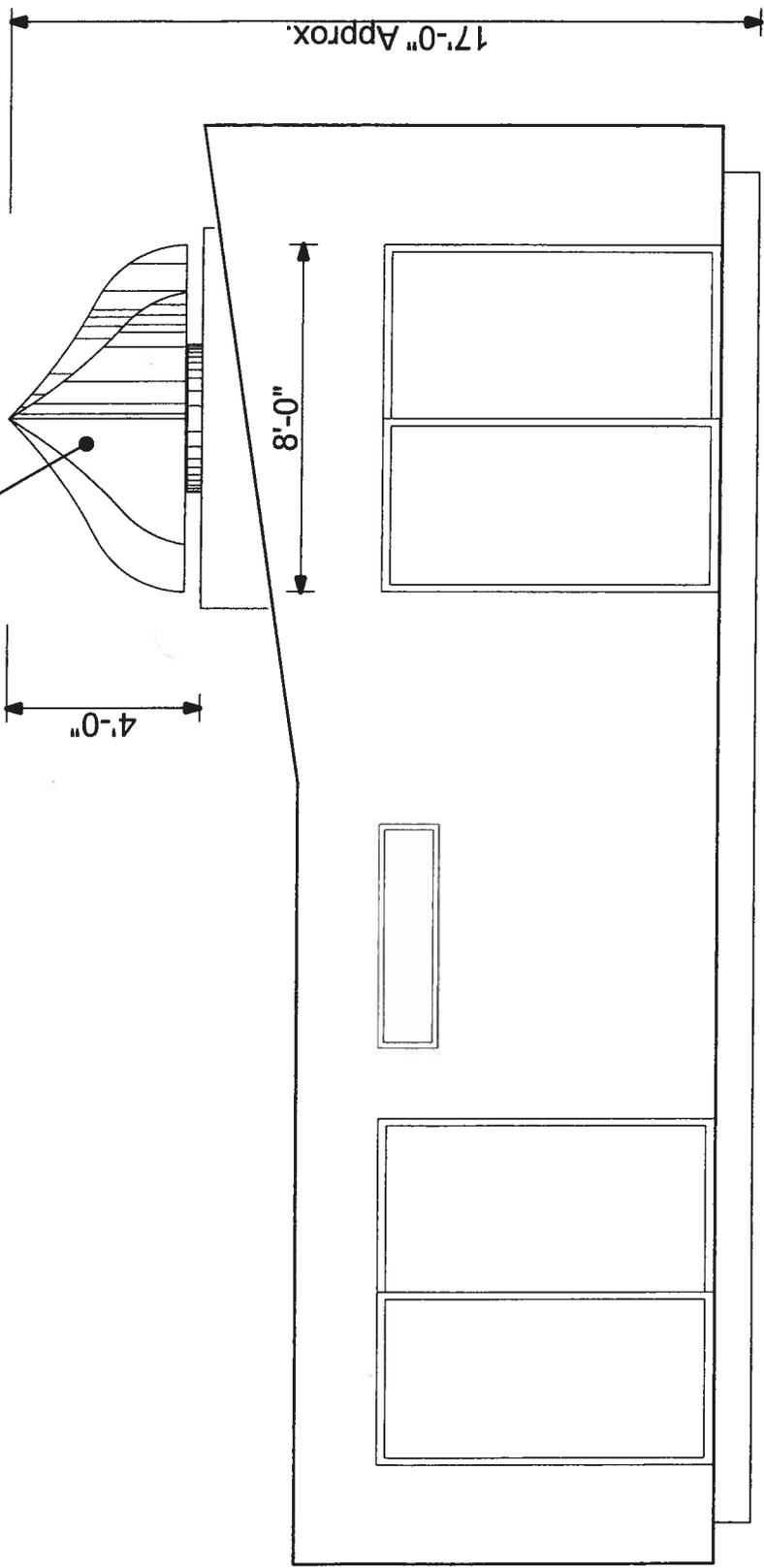


EXHIBIT 12b

Envision Design
sustainable design & development
2041 Keeaumoku Street • Honolulu, Hawaii 96822
808 550-0165 phone • 808 550-0167 fax
paul@envisiondesign.us

Date	Scale	Title
8/24/09	1/4" = 1'-0"	SKA-02 Elevation Showing Wind Turbine
TMK: 7-1-001:002		Pu'u Wa'awa'a Ranch / Hale Piula Haina

Enviro-Energies spokesman, highly respected environmentalist and Hollywood actor, Ed Begley Jr.:



"I've been an ardent supporter of wind turbines for many years. In fact, I've even owned a share of an industrial wind turbine in the California desert since 1985. And yet, while wind farms have long been used to reduce our reliance on fossil fuels and our overworked power grid, a wind turbine solution for our energy demands where we live, work, shop and play has not been commercially viable, realistic or practical... until now. Enviro Energies has re-awakened my excitement about utilizing urban wind power by designing and launching the best technologies in the wind turbine industry... I urge you to take a further look at what Enviro Energies has to offer."

EXHIBIT 12c

**ENVIRO ENERGIES
NO MONEY DOWN...
...NO PAYMENT...
...UNTIL SHIPPING!!!**

The Enviro Energies family is proud to offer our customers the limited time opportunity to purchase any of our 2.5kW, 5kW, or 10kW MagWind™ vertical axis wind turbines with absolutely no money down and no payment due until we ship your turbines out to you!!!

Our no money down, no payment plans are currently for the USA and Canada. For program availability in other countries, please inquire with our staff to check availability in your region of the world.

The no money down, no payment plans are for a limited time only.

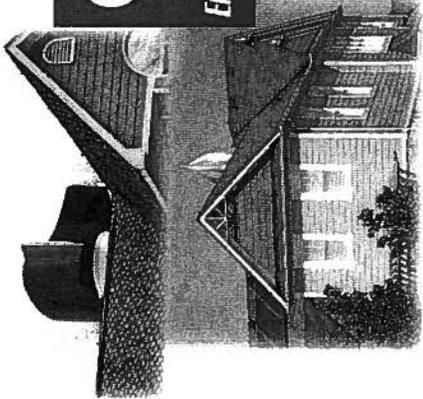
We'd be happy to answer any questions that you may have...

... just shoot us an email or give us a call anytime!!!

888.253.7975

*Payment is due in full prior to the shipping of turbine order. On orders of more than one turbine, payment is due in full prior to the shipment of the first turbine of the order. Shipping/handling costs are due in full prior to shipment. Installation costs are the sole responsibility of the end user. No money down, no payment plans are OAC. Creative financing programs available. Programs may be discontinued or modified without further notice from Enviro Energies.

Enviro Energies



www.enviro-energies.com

Enviro-Energies 2.5 kW MVAWT

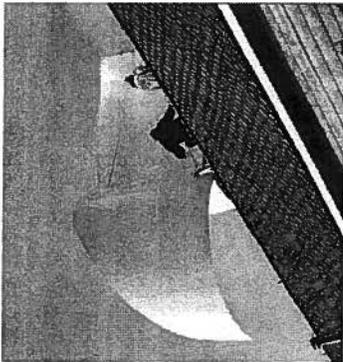
Rated output of 2.5 kW and maximum output of 4.3 kW. Various sail assembly sizes available ranging from 4'h x 8'd to 6'h x 12'd. Can be utilized in most wind conditions. Power



generation in as low as 4 mph of wind. 3.6 kW inverter system. Ideal for eliminating peak usage in homes, hybrid installations, back-up power, remote power, or installed in arrays along roof lines for a great architectural presence. The 2.5 kW MVAWT will soon be helping Ed Begley Jr., and his family, to power their home in Southern California.

Enviro-Energies 10 kW MVAWT

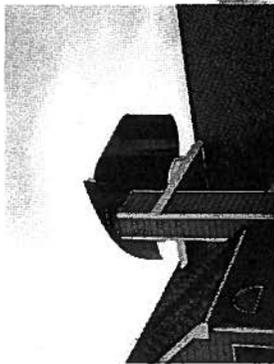
Rated output of 10 kW and maximum output of 14.4-18 kW. Various sail assembly sizes available ranging from 8'h x 14'd to 10'h x 26'd. Can be utilized in most wind conditions.



Power generation in as low as 4 mph of wind. 12-18 kW inverter systems. Ideal for covering large residential power needs, hybrid installations, larger sized back-up and remote power and endless commercial, industrial and agricultural applications. The 10 kW MVAWTs are very popular with corporate, retail and industrial clients as moving green billboards with their colors and logo imprinted onto the sails of the turbine.

Enviro-Energies 5 kW MVAWT

Rated output of 5 kW and maximum output of 7.2 kW. Various sail assembly sizes available ranging from 6'h x 12'd to 10'h x 20'd. Can be



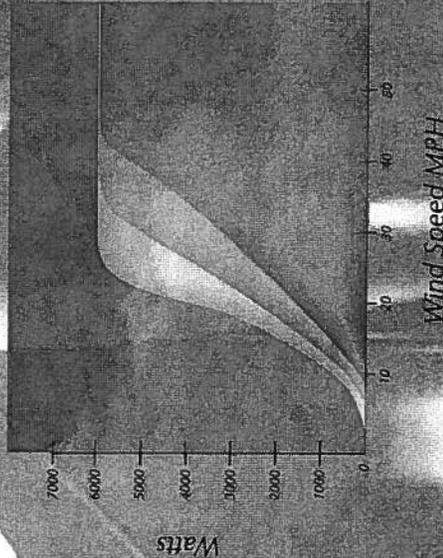
utilized in most wind conditions. Power generation in as low as 4 mph of wind. 6 kW inverter system. Ideal for covering residential power needs, hybrid installations, medium sized back-up and remote power and endless commercial, industrial and agricultural applications. The 5 kW MVAWT will soon be helping to power Jay Leno's world famous Big Dog Garage in Southern California.

2.5 kW MVAWT		
Description	MSRP	
4'h x 8'd design	\$9,995	
5'h x 10'd design	\$10,495	
6'h x 12'd design	\$10,995	
3.6 kW Inverter System	\$3,695	
5 kW MVAWT		
Description	MSRP	
6'h x 12'd design	\$20,995	
8'h x 14'd design	\$25,995	
8'h x 18'd design	\$27,995	
10'h x 20'd design	\$29,995	
6 kW Inverter System	\$4,995	
10 kW MVAWT		
Description	MSRP	
8'h x 14'd design	\$39,995	
8'h x 18'd design	\$41,995	
10'h x 20'd design	\$43,995	
10'h x 26'd design	\$48,995	
12 kW Inverter System	\$9,995	
18 kW Inverter System	\$13,995	

MSRPs do not include installation, permitting or shipping/handling costs and are subject to change without further notice. Information contained herein is deemed reliable, but is not guaranteed.

- Survival wind speed --- 90 mph.
- Survival wind speed --- 150 mph with High Airspeed Wind Kit (HAWK™)
- Turbine Operating Temp. -45° F to 130° F
- Full 5-year limited warranty. Extended warranties available.
- 7 sail sizes available to suit your specific wind conditions.
- Research and development carried out in Canada.
- Manufactured in the USA and Canada.

www.enviro-energies.com



The chart above illustrates energy output ranges of the 5 kW MVAWT design with Undisturbed Air Factors (UDAF) of 1, 1.5 and 2, which is typical of a flat roof building with varying wind directions. The UDAF is the amount of compression (increased energy) of the wind created from the rooftop of the building. The red curve shows output with a UDAF of 1 (poorest prevailing wind direction for the installation). The orange curve shows output with a UDAF of 1.5. The yellow curve shows output with a UDAF of 2.

* Proper sail sizing, wind and site analysis are recommended. Specific MVAWT outputs vary from location to location.

EXHIBIT 12d