

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

January 24, 2014

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

REGARDING: Conservation District Enforcement File HA-08-26
Alleged Unauthorized Use of a Coffee Mill Structure as a Single Family
Residence

BY: Lawrence Merril Smith
Ida Kailakanoa Smith

**LOCATION/
Tax Map Key:** Pohoiki, Island of Hawaii
(3) 1-3-008:034

LOT SIZE: 36 Acres

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject area is located in Pohoiki, Puna District, Island of Hawaii, TMK: (3) 1-3-008:034 (**Exhibits 1, 2 & 3**). The property abuts Isaac Hale Park. The property is located in the State Land Use Conservation District, Resource subzone (**see Exhibit 4**). The property is approximately 36 acres. The property abuts the shoreline. Based on records with the Office of Conservation and Coastal Lands (OCCL), there is currently one nonconforming coffee mill converted to a single family residence (SFR) on the property.

CHRONOLOGY:

Unauthorized Conversion of a Coffee Mill to a Single Family Residence

On February 13, 2008, the DLNR issued a letter to the Smiths informing them of a complaint about the illegal use of a structure on the property (**Exhibit 5**).

On February 28, 2008, DLNR received a response from the Smith's representative (Ken Fujiyama) indicating that an "old coffee mill" had been converted to a single family residence and that as built plans would be furnished to DLNR (**Exhibit 6**).

In July 2013, via a letter from Ken Fujiyama, the Smiths offered to enter into a memorandum of agreement (MOU) with DLNR to finally resolve the matter (**Exhibit 7**). This is because the County of Hawaii is seeking to purchase approximately 26 acres of the Smith's property for the extension of Isaac Hale Park. However, the Smiths have pending violations so the DLNR is not able to process their CDUA for the subdivision action. Section 13-5-6(c), Hawaii Administrative Rules (HAR) states that "No permit shall be processed by the department or board until any violations pending against the subject parcel are resolved."

Thus, resolution of the "pending violation" will entail action by the Board of Land and Natural Resources (Board) on the unauthorized conversion of the coffee mill to an SFR. Additional actions will include an after-the-fact CDUA for SFR, a fine, and reduction in the livable footprint of the SFR to comply with maximum developable area for single family residences in the Conservation District¹.

ALLEGED UNAUTHORIZED LAND USE:

Chapter 183C, Hawaii Revised Statutes (HRS) and Chapter 13-5, Hawaii Administrative Rules (HAR) regulate land uses in the Conservation District by identifying a list of uses that may be allowed by a Conservation District Use Permit (CDUP). The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapters 183C, HRS and HAR §13-5-2 defines "land use" as follows:

"The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land."

Furthermore, § 13-5-6(d), HAR states that:

"No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board."

Conversion of the coffee mill to a single family residence qualifies as a land use and would have required authorization from the department or board. This, this enforcement action is brought before the Board of Land and Natural Resources pursuant to Chapter 183C-7, HRS and § 13-5-6(d), HAR.

DISCUSSION:

On July 10, 2013, the OCCL wrote back to Ken Fujiyama in response to the Smith's request to resolve the violation and consummate a subdivision of the land for park purposes (**Exhibit 8**). In that letter, the OCCL agreed to prepare a report to the BLNR to propose a conclusion to the long pending violation case. The OCCL indicated that there would likely be a fine and a need for an

¹ Under Section 13-5, Exhibit 4 of the Hawaii Administrative Rules, for lots larger than one (1) acre, the maximum developable area is 5,000 square feet. Staff still needs to work with the Smiths to calculate exactly how much the existing structure is over the maximum allowable area of 5,000 square feet.

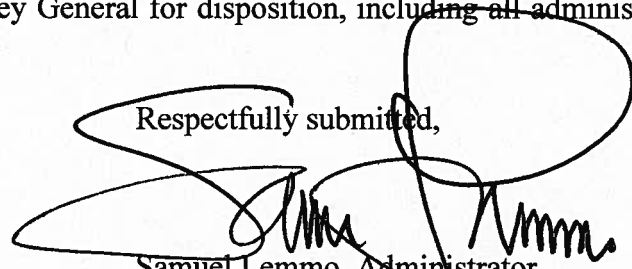
after-the-fact permit for the SFR. This submittal and notice of the Board's meeting shall be sent to the landowners by certified mail to the address on record.

AS SUCH, STAFF RECOMMENDS:

That pursuant to Chapter 183C, HRS, the Board finds the Landowners of TMK: (3) 1-3-008:034 at Pohoiki, Puna, Hawaii, in violation of Chapter 183C-7, HRS and Chapter 13-5-6, HAR, subject to the following:

1. The Landowner is fined \$14,000.00² for the Conservation District violation, pursuant to Chapter 183C-7, HRS;
2. The Landowner is fined an additional \$1,000.00 for administrative costs associated with the subject violation;
3. The Landowner shall pay all fines (total \$15,000.00) within sixty (60) days of the date of the Board's action;
4. The Landowner shall file an after-the-fact Conservation District Use Application for conversion of the coffee mill into a single family residence within three (3) months of the date of the Board's decision on this matter, or alternatively, return the use to a coffee mill;
5. That in the event of failure of the landowners to comply with any order herein, the landowner shall be fined an additional \$15,000.00 per day until the order is complied with; and
6. That in the event of failure of the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



Samuel Lemmo, Administrator
Office of Conservation and Coastal Lands

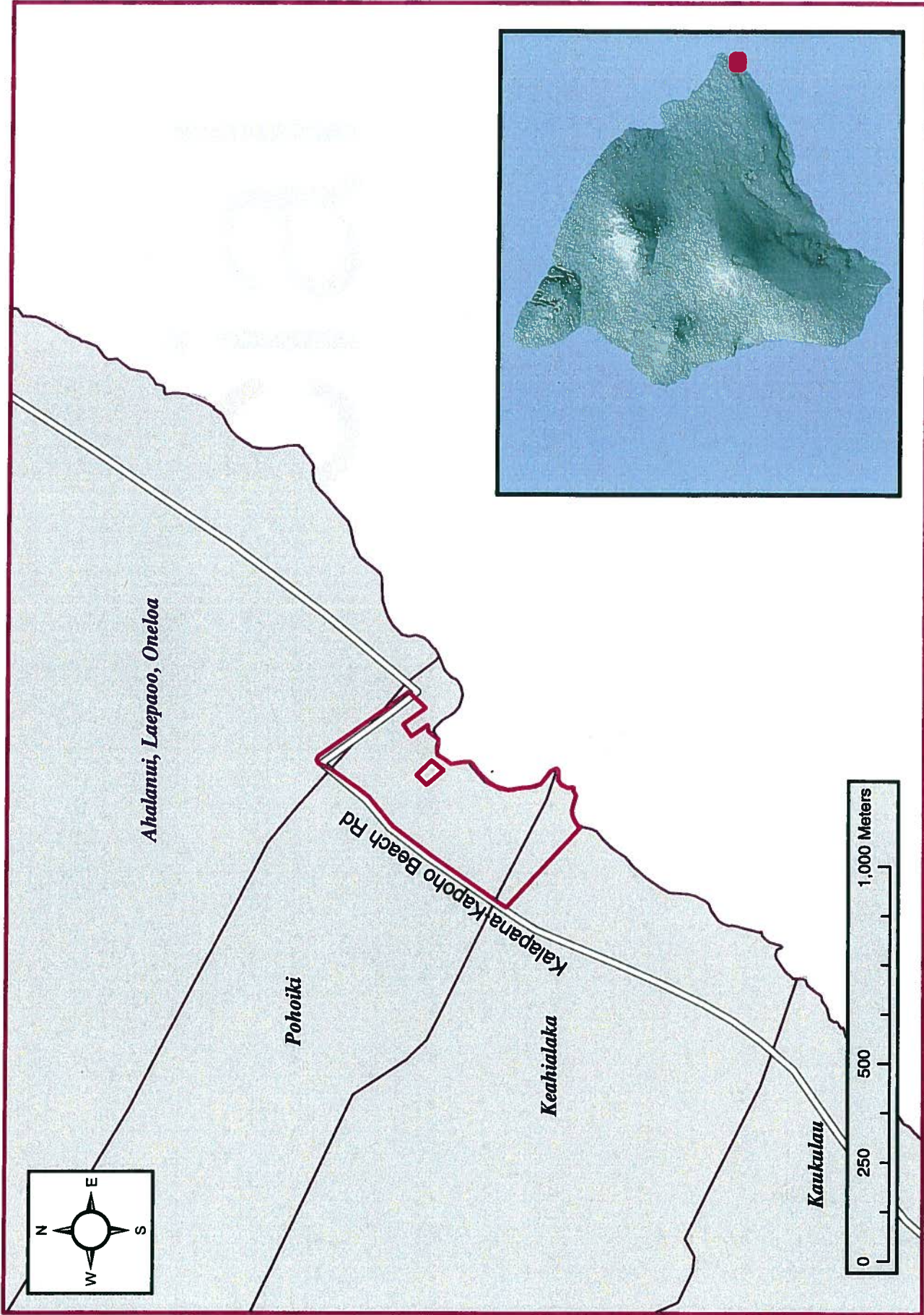
Approved for submittal:



William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

² The original notice to the Smith's mentioned up to a \$2,000 fine for the unauthorized use. After this notice was issued, the Legislature changed the maximum fine to \$15,000. Per Exhibit 7 of this report, the Smiths have agreed to pay up to \$15,000 for the violation.

TMK (3) 1-3-008:034



Produced by MC @ OCCL January 15, 2014 All boundaries are approximate



Google earth



COFFEE MILL / SFR

EXHIBIT 2

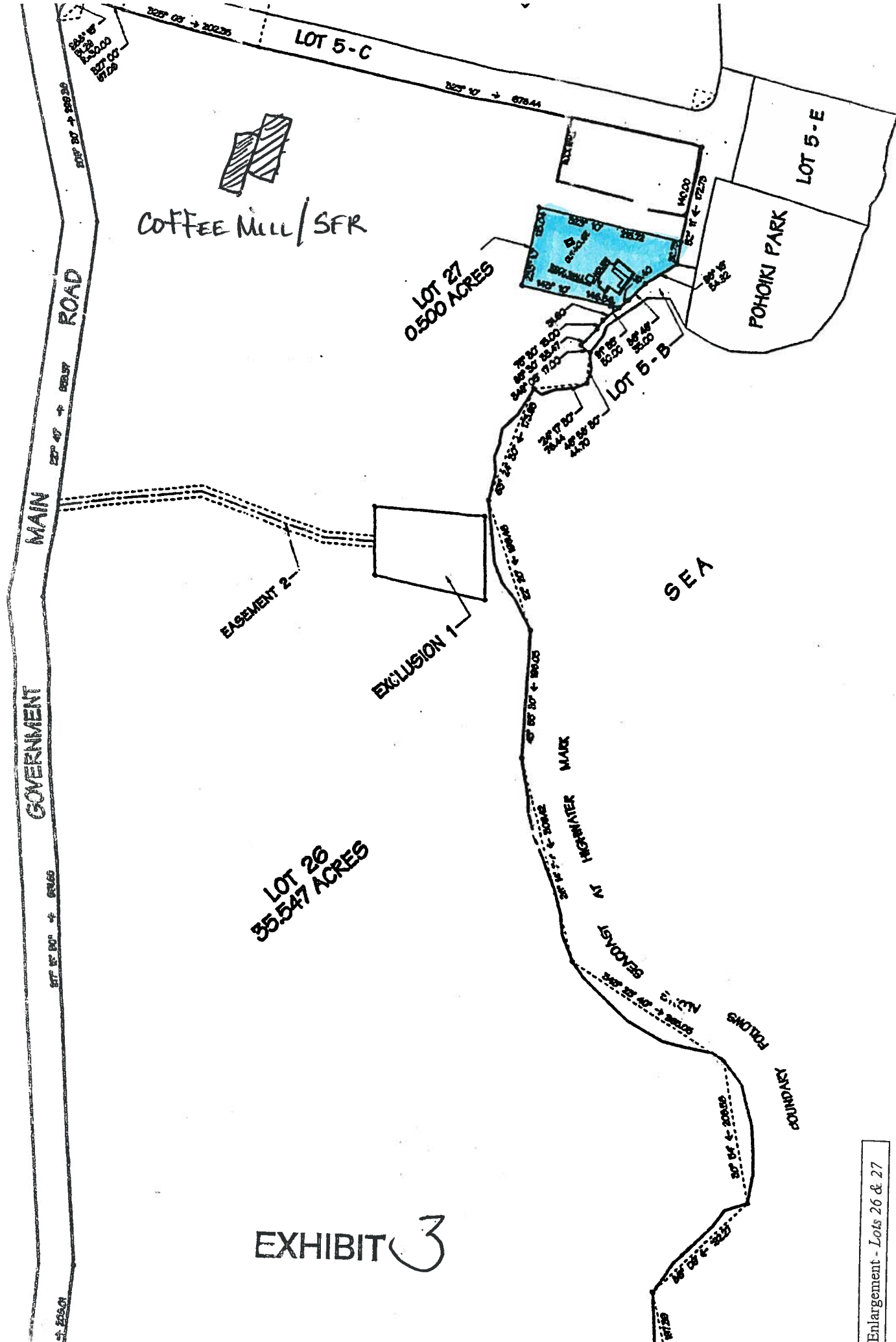


EXHIBIT 3

LINDA LINGLE
GOVERNOR OF HAWAII



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

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
RUSSELL Y. TSUJI
FIRST DEPUTY
KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

Enforcement Case: HA-08-26

CERTIFIED/RETURN RECEIPT
7004 0710 0003 9987 8275

FEB 13 2008

Lawrence Merrill Smith
Ida Kailakanoa Smith
Kapuanani Beatrice Rothfus

Dear Ms. Smith, Mr, Smith, and Mr. Rothfus,

SUBJECT: Alleged, Unauthorized Land Use to Structure
Subject Parcel TMK: (3) 1-3-008:034, Pohoiki, Island of Hawaii

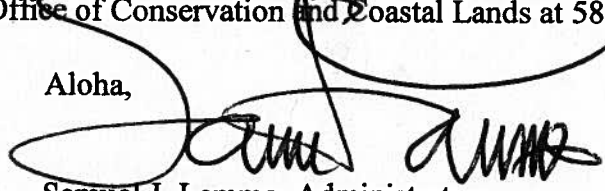
The Department of Land and Natural Resources' (DLNR), Office of Conservation and Coastal Lands (OCCL) is in receipt of a complaint regarding the alleged, unauthorized use of the structure located on Subject Parcel TMK: (3) 1-3-08:034, Pohoiki, Island of Hawaii.

The OCCL notes the subject parcel is located in the State Land Use (SLU) Conservation District, Resource Subzone. The OCCL notes there is no record of any approval for any renovations to the structure located in the subject parcel.

Authorization for any land use is required by the department, pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), and Chapter 183C, Hawaii Revised Statutes (HRS), Conservation District Rules and Regulations. The department can levy fines up to \$2,000 per day pursuant to Chapter 13-5, HAR, in addition to administrative costs incurred by the department. Please contact the OCCL within ten days upon receipt of the letter.

We are attaching Chapter 13-5, HAR, for you information. Should you have any questions please feel free to contact Dawn Hegger of our Office of Conservation and Coastal Lands at 587-0380.

Aloha,


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

c: Hawaii District Land Agent
County of Hawaii Planning Department

EXHIBIT 5

Ken Fujiyama
set

February 22, 2008

State of Hawaii
Dept. of Land and Natural Resources
Office of Conservation and Coastal Lands
P O Box 621
Honolulu, HI 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2008 FEB 28 A 9:03

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

re: HA-08-26

Dear Ms. Hegger,

Per our phone conversation regarding the use of the old coffee mill as the residence for Merrill and Ida Smith, I will personally obtain the information you requested and will forward to you the plans and specifications for the "as built" building that now exists. It will take me a while to have plans drawn and certified by a structural engineer as to the soundness of the construction. So, I am asking for your patience in this matter.

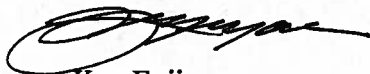
Also, I will inquire with the attorney who helped the Smiths subdivide out a half acre parcel so that they could sell that parcel to the Hale family who has lived there for over a century, which has helped maintain peace among the neighbors. It is very surprising to me that your department was not informed of this situation during the subdivision process since the land designation for the State is conservation.

As you agreed, our phone conversation on Feb. 22, 2008 meets the requirement to contact your office within 10 days of receipt of the letter from Mr. Samuel Lemmo.

I will also apply for a building permit for the Smiths and seek approval for their residence in the coffee mill through your department. The Smiths did represent to me that they had approached someone at the Department of Land and Natural Resources in Hilo to see if they could build their residence in the old coffee mill and were told that as long as all construction was done inside, it would be ok. I guess this is how the whole problem started.

Mr. Merrill Smith is 76 and Ida Smith is 72. They have asked me to assist them on this matter since they were not sure where to turn.

Sincerely yours,



Ken Fujiyama
Friend of the Smiths
CEO Ken Direction Corp.

EXHIBIT 6

July 2, 2013

Mr. Samuel J. Lemmo
Administrator, OCCL
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hi 96809

RECEIVED
STATE OF CONSERVATION
AND COASTAL LANDS

2013 JUL -8 A 10:50

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Proposed Subdivision for Public Use at Pohoiki, Puna, Hawaii, TMK (3) 1-3-008:034

Dear Mr. Lemmo,

Please consider this letter as a **Memorandum of Agreement** from Mr. Merrill and Ida Smith owners of TMK (3) 1-3-008:034 to allow them subdivide their land so approximately 26 acres can be sold to the County of Hawaii for the extension of the Isaac Hale Park. The Smith's agree to pay a fine for the conversion of the old sugar mill to a single family residence that exceed the allowable area of a residential dwelling of 5,000 square feet within a conservation district, subject to two parties agreeing to the final amount which will not exceed \$15,000.00. The Smith's also agree to move out of the house within two weeks after the sale and purchase of the land being sold to the County of Hawaii is completed. As part of this memorandum of agreement we would like the State to proceed with the subdivision approval process so the Sale and Purchase agreement can be closed.

The Smith's would also like approval to move back into the dwelling after the building is remodeled to decrease the useable area to 5,000 square feet or less. Their proposal is to fully vacate and enclose the lower level of the building by sealing off the lower level windows and doors with hollow tile so there will be no access to that level except for the smallest size door if required by the building code. They agree that the lower level will never be use for any purpose including storage. There will be no windows to that area. They may be required to provide natural air vents. An existing interior stair leading to the lower level will be removed and sealed. The remaining top level of the building will be less than 5,000 square feet. Upon approval of this request, plans and specifications will be provided before any work is started. Attached to this letter are plans which show which windows and doors that will be sealed and the stair that will be removed and openings also sealed. Plans marked with X are areas to be sealed.

Thank you,

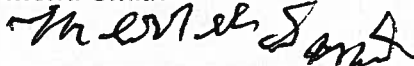
Agree and acknowledge

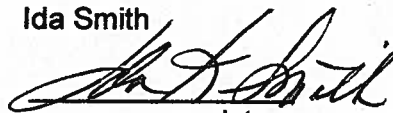
Witness

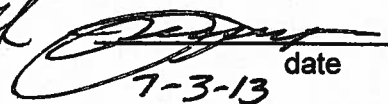
Merril Smith

Ida Smith

Ken Fujiyama







date

date

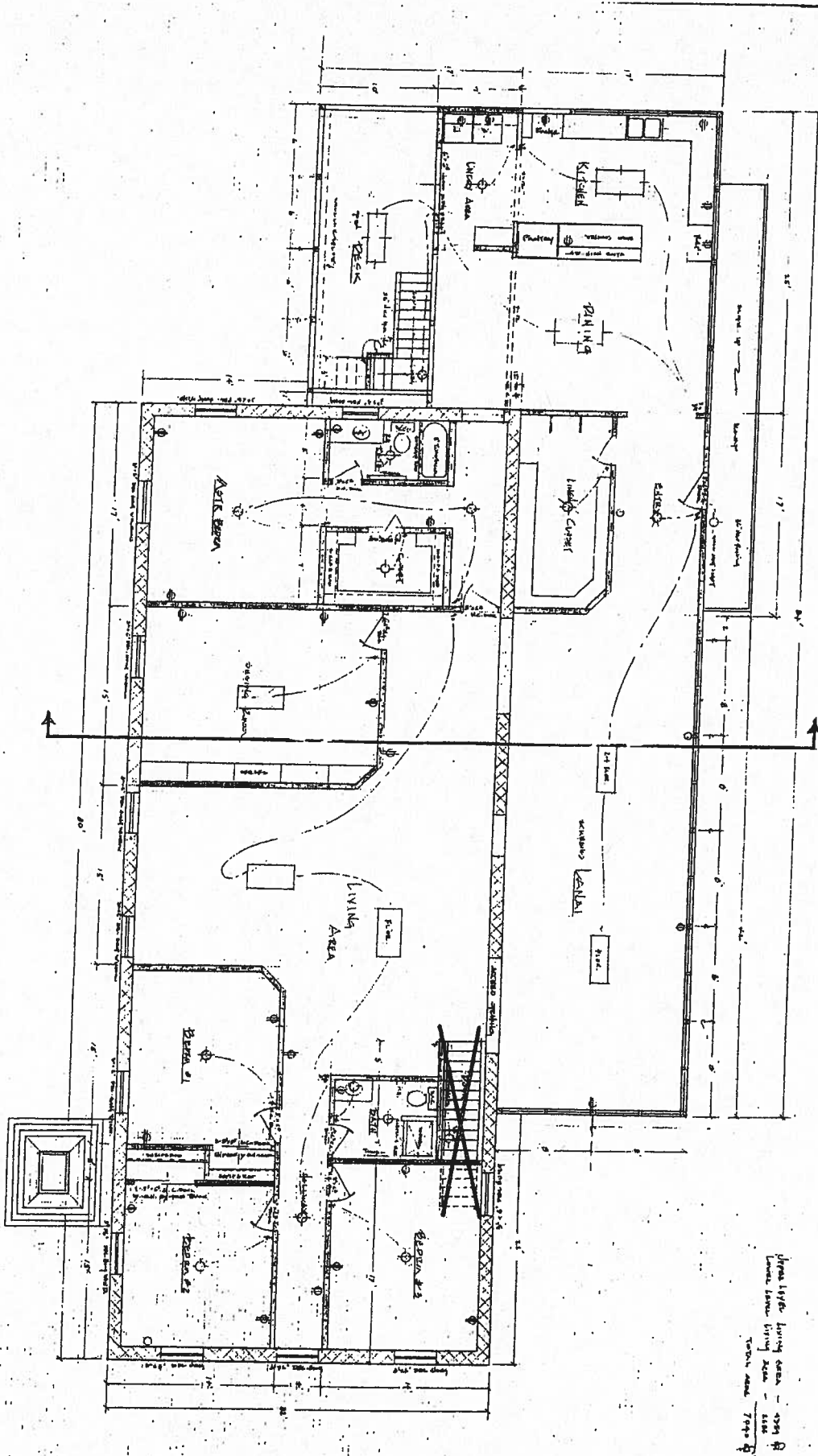
date

7-3-13

EXHIBIT 7

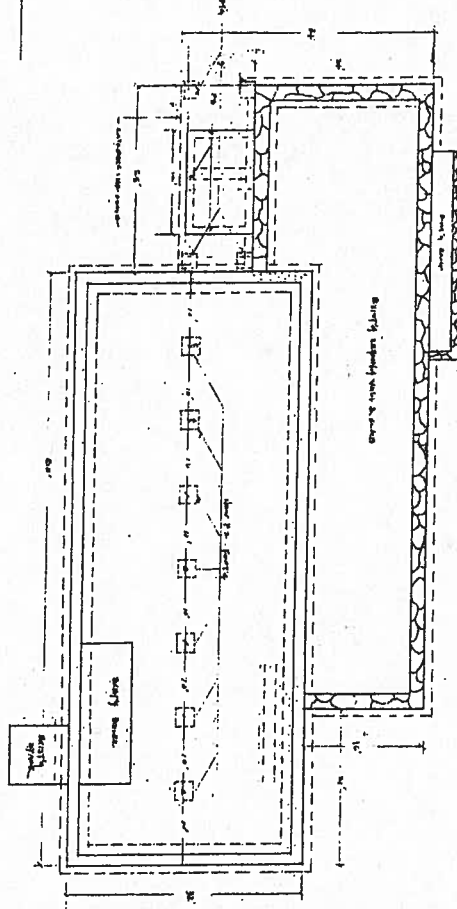
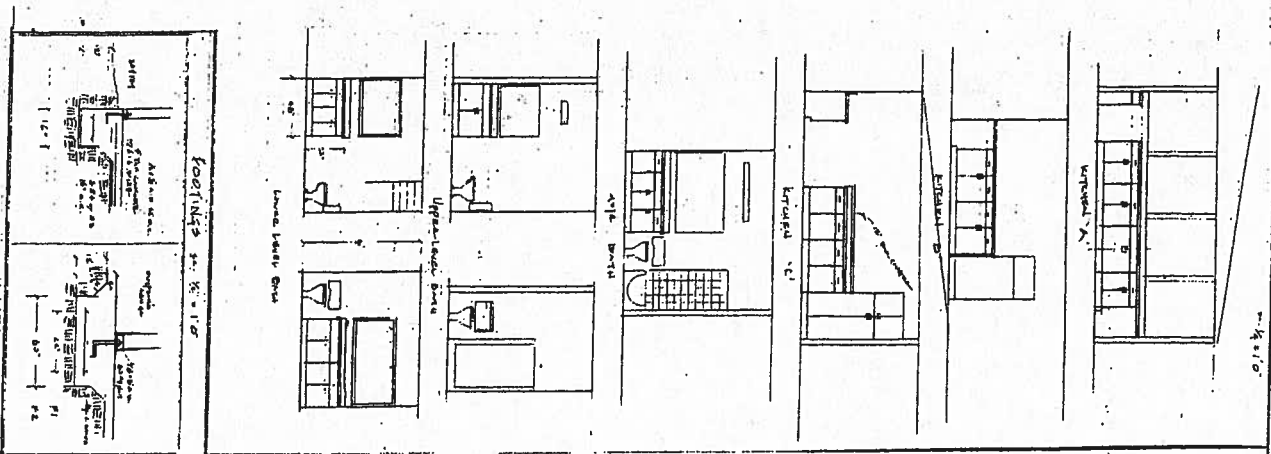
UPPER LEVEL FLOOR PLAN

24 x 40

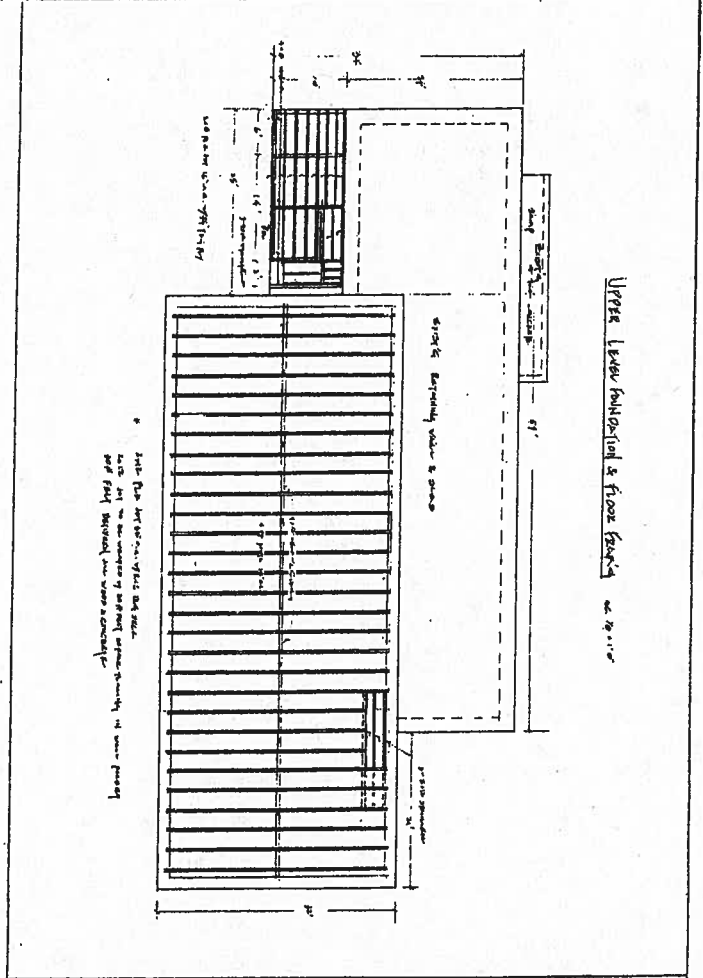


Upper level living area - 1991
 Lower level living area - 1991
 Terrace area - 1991

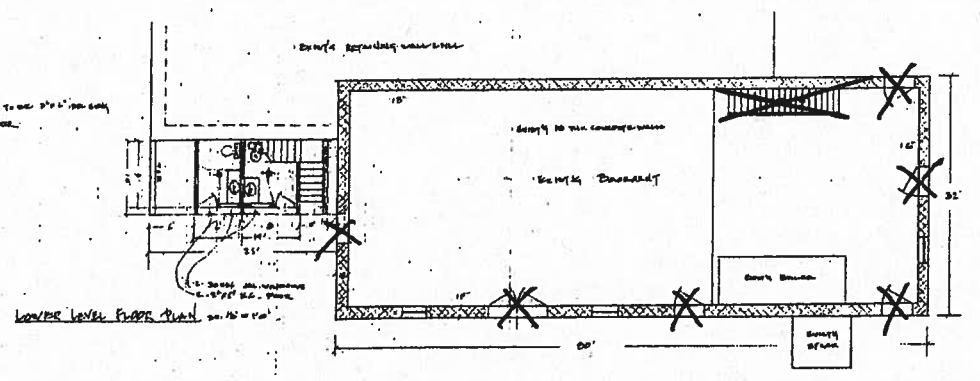
RESTORATION / RENOVATION of OLD COFFEE MILL
 RESIDENCE for
 MERRILL & IDA SMITH



LOWER LEVEL FOUNDATION PLAN 12'-1" x 12'-1"

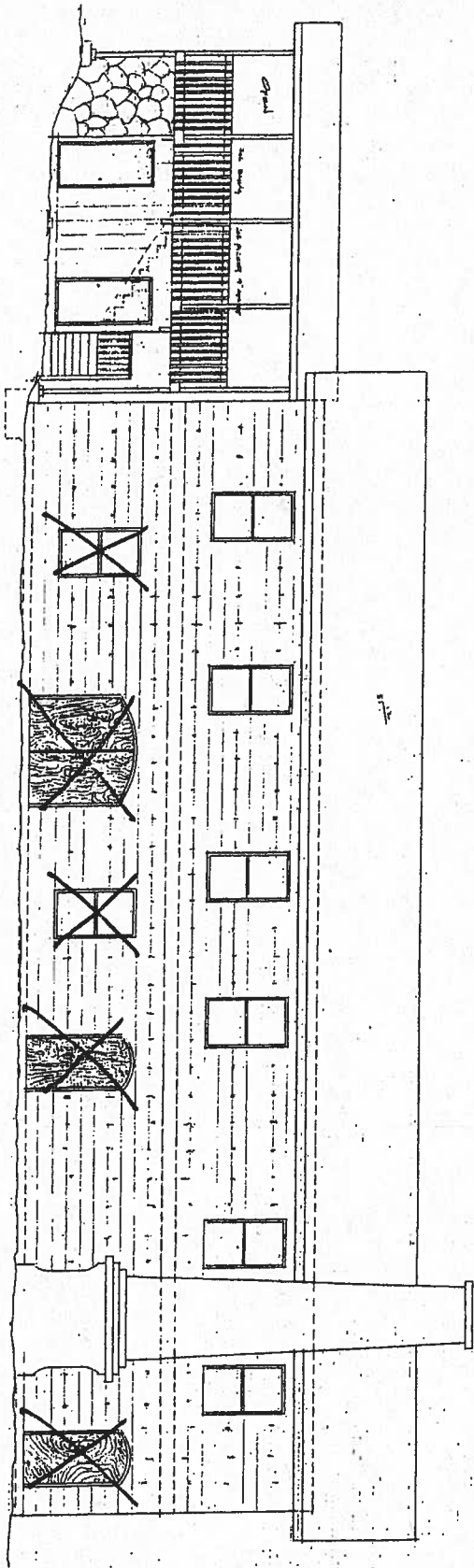


UPPER LEVEL FOUNDATION & FLOOR FRAMING 12'-1" x 12'-1"

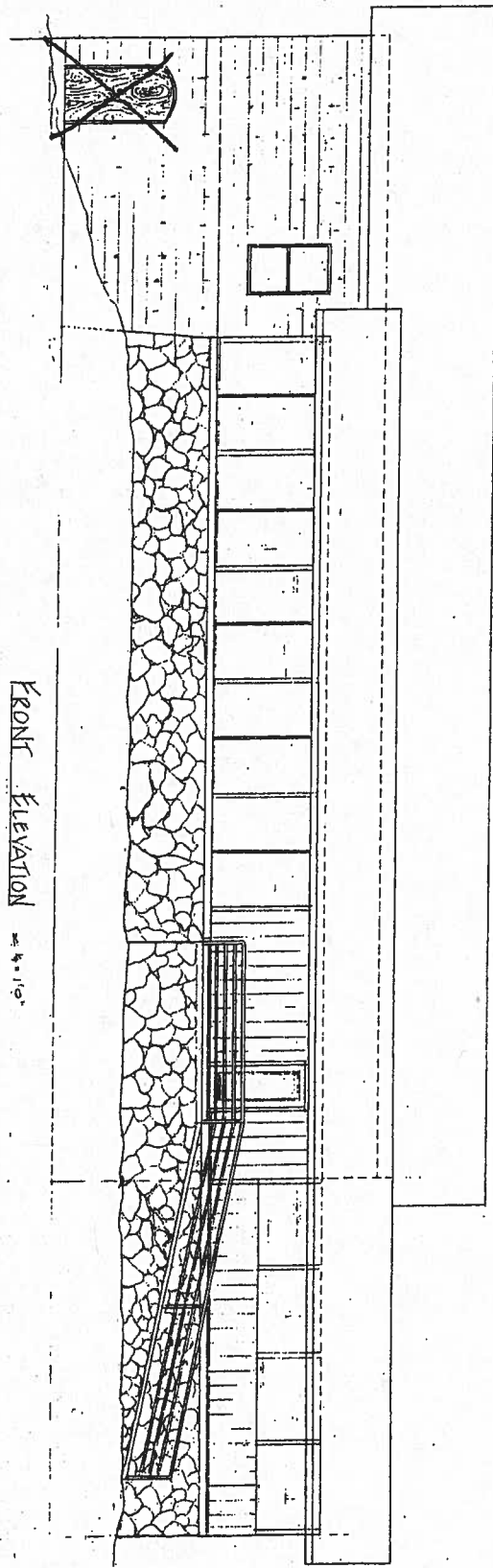


LOWER LEVEL FLOOR PLAN 12'-1" x 12'-1"

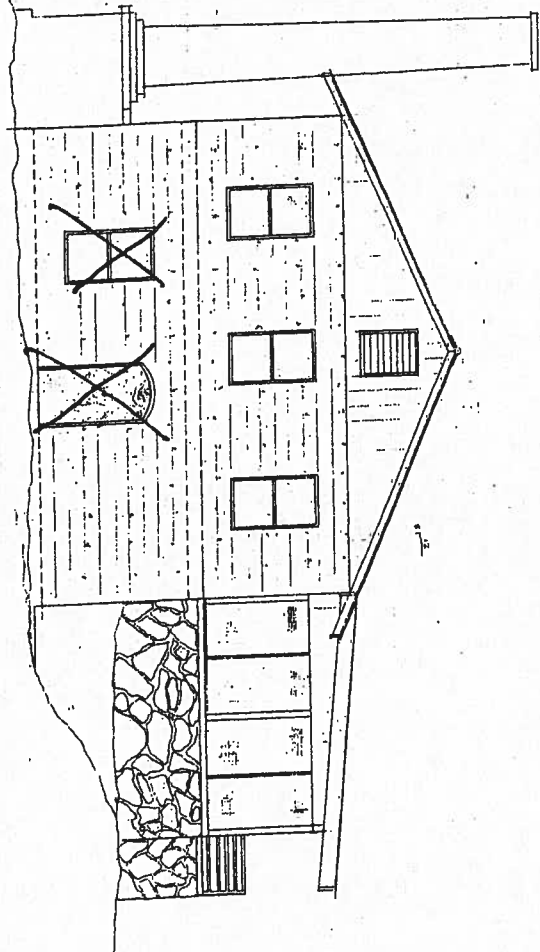
REAR ELEVATION 28'-10"



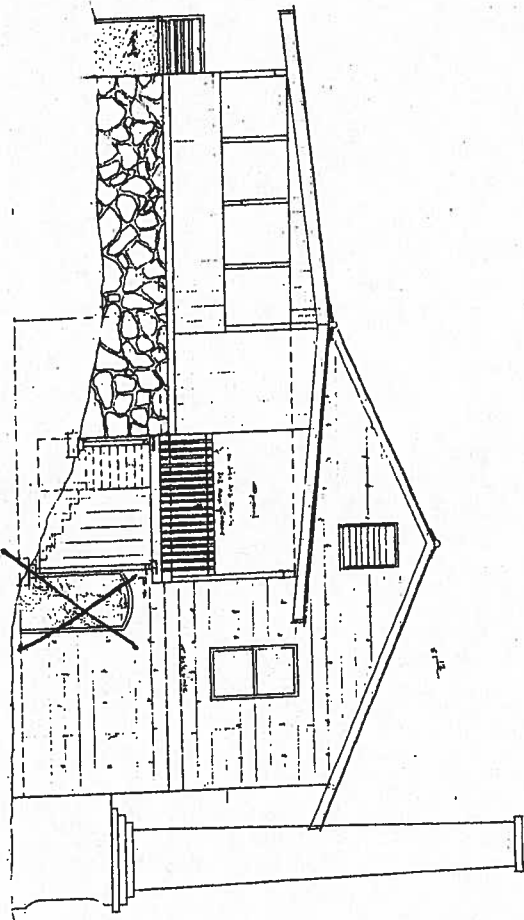
FRONT ELEVATION 28'-10"



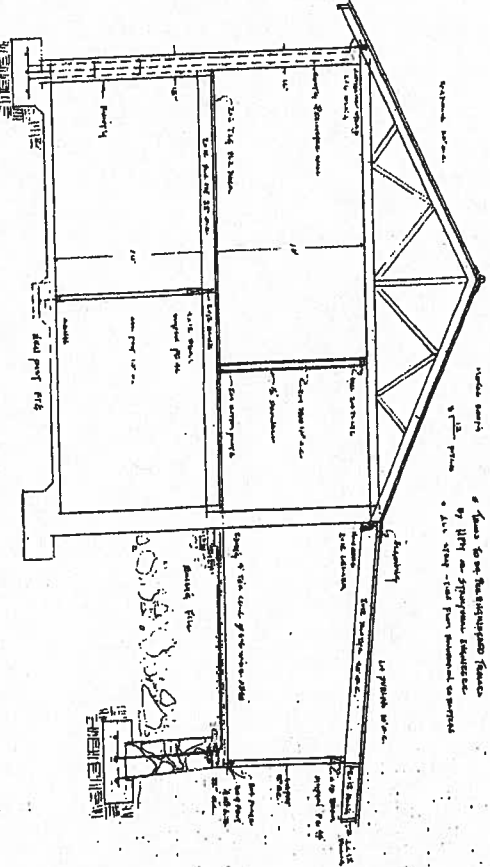
LEFT SIDE ELEVATION



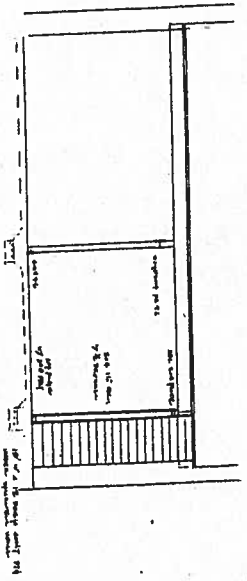
RIGHT SIDE ELEVATION



CROSS SECTION



STAIRWAY SECTION



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

JUL 10 2013

Kenneth Fujiyama

Hilo, Hawaii 96721

Dear Mr. Fujiyama:

Subject: Proposed Resolution of Land Use Violations and Proposed Subdivision for Public Purposes at Pohoiki, Puna, Hawaii – TMK: (3) 1-3-008:034

Thank you for your recent Memorandum of Agreement (MOA) from Merrill and Ida Smith. The Smiths have had a long-standing alleged violation on their Pohoiki property involving the unauthorized conversion of a sugar mill into a Single Family Residence. The Smiths have been on formal notice of this violation for close to five years (see attached notice), as the matter has not yet been resolved.

It is our understanding that the County of Hawaii is interested in purchasing a portion of the Smith's property to extend Isaac Hale Park. This transaction would require the land to be subdivided. The rules that govern conservation district areas, which encompass the Smith's property, do not allow the Department of Land and Natural Resources (DLNR) to process an application for a subdivision due to the pending violation, and until the violation is resolved. The MOA seeks to address and resolve the violation so that the subdivision may proceed.

The DLNR agrees in concept¹ with the plan to resolve the violation, and we propose the following actions:

1. Prepare a report to the Board of Land and Natural Resources (BLNR) to propose a conclusion to the pending violation case. This would involve a recommendation for a fine not exceeding \$15,000, and other actions necessary to conclude the case, including consideration of the measures outlined in the MOA in regards to the sugar mill.
2. If the matter of the violation is concluded to the satisfaction of all parties, the DLNR could then process a CDUA for the alterations to the sugar mill and for the subdivision, subject to the approval or disapproval of the BLNR. For the subdivision action, the CDUA must have the support of the County of Hawaii. Your client may want to consider asking the County of Hawaii to apply for the subdivision. The application must minimally have a letter from the County of Hawaii indicating that there is an agreement

¹ DLNR staff cannot unilaterally agree to the MOA. It has to be presented to the BLNR who may deny, modify or approve the actions proposed in the MOA.

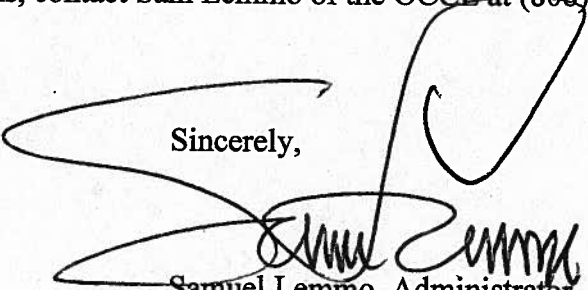
EXHIBIT 8

in place for a purchase. If for some reason the county does not purchase the property, the subdivision action would be invalidated.

If this letter meets your satisfaction, we will prepare a staff report to the BLNR regarding the violation. You may consider preparing a CDUA for the past and prospective alterations to the sugar mill as well as the subdivision. We recommend that your client engage the County of Hawaii or retain a professional planner to accomplish this.

We have enclosed a copy of our CDUA form and our Administrative Rules for your information and use. Should you have any questions, contact Sam Lemmo of the OCCL at (808) 587-0377.

Sincerely,



Samuel Lemmo, Administrator

C: Chairperson
Merril and Ida Smith
County of Hawaii

Attachment