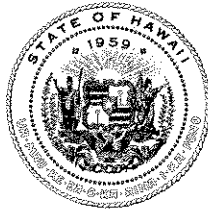
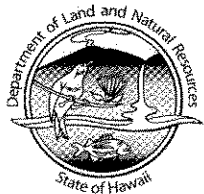


LINDA LINGLE
GOVERNOR OF HAWAII



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

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING 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
KAIROOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

FILE NO.: KA-3190

MEMORANDUM

TO: Genevieve Salmonson, Director
Office of Environmental Quality Control

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

SUBJECT: Final Environmental Assessment (FEA)/ Finding of No Significant Impact (FONSI)
for Conservation District Use Application (CDUA) KA-3190

NOV 18 2005

The Office of Conservation and Coastal Lands (OCCL) has reviewed the Final Environmental Assessment (FEA) for Moloaa Bay Ranch. The Draft Environmental Assessment (DEA) for CDUA KA-3190 was published in OEQC's September 8, 2005 Environmental Notice.

The FEA is being submitted to OEQC. We have determined that this project will not have significant environmental effects, and have therefore issued a FONSI. Please publish this notice in OEQC's upcoming December 8, 2005 Environmental Notice.

We have enclosed four copies of the FEA for the project along with the OEQC Bulletin Publication Form and Project Summary. Comments on the Draft Environmental Assessment were sought from relevant agencies and the public, and were included in the FEA.

Please contact Tiger Mills of our Office of Conservation and Coastal Lands staff at 587-0382 if you have any questions on this matter.

Attachments

RECEIVED
NOV 21 AM 1:33
OFFICE OF ENVIRONMENTAL
QUALITY CONTROL

**CONSERVATION DISTRICT USE PERMIT APPLICATION
AND FINAL ENVIRONMENTAL ASSESSMENT
MOLOAA BAY RANCH**

**Kauai, Hawaii
TMK: 4-9-11: Portion of 1**

**MOLOAA BAY RANCH, LLC
132 WEST MAIN STREET
ASPEN, COLORADO 81611**

APPLICANT

**Kusao & Kurahashi, Inc.
Planning and Zoning Consultants
Manoa Market Place
2752 Woodlawn Drive, Suite 5-202
Honolulu, Hawaii 96822**

AGENT

NOVEMBER 2005

**CONSERVATION DISTRICT USE PERMIT APPLICATION
AND FINAL ENVIRONMENTAL ASSESSMENT
MOLOAA BAY RANCH**

**Kauai, Hawaii
TMK: 4-9-11: Portion of 1**

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Manoa Market Place
2752 Woodlawn Drive, Suite 5-202
Honolulu, Hawaii 96822**

AGENT

NOVEMBER 2005

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. Box 621
HONOLULU, HAWAII 96809
CONSERVATION DISTRICT USE APPLICATION FORM

Dec. 1994

FOR DLNR USE ONLY

Reviewed by _____
Date _____
Accepted by _____
Date _____
Docket/Fine No. _____
180-Day Exp. _____
EIS Required _____
PH Required _____
Board Approved _____
Disapproved _____

(Print or Type)

SUMMARY PAGE

I. LANDOWNER

(If State land, to be filled by State of Hawaii or government entity with management control over parcel.)

Name Moloaa Bay Ranch, LLC
Address 132 West Main Street
Aspen, Colorado 81611

Telephone No. (970) 920-2112

SIGNATURE [Signature]

DATE 4/28/04

NOTE: Signature of an authorized representative of DLNR under this section is not to be construed as an application which shall be submitted separately with the appropriate fee. Also, for private lands with multiple owners, the application shall be signed by landowners whose property interests constitute exceed 85% of the fee ownership of the parcel(s).

II. APPLICANT

Name Moloaa Bay Ranch, LLC
Address 132 West Main Street
Aspen, Colorado 81611

Telephone No. (970) 920-2112
Interest in Property Owner

(Indicate interest in property; submit written evidence of this interest.)
evidence of this interest.)

*SIGNATURE [Signature]

Date 4/28/04

*If for a Corporation, Partnership, Agency or Organization, must be signed by an authorized officer.

AGENT

Name Kusao & Kurahashi, Inc.
Address 2752 Woodlawn Dr., Ste. 5-202
Honolulu, Hawaii 96822

Telephone No. (808) 988-2231

**CONSERVATION DISTRICT USE PERMIT APPLICATION
AND FINAL ENVIRONMENTAL ASSESSMENT
MOLOAA BAY RANCH**

**Kauai, Hawaii
TMK: 4-9-11: Portion of 1**

III. TYPE OF PERMIT

Board Permit.

IV. LAND PARCEL LOCATION

Island : Kauai
County : Kauai
District : Kawaihau
Tax Map Key : (4) 4-9-011: Portion of 001
Area of Parcel : 45 acres

V. SUMMARY OF PROPOSED IDENTIFIED LAND USE

A. L-3 EROSION CONTROL
P-9 STRUCTURES, EXISTING

“Erosion control, flood control, and other hazard prevention devices or facilities.” “Demolition, grading, removal or alteration of topographic features.” The applicant plans to grade the property to restore previous grades to washed out areas and even out the slopes on land in the Conservation District to curb erosion. Immediately after restoring the grade, the soil will be hydromulched and watered.

Temporary irrigation will be provided to ensure that the grass will establish itself and mitigate potential for erosion.

(Requires Board Permit)

B. P-4 LANDSCAPING, REMOVAL OF NOXIOUS PLANTS

“Landscaping, defined as alteration (including clearing of plant cover.” The applicant proposes to implement a Reforestation Master Plan required by the Board of Land and Natural Resources as part of the action to resolve a violation of Chapter 13-5, Hawaii Administrative Rules, Chapter 183C, Hawaii Revised Statutes, for failing to obtain the appropriate approvals for unauthorized tree removal at Moloaa Bay Ranch, Moloaa, Koolau, Kauai, Hawaii. The trees of concern were 15 ironwood trees that were over 6-inches in diameter. The applicant plans to grass all bare areas on the slopes of Moloaa Bay Ranch and to provide for replacement, on a one for one basis, of the 15 ironwood trees that were removed with 15 False Kamani trees. The applicant plans to provide an additional 17 False Kamani trees and 9 Beach Heliotrope trees.

(Requires a Departmental Permit)

In addition, the applicant plans to install a 3-rail perimeter security fencing (with a 4-foot height) to delineate the mauka

boundary of an existing trail used by the public. (Requires a Departmental Permit)

C. P-9 STRUCTURES, EXISTING

“Replacement or reconstruction of existing structures and facilities as identified in the exempt classes established in section 11-200-8, except as provided in section 13-5-37 where the new structure will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.” The applicant plans to repair the existing roadway that has been washed out in certain areas. The existing roadway will be restored to it’s previous condition and retaining walls will be provided, as needed to ensure that the roadway will not be readily affected by heavy rains. The roadway qualifies as reconstruction of an existing facility identified in the exempt classes established in section 11-200-8. (Requires no permit from the Department or Board)

D. P-12 TREE REMOVAL

“Removal of more than five trees, six inches or greater in diameter measured at ground level.” The applicant plans to remove all ironwood trees on the upper slopes of Moloaa Bay Ranch, within the Conservation District. These ironwood trees are an invasive species that drops needles that cover large areas

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

of soil and restricts growth of ground cover which leads to serious erosion problems. In order to reduce existing problems with soil erosion, the applicant plans to replace these ironwood trees on a one for one basis with Coconut Palms, False Kamani and Beach Heliotrope trees. (Requires Board Permit)

Since the various improvements proposed in this Conservation District Use Permit application requires Department Permits and Board Permits, a Board Permit will be required for all improvements.

VI. ENVIRONMENTAL REQUIREMENTS

A. APPLICANT

Moloaa Bay Ranch, LLC.
132 West Main Street
Aspen, Colorado 81611

B. APPROVING AGENCY

State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

C. AGENCIES CONSULTED IN MAKING ASSESSMENT

Department of Land and Natural Resources
Office of Conservation and Coastal Lands
State Historic Preservation Division
County of Kauai Planning Department

D. TECHNICAL CHARACTERISTICS

1. Proposed Improvements

The applicant proposes to grade the site to restore previous grades to washed out areas and to even out the slopes on land in the Conservation District to curb erosion. Immediately after resetting the grade, the soil will be hydromulched and watered. Temporary irrigation will be provided to ensure that the grass will establish itself and mitigate potential for erosion.

The applicant proposes to implement a Reforestation Master Plan required by the Board of Land and Natural Resources as part of the action to resolve a violation of Chapter 13-5, Hawaii Administrative Rules, Chapter 183C, Hawaii Revised Statutes, for failing to obtain the appropriate approvals for unauthorized tree removal at Moloaa Bay Ranch, Moloaa, Koolau, Kauai, Hawaii. The trees of concern were 15 ironwood trees that were over 6-inches in diameter. The applicant plans to grass all bare areas on the slopes of Moloaa Bay Ranch and to provide for replacement, on a one for one basis, of the 15 ironwood trees that were removed with 15 False Kamani trees. The applicant plans to provide

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

an additional 17 False Kamani trees and 9 Beach Heliotrope trees.

The applicant plans to repair the existing roadway that has been washed out in certain areas. The existing roadway will be restored to its previous condition and retaining walls will be provided, as needed to ensure that roadways will not be readily affected by heavy rains.

The applicant plans to remove ironwood trees on the upper slopes of Moloaa Bay Ranch, within the Conservation District. These ironwood trees are an invasive species that drops needles that cover large areas of soil and restricts growth of ground cover which leads to serious erosion problems. These trees will be replaced by False Kamani trees or Beach Heliotrope trees on a one for one basis.

The applicant plans to install a 3-rail perimeter security fencing (with a 4-foot height) to delineate the mauka boundary of an existing trail used by the public.

The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until the Department of Land and Natural Resources (DLNR) has resolved the issue of the trail. Should the trail

be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

2. Location

The project site is approximately five miles north of Anahola off an easement off of Koolau Road, which is located makai of Kuhio Highway. It is situated at Moloaa Bay, and extends from the top of the bluff to the ocean. The area is within the District of Kawaihau (Puna), Island and County of Kauai, Hawaii.

The project area extends from the fence at the boundary with Kaakaaniu (the adjacent ahupuaa to the Northwest), Southeastward to Moloaa Bay, then Southward along the Northwestern slope of the bay. It consists of Conservation land that was previously utilized as pasture land, but does not include the flat tablelands at the top of the bluff, which were former Kilauea Sugar Plantation fields. The project area includes the cliff face of Amana Point, with a narrow, wave-cut bedrock and boulder bench at the base. The bay frontage portion consists of narrow bedrock and boulder-strewn bench deposits back to where Moloaa Stream empties into the bay. Naupaka Beach is also present within the narrow stretch of sand. The subject

property is immediately adjacent to Moloaa Beach, which is a wide crescent of sand that curves for 1/4 mile along the shore of Moloaa Bay. Both ends of the beach terminate at high bluffs with rocky coastlines. Beach rock fronts the Western end of the beach where Moloaa Stream meets the ocean.

3. Surrounding Area

The adjacent area north and west of the project site, which is part of the same parcel of land, is utilized as a plant nursery with accessory uses and structures, including a caretaker's residence. The area immediately south of the property is Moloaa Bay and Moloaa Stream, with residences located further west at the mouth of the stream.

E. ECONOMIC CHARACTERISTICS

1. Economic Growth

Grading, roadway repair/reclamation, tree removal, landscaping, and construction of the proposed security fence will not affect economic growth on Kauai. These improvements are intended to reduce the erosion potential on the site and protect Moloaa Bay from erosion and soil runoff.

2. Employment

The proposed grading, landscaping, roadway repair and security fence improvement will provide short-term landscaping and construction jobs, but will not result in any long-term employment.

3. Government Revenues/Taxes

Tax revenues generated by the short-term employment from the proposed grading, landscaping, roadway repair and security fence improvement will be minimal.

F. SOCIAL CHARACTERISTICS

1. Residential Population

The development will have no impact on the residential population on Kauai.

2. Visitor Population

The development will have no impact on the visitor population or resort industry on Kauai.

3. Character or Culture of the Neighborhood

The property will retain its existing open space character and will not affect the existing character and culture of the neighborhood.

4. Displacement

The proposed project area is vacant and will not displace any residences or businesses.

G. PUBLIC SERVICES

1. Access and Transportation

Access to the area is by way of an easement off of Koolau Road (Old Kuhio Highway) which provides access to Kuhio Highway located mauka (west) of the property.

The access easement to Moloaa Bay Ranch is found by traveling east on Kuhio Highway and making a right turn onto Koolau Road seven tenths of a mile past mile 16 (marker). After the right turn, travel on Koolau Road for 2.2 miles and turn right at Larsen's Beach Road. On Larsen's Beach Road, travel 130 feet and at the point where the road turns to the left, the easement will lie directly in front of you.

The proposed landscape improvements will involve moving of construction and landscaping equipment to and from the site, however, construction equipment will be left on the upper plateau of Moloaa Bay Ranch and the only further impact on traffic will be the daily travel of employees to the site. This employee

traffic is not expected to be significant, probably ten vehicles or less traveling during the morning and afternoon peak hours, traveling in a direction opposite from the peak flow (peak flow heads toward Lihue in the morning and out of Lihue in the afternoon).

2. Water

The applicant has a private water system that will provide irrigation water until the grass and trees are established on the slopes. The applicant will provide a temporary irrigation system for landscaping and replanting purposes.

3. Wastewater

The project area will not require wastewater facilities since upon completion the project site will be a landscaped area with no improvements other than the access road and a three-rail fence.

4. Drainage

Presently, runoff sheet flows over the existing topography and ultimately into Moloaa Bay. The existing drainage patterns will be retained, however, the grassing of bare areas and grading to eliminate existing cuts in the terrain will reduce the potential for soil erosion into the bay.

5. Solid Waste Disposal

The Kapaa Refuse Transfer Station south of Anahola provides nearby refuse disposal for area residents. Green waste will be composted on site or utilized in the improvement of the existing trail on the property.

6. Schools

The proposed landscape improvements will not impact the local school system.

7. Parks

The proposed landscape improvements will not affect any park and recreation area, except to reduce the potential for soil runoff into Moloaa Bay.

8. Police

Police service in the Moloaa area, is provided by the Lihue Police Station and the Kapaa Police Substation. Police services will not be affected by the proposed landscape improvements.

9. Fire

Fire protection service for the Moloaa area is currently being provided by the Kapaa Fire Station. Five (5) men are assigned to the station, and are on duty at all times with major fire fighting equipment. Response time

to the proposed site from the station, approximately 12 miles, is estimated at 15 minutes.

Emergency medical services (including an ambulance and emergency medical technicians) are provided by the Kapaa Fire Station in conjunction with a private firm which is contracted by the State Department of Health.

10. Utilities

Utility services, such as electric and telephone, will not be required for the landscaped area.

H. ENVIRONMENTAL IMPACTS

1. Historical and Archaeological Resources

Cultural Surveys Hawaii prepared an "Archaeological Assessment of an Approximately 40-Acre Parcel in Moloa'a *Ahupua'a*, Ko'olau District, Island of Kaua'i" in November 1999. This archaeological assessment was submitted to the State Historic Preservation Division for review and recommendations. The State Historic Preservation Division, in a letter dated November 8, 1999, determined that "It is an acceptable report. Two significant historic sites were found (50-30-04-1033 – a buried cultural

deposit and 50-30-04-1034 - trail). These sites are to be preserved. No further archaeological work is required.”

The State Historic Preservation Division, however, further stated that “One concern we have is why you did not try to collect a sample for radiocarbon dating from the exposed cultural deposit site 50-30-04-1033? Please explain this.”

Cultural Surveys Hawaii filed an Addendum to the Archaeological Assessment with the State Historic Preservation Division on December 24, 2002 and received a response letter from the Division, dated January 16, 2003, accepting the assessment report as final (with submission of the addendum which provided a radiocarbon date of AD 1400-1700 for site 50-30-04-1033).

The archaeological assessment, the addendum and the response letters from the State Historic Preservation Office are included in Appendix I.

Section V, Summary, Significance and Recommendations, of the archaeological assessment states as follows:

“A. SUMMARY

Cultural Surveys Hawai'i conducted an archaeological assessment of the approximately 40-acre conservation-zoned parcel on the northwestern side of Moloa'a Bay. The assessment included background literature research and a surface survey.

The background literature search indicated that no previously identified sites were within the project. Mid-1800s Land Commission documents place the focus of agriculture and habitation within the alluvial flood plain where there was extensive taro *lo'i* terracing with dispersed permanent residences. No *kuleana* (LCA) were awarded in the project area (see Figures 4 & 5).

Historic land use within the project area was primarily cattle pasturage as it was too steep for commercial sugarcane cultivation. Sugarcane cultivation occurred on the level table lands adjoining the subject parcel (See Figures 7 & 8) associated land clearing operations have deposited large boulders and increased soil erosion into the project area.

The surface survey was conducted by two archaeologists walking multiple cross-slope transects. During the survey two sites were identified. The sites consist of a buried cultural layer, Site 50-30-04-1033, and a unmodified trail segment, Site 50-30-04-1034.

Site -1033, the buried cultural layer is situated where the sandy beach ends at a natural boulder point. Behind or inland of the boundary point is a relatively level and narrow shoreline bench. High surf has cut a .5 cm. to 1 m. deep face into the shoreline bench exposing

the cultural layer. The cultural layer is from .5 m. to .9 m. below the present soil surface. Observed eroding out of the cultural layer were traditional marine midden components of cowry, *opihi*, *pipipi*, fishbone and charcoal. No historic-era artifacts were observed, suggesting a primarily pre-contact deposit.

The trail segment, Site 1034, allows for access to and from Moloa'a Bay and Larsen's Beach in the adjoining (northwest) *Ahupua'a* of Ka'aka'aniu. Traditional and historical accounts (including local informant) indicate that the fringing reef fronting Larsen's beach is renown for its *limu kohu* (Clark 1990, Wickman 1998, Bill Wong per. Comm. 1999). Based on these accounts and the well-worn path, it is presumed that the trail segment represents an access route older than 50 years. The trail itself is a narrow shallow unmodified trodden path utilized both by tourists and *kama'aina*.

No other sites were observed during the survey. The majority of the project area ranges from moderate to steeply sloping soil with rock outcrop terrain. During the survey particular attentio was paid to wave-cut and cliff-face exposures nad erosional slope wash cuts. No cutural features or strata other than site -1033 were observed.

B. SIGNIFICANCE

Significance assessments are based on the broad criteria established for the National and State Registers of Historic Places.

The five criteria are:

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

- A Site reflects major trends or events in the history of the state or nation.
- B Site is associated with the lives of persons significant in our past.
- C Site is an excellent example of a site type.
- D Site may be likely to yield information important in prehistory or history.
- E Site has cultural significance; probable religious structures (shrines, *heiau*) and/or burials present. (State of Hawai'i criterion)

The two sites, 50-30-04-1033, a buried cultural layer, and 50-30-04-1034, a trail segment are assessed solely under Criterion D. Each site has already yielded important information in terms of location, type, function, probable age, and regional context. Both sites have the potential to yield further information. The buried cultural layer, Site -1033 may yield more detailed information on site and regional chronology and function. Similarly, further research on the trail may yield more information on age and additional destinations.

C. RECOMMENDATIONS

The two sites, 50-30-04-1033 and -1034 are recommended for preservation as is. No ground disturbing activities such as bulldozing, mechanized vegetation clearing or construction activity should occur on these sites.

No other archaeological constraints are deemed warranted for the remaining majority of the project area. However, in the unlikely event inadvertently discovered archaeological features are encountered appropriate

government agencies (*e.g.*, SHPD/DLNR) should be notified.”

Although not presented in the Archaeological Assessment, the Koolau Japanese Cemetery is located about 2,500 feet from the project site, along the access easement to the property.

The applicant plans to follow the recommendations of the archaeological assessment and plans no activity near site 50-30-04-1033. The only activity planned at site 50-30-04-1033 will be the use of wood chips to provide a better surface for the trail and to delineate the trail.

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR’s authority to establish the trail.

In an abstract attached to a letter from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant’s SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant’s discussion with staff at Na Ala Hele, the applicant recognizes DLNR, as the successor to the “Commissioner of Public Lands” and DLNR’s right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the

trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

The State Historic Preservation Division has determined that the project has been through the historic preservation review process and that mitigation has been completed and their office believes that “no historic properties will be affected” by this undertaking.

2. Cultural Survey

Cultural Surveys Hawaii, Inc. prepared a “Limited Cultural Impact Assessment for an Approximately 40-acre Coastal Property in Moloa’a *Ahupua’a*, Ko’olau District Island of Kaua’i”, dated July 2003, for the applicant.

The cultural impact assessment is included in Appendix II.

Section VIII, Summary and Recommendations, of the cultural impact assessment states as follows:

“A. SUMMARY

The cultural impact assessment attempted to identify potential effects present and future development activities may have on traditional cultural practices and traditions. The following areas were focused upon during the course of the assessment: burials, Hawaiian trails, hunting and gathering practices for plant and animal resources, and archaeological reports and historic

properties. Through consultation with informants, reviews of archaeological reports and historic research, five primary concerns were identified: (1) Shoreline access to gather marine resources; (2) Impacts future mechanical activities may have on the marine resources; (3) Possible human burials; (4) Archaeological sites; and (5) Impacts to the overall ambiance of Moloa'a Bay.

Moloa'a Bay is accessible to the public by two public right-of-ways: one to the north and one to the south of Moloa'a Stream. Through informant testimonies, it was very apparent that access to the northeastern flank of the project area is critical for locals who fish and gather marine resources. The fringing reef on the northeastern side of the project area is known to be one of the few places remaining in the State of Hawai'i where the rare variety of *limu kohu* can still be gathered. A trail, leading from Moloa'a bay, northwest through the edge of the project area, terminates at the high point between Moloa'a Bay and the adjacent *ahupua'a* of Ka'aka'aniu. Locals, as well as tourist, are known to frequent this trail at all times of the day. In recent years, informants indicated that portions of the trail have been restricted to the public. All informants indicated, in no uncertain terms, that restrictions imposed by private landowners limit gathering of marine resources in the most prime gathering areas of in Moloa'a Bay and adjoining K'aka'aniu. All *the kama'aina* who commented on the cultural impact assessment expressed concern regarding public access via this trail.

Another major concern voiced by *kama'aina* is the impacts future mechanical activities may have on marine and estuary resources. Recent mechanical grading

within the project area has occurred, and locals expressed that sediment runoff into the stream and into the bay have impacted the marine resources, including the *limu kohu*. Locals from all over Kaua'i frequent the bay and vicinity to gather a variety of marine resources. All informants voiced strong regarding the integrity and fragile nature of the resources within the bay and stream.

No discoveries of human burials have been documented within the project area, but a subsurface cultural layer has been documented (50-30-04-1033). Human burials are known to exist in sandy areas throughout the state of Hawai'i, and concerns regarding inadvertent burials along the beachfront and along Moloa'a Stream is of deep concern. One informant did indicate that prehistoric human burials were inadvertently exposed during the tidal wave of 1958 at the mouth of Moloa'a stream. Consultation with Ms. Nancy McMahan of the State Historic Preservation Division and Ms. La France Kapaka-Arboleda of the Kaua'i Island Burial Council resulted in no known documented burials or "talk story" of human burials within the project area.

State Site 50-30-04-1034 is the aforementioned trail that traverses the project between Moloa'a Bay and Ka'aka'aniu to the northwest. The trail is unmodified and consists of a well-worn trodden path that allows for public access to the Moloa'a Bay from Larsen's Beach in Ka'aka'aniu. The fringing reef adjacent to the eastern side of the trail is one of the few places where *limu kohu* is still available for gathering. Access via this trail has played a critical role in the subsistence of the Moloa'a people in historic, and presumably in pre-contact times.

As mentioned previously, access to sections of the trail have been restricted to the public in recent years.

Concerns were also expressed regarding possible impacts on Moloa'a Bay by development in adjacent areas. Many *kama'aina* indicated that within the last ten years timeshares and bed and breakfast endeavors have drastically changed the overall ambiance of Moloa'a. The change has been so drastic that several *kama'aina* consulted indicated that they no longer go to Moloa'a Bay because they do not feel welcomed. No trespassing signs displayed by private landowners in adjacent bay properties ward off locals who have been coming to the bay to gather resources for generations. Public parking also adds to the frustration of locals who are forced to park in dangerous areas off the highway or on hairpin turns on Moloa'a Road. Many *kama'aina* are reluctant to visit the area because of the rapid changes occurring in Moloa'a. The sense of traditional Hawaiian lifestyles and fond memories of family traditions in Moloa'a make visiting too overwhelming for some locals today.

B. RECOMMENDATIONS

The following recommendations are suggested to mitigate cultural concerns identified during the preparation of this cultural impact assessment.

Open public access along the shoreline of the project area should be maintained at all times. Individuals should have the right to access these areas for traditional cultural practices, which include the gathering of marine resources. It is important that the landowner observe and maintain the State shoreline setback for public access.

Regarding future mass grading and development activities within the project area, it is recommended that grubbing be completed during the driest months of the year and limited to very a small section at a time (as in bit-by-bit grubbing). Soil sheeting should be placed down in areas where grubbing has occurred to prevent runoff into Moloa'a Stream and Bay. It is further recommended that any tree removal and mass grading along the coast needs to done very carefully.

As noted in the archaeological investigation of the project area, a historic trail and a subsurface cultural layer have been recorded within the project area. As indicated in the archaeological assessment (Borthwick *et al.*, 1999), both sites were recommended for preservation. Further recommendations indicated no ground disturbing activities such as bulldozing, mechanical vegetation clearing or construction activities on these sites. Any proposed impacts to the sites should be planned in consultation with the State Historic Preservation (SHPD) and the Kaua'i Island Burial Council.

Although no burials are indicated within the project area, the sandy sediment along the beachfront and slopes of the project area, as well as the presence of a subsurface cultural layer, both warrant concerns regarding human burials. Regarding the discovery of burials, state law (Chapter 6E, Hawai'i Revised Statutes) requires the following:

1. Stop all disturbing activities in the immediate area.
2. Leave all remains in place.

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3. Immediately notify the State Department of Land and Natural Resources - State Historic Preservation Division (DLNR/SHPD) and the county police department.

Further procedures are in place to ensure that proper treatment of any burial finds is coordinated with appropriate agencies, including the DLNR/SHPD and the Kaua'i/Ni'ihau Island Burial Council.

Moloa'a Bay is one of the prime places on Kaua'i where marine resources are actively gathered in a traditional manner. Damage to near shore reefs, lateral shoreline access, and impacts to cultural and customary practices can occur without very careful land development planning and activities. It is therefore strongly recommended that the procedures outlined above be incorporated into land management practices for the project area.”

The applicant plans to follow the recommendations of the cultural impact assessment as follows:

1. Access along the shoreline will be maintained and no improvements are planned within the State or County shoreline setback.
2. Mass grading is not planned for this project. Spot grading will be done in areas where soil erosion has created severe cuts in the slope and where the existing roadway has been washed away. Best management practices will be followed in providing silt curtains as needed and hydromulching bare areas as soon as practicable to

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minimize soil erosion. Tree removal is planned for the upper slopes of Moloa'a Bay and not near the coastline. Should future landscaping plans include tree removal near the coastline, care will be taken to minimize impacts to the near shore waters.

3. As mentioned earlier, in relation to the archaeological assessment, the applicant plans to follow the recommendations of the archaeological assessment and plans no activity near site 50-30-04-1033. The only activity planned at site 50-30-04-1033 will be the use of wood chips to provide a better surface for the trail and to delineate the trail. The wood chips provide a walking surface that will also help preserve the trail. The applicant further plans a three-rail fence to provide security for the portion of the applicant's land mauka of the trail and to further delineate the trail for the general public.
4. Regarding the discovery of burials, the applicant will comply with state law (Chapter 6E, Hawai'i Revised Statutes) which requires the following, should any inadvertently discovered archaeological features or remains are found :
 - a. Stop all disturbing activities in the immediate area.
 - b. Leave all remains in place.
 - c. Immediately notify the State Department of Land and Natural Resources - State Historic Preservation Division (DLNR/SHPD) and the county police department.

3. Natural Resources

a. Water Resources

The Moloaa Stream, Moloaa Bay and the Pacific Ocean abuts the subject property and which is also located in the Special Management Area (SMA). The proposed landscape improvements, roadway repair and three-rail fence development will have not have a significant impact on effect on these bodies of water. In fact, the proposed improvements will help reduce soil erosion from the property.

b. Flood Plain Management

The upper area of the project site is within the Zone X. A portion of the property is designated within the 100-Year Floodway Fringe (Zone VE) by FEMA.

Based on a discussion with staff of the County of Kauai Department of Public Works, the applicant understands that the County's Ordinance No. 831 (Flood Ordinance) was patterned after Title 44 of the Code of Federal Regulations (44CFR, minimum standards established by the National Flood Insurance Program, NFIP). The applicant further

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understands that he will be responsible for meeting the requirements of the County's Ordinance No. 778 (dealing with storm water runoff). The applicant will meet requirements of Ordinance Nos. 831 and 778 and also 44CFR, as applicable.

c. Wetlands Protection

The project site located on the slopes of Moloaa contains no wetlands.

d. Coastal Zone Management

The development site is within the coastal zone management area and within the County's Special Management Area and a SMA use permit has been filed with the Planning Department of the County of Kauai for review.

e. Unique Natural Features

The development site is unimproved land above the cliffs of Moloaa Bay. The project site itself does not contain any unique natural features, however, the project site does abut Moloaa Bay which is a unique natural feature that provides recreational venues for the residents and visitors of Kauai.

f. Flora and Fauna

The vegetation within the Conservation District and the Special Management Area on this property has been intensively altered by human activities, especially ranching, for many decades and is typical of highly disturbed areas within the Hawaiian Islands. The natural vegetation of this area before human alteration would have been coastal dry shrubland with a diverse mix of native species. We find that one result in the elimination of grazing on the slopes has resulted in the proliferation of ironwood trees, an invasive tree that has proliferated like a weed since it was uncontrolled when grazing was terminated. The heavy shade and dense mat of the ironwood tree limits the growth of other plants and grasses resulting in bare soil under the mat of needles.

Diane Ragone, Ph.D. of the National Tropical Botanical Garden surveyed the subject property on June 8, 1999 and provided a Horticultural Report (Appendix III). This report found that none of the plants on the subject property are threatened or endangered species and

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reiterated the problems of erosion created by the invasive ironwood trees.

Phillip L Bruner, Environmental Consultant, has prepared an avifaunal and feral mammal field survey of Moloaa Bay Ranch, for the applicant. The field survey is titled “Avifaunal and Feral Mammal Field Survey of Moloaa Bay Ranch, Kauai” and dated January 30, 2003. The Avifaunal and Feral Mammal Field Survey is provided in Appendix IV.

The Field Survey section “Summary and Conclusions” states as follows:

“The field survey examined all habitats on the property. The typical array of introduced birds and mammals were recorded. The relative abundance of these species was likewise similar to that found on other surveys of nearby lands. The presence of courting Laysan Albatross was not entirely unexpected since there is an active breeding colony at Kilauea Point National Wildlife Refuge. Whether or not a long term successful breeding colony can be established on or near this Moloaa property will in part depend on the predator impact from dogs, cats and pigs on the eggs, young and even adults. Nesting Laysan Albatross on Oahu have often been predated by dogs (pers. Obser.). The presence of a

fair number of wintering Pacific golden-Plover is due to the mowed lawn areas on the ridge tops. Plover can only forage in grasslands where the grass is kept low by either mowing or grazing mammals.

The absence of the Hawaiian Hoary Bat was a little unusual since it has been recorded on all of the other surveys I have conducted in this region of the island. The fact that it was missed on the survey was likely just a matter of chance.

The habitats on this property have all been modified by cutting and the spread of introduced species of plants. Native land birds like the Nene are able to utilize altered environments.”

g. Agricultural Lands

The development site is within the Conservation District where its use will not impact agricultural lands or lands with the potential for agricultural use. The upper plateau of table land is utilized as a plant and tree nursery and the planned landscaping improvements will not affected the continued use of the upper plateau as a nursery.

h. Open Space

The proposed landscape improvements serves as the applicant's commitment to protecting, preserving, and where desirable, restoring or improving the quality of the coastal scenic and open space resources. The landscape improvements will reduce the potential for soil runoff and will preserve the landscaped open space along the slopes of Moloaa Bay.

i. Topography

The subject site consists of hilly, mountainous land that slopes towards the shoreline of Moloaa Bay. The elevation ranges from mean sea level to 200 feet above mean sea level.

j. Soils

The U.S. Department of Agriculture Soil Conservation Service Soil Survey Report for the Island of Kauai classifies the soils for this area as Beaches (BS), Badland (BL) and Rough Broken Land (rRR). Beaches (BS) occur as sandy, gravelly, or cobbly areas on all the island in the survey area. They are washed and rewashed by

ocean waves. The beaches consist mainly of light-colored sands derived from coral and seashells. A few of the beaches, however, are dark colored because their sands are from basalt and andesite. These soils are used almost entirely for recreational uses and resort development. There is no value for farming.

Badland consists of steep or very steep, nearly barren land, ordinarily not stony. The soil-forming material is generally soft or hard saprolite. The annual rainfall amounts to 22 to 60 inches. Elevations range from nearly sea level to about 3,000 feet. This land type occurs on the island of Kauai. Runoff is very rapid, and geological erosion is active. Included in mapping were areas of Kalapa, Lihue, and Makaweli soils. This land type is used for water supply and wildlife habitat. Ironwood trees have been planted in areas with this soil.

Rough Broken Land (rRR) consists of very steep land broken by numerous intermittent drainage channels. In most places it is not stony. It occurs in gulches and on mountainsides on all

the islands except Oahu. The slope is 40 to 70 percent. Elevations range from nearly sea level to about 8,000 feet. The local relief is generally between 25 and 500 feet. Runoff is rapid, and geologic erosion is active. The annual rainfall amounts to 25 to more than 200 inches.

These soils are variable. They are 20 to more than 60 inches deep over soft, weathered rock. In most places some weathered rock fragments are mixed with the soil material. Small area of rock outcrop, stones, and soil slips are common. Included in mapping were areas of colluvium and alluvium along gulch bottoms. This type of land is used primarily for watershed and wildlife habitat.

k. Noise

Short term noise impacts at construction sites are a normal result of construction activity. The State Department of Health administers rules and regulations relating to the hours during which construction is permitted and the noise levels permitted during those hours. The contractor will be required to apply for a permit from the State

Department of Health should noise from construction activities exceed regulatory limits. The contractor will abide by the noise regulations incorporated into the permit.

The proposed landscape, grading, roadway and three-rail fence improvements will not generate any long-term noise impact.

1. Air Quality

The area's air quality is relatively clear and low in pollution. This is due, in part, to the prevailing trade winds from the ocean, and the distance from major urban areas that produce the majority of the pollutants.

The proposed landscape, grading, road repair and three-rail fence improvements will result in short-term air quality impacts due to construction activity. The area's ambient air quality may be affected by dust raised during site preparation activities, and by exhaust fumes from construction equipment. Fugitive dust is an inevitable consequence of soil handling/movement but can be controlled by water sprinkling and/or the application of dust suppressants.

Combustion discharge from construction equipment and vehicles are not anticipated to significantly alter ambient air quality, and can be minimized by proper operation and maintenance of all petroleum-fueled equipment. In addition, the prevailing winds can be expected to dilute and disperse exhaust emissions away from most existing homes.

The proposed landscape, grading, roadway and three-rail fence improvements will not generate any adverse long-term air quality impact. In fact, the reduction in areas of bare soil through landscaping and grading will provide a positive impact on air quality.

m. Visual Impact

The proposed landscaping, grading, roadway and three-rail fence improvements will not have a significant impact on views of the slopes along Moloaa Bay. The more visible three-rail fence will provide a rustic looking improvement in keeping with the open rural look of the slopes of Moloaa Bay. The proposed landscape improvements will result in a greening

of the slopes and a reduction in bare soil areas, all of which will serve to improve the view of the slopes from the bay.

n. Hazards

The development site does not contain any nuisances, airport clear zones, or other features which would jeopardize its development.

I. MAJOR IMPACTS AND ALTERNATIVES CONSIDERED

As mentioned throughout this report the proposed landscape, grading, roadway and three-rail fence improvements will not have a significant impact on the surrounding area in terms of public services and the environment. The improvements will have a positive impact on the environment in reducing the potential for soil erosion.

1. No Action

This alternative was considered and rejected due to the need to reduce the potential for soil erosion on the project site; a need to provide adequate delineation for the general public of the location of the trail on the property and to secure the mauka portion of the property; a need to repair an existing roadway in the project area to provide access for landscape

maintenance; and the Board of Land and Natural Resources requirement for reforestation of the site.

2. Alternative Action

One alternative that was considered was simply meeting the requirement of the Board of Land and Natural Resources requirement for reforestation of the site. This alternative, although the least costly does not provide for the reduction of bare soil areas; the repair of the roadway needed to provide access to maintain the planned landscape improvements; elimination of additional ironwood trees that have created the erosion problem; and would not serve the need to provide adequate delineation for the general public of the location of the trail on the property and to secure the mauka portion of the property.

J. MITIGATION MEASURES

Since impacts from the proposed landscape, grading, roadway and three-rail fence improvements will not have a significant impact on the surrounding area in terms of public services and the environment, no extraordinary mitigation measures are planned. However, in order to minimize short-term construction impacts of the project, the applicant's contractor will employ dust control measures where

appropriate, including the use of water wagons, erection of barriers, and other methods for minimizing dust.

The applicant will ensure that clearing and planting activities will be restricted to periods of minimal rainfall and areas denuded of vegetation which could be susceptible to wind or water erosion are appropriately stabilized through use of best management practices, including providing silt curtains, as needed, and hydromulching bare areas as soon as practicable to minimize soil erosion.

Best management practices will be followed to prevent debris, eroded soil, petroleum products, landscaping chemicals (herbicides, pesticides, etc.) and other potential contaminants from flowing, blowing or leaching into Moloaa Stream, Moloaa Bay and Naupaka Beach. In addition, use of landscaping chemicals, if needed, will be limited to periods when there will not be significant wind drift and periods of minimal rainfall to minimize leaching.

The contractor will also utilize best management practices in reducing soil runoff through use of silt curtains and other effective mitigative measures. The contractor will also be required to apply for a permit from the State Department of Health should noise from operation of construction equipment

exceed regulatory limits. The contractor will abide by the noise regulations incorporated into the permit.

The applicant will ensure that public access to shoreline areas will not be blocked during the reforestation project.

K. GOVERNMENT PERMITS AND APPROVALS REQUIRED

The development will require the following governmental permits or approvals:

- Special Management Area Use Permit from the Planning Commission, County of Kauai
- Environmental Assessment and Conservation District Use Permit from the Board of Land and Natural Resources
- Grading Permit from the Department of Public Works, County of Kauai

L. SIGNIFICANCE CRITERIA

The following review of the significance criteria indicates that the development will not have a significant impact on the environment.

- **No irrevocable commitment to loss or destruction of any natural or cultural resource would result.**

The proposed landscape, grading, roadway and three-rail fence improvements do not represent an irrevocable commitment resulting in loss or destruction of any natural or cultural resource. It will in fact

enhance the open space area by reducing the potential for soil runoff and restoring grades that will accept landscaping to improve the look of the slopes of Moloaa Bay.

The project site has been unimproved land for many years and two significant historic sites found during the archaeological survey, as reported in the archaeological assessment for the project: (50-30-03-1033- buried cultural deposit, and 50-30-04-1034-trail). These sites are to be preserved. No further archaeological work is required.

The proposed landscape, grading, roadway and three-rail fence improvements will involve primarily surface alterations with limited excavation, however, if any archaeological, burial, or historic features are discovered during the grading, landscaping, repair of the road or installation of the three-rail fence, the applicant's contractor (earthwork) will be instructed to immediately stop work and contact the State Historic Preservation Division (SHPD) for review and approval of proposed mitigation measures should any previously unidentified historic sites (including but not limited to artifacts, shell, bone, or charcoal deposits, human burials, rock or coral

alignments, pavings or walls) be encountered during the landscape improvements of Moloaa Bay Ranch approved under this Environmental Assessment. Work in the immediate area shall be stopped until SHPD is able to assess impacts and make further recommendations for appropriate mitigation measures, which in the case of burials may involve coordination with the Kaua'i/Ni'ihau Island Burial Council.

- **The action would not curtail the range of beneficial uses of the environment.**

The proposed landscape, grading, roadway and three-rail fence improvements will not curtail, but will instead enhance the range of beneficial uses of the environment. The project site will be improved with landscaping and much of the areas of bare soil will be eliminated. The areas of cut created by soil erosion and soil runoff will be restored to a more natural grade/slope and grassed. The access road needed to maintain the existing and planned landscaping will be improved. The existing trail on the property will be improved and better delineated. Invasive ironwood trees on the upper slopes of Moloaa will be eliminated to further reduce the potential for soil erosion.

- **The proposed action does not conflict with the state's long-term environmental policies or goals and guidelines.**

The State's environmental policies and guidelines are set forth in Chapter 344, Hawaii Revised Statutes, "State Environmental Policy". The broad policies set forth include conservation of natural resources and enhancement of the quality of life. As discussed earlier, the development does not adversely affect significant natural resources, in fact, the landscape improvements will substantially benefit the natural resources and enhance the scenic views of the mountainside from the Bay.

- **The economic or social welfare of the community or state would not be substantially affected.**

The proposed landscape, grading, roadway and three-rail fence improvements will have a positive impact on the economic and social welfare of the community. The economic benefit will be limited to short-term employment during the implementation of the landscaping and other improvements. The social welfare of the community will be enhanced with an improved view of the slopes of Moloaa Bay and a reduction in the

potential for soil runoff into Moloaa Bay, protecting an important recreational and cultural resource.

- **The proposed action does not substantially affect public health.**

The proposed landscape, grading, roadway and three-rail fence improvements will not affect public health, other than to protect an important recreational and cultural resource, Moloaa Bay.

- **No substantial secondary impacts, such as population changes or effects on public facilities, are anticipated.**

The proposed landscape, grading, roadway and three-rail fence improvements will not entail secondary impacts, such as population changes or effect public facilities, since municipal services will not be required for the landscaped sloped areas.

- **No substantial degradation of environmental quality is anticipated.**

The development will not result in degradation of the environment. In fact, the proposed landscape, grading, roadway and three-rail fence improvements will enhance the natural environment. The project site will be improved with landscaping and much of the areas of bare soil will be eliminated. The areas of cut created by

soil erosion and soil runoff will be restored to a more natural grade/slope and grassed. The access road needed to maintain the existing and planned landscaping will be improved. The existing trail on the property will be improved and better delineated. Invasive ironwood trees on the upper slopes of Moloaa will be eliminated to further reduce the potential for soil erosion.

Only minimal short-term environmental impact is projected during the construction phase with the use of construction machinery on the project site and temporary bare soils during the spot grading to repair cuts in the slope caused by soil erosion. Construction equipment will be kept in good working order to minimize air quality impacts and dust control measures appropriate to the situation will be employed by the contractor, including where appropriate, the use of water wagons, erection of silt curtains to minimize soil runoff, prompt hydromulching and other methods for minimizing dust and erosion.

- **The proposed action does not involve a commitment to larger actions, nor would cumulative impacts result in considerable effect on the environment.**

The proposed landscape, grading, roadway and three-rail fence improvements does not involve a

commitment to larger actions nor will it result in cumulative impacts to the environment. The proposed improvements are not a prelude to future development on the project site and will not generate future developments, creating a cumulative impact.

- **No rare, threatened or endangered species or their habitats would be affected.**

As detailed in our horticultural survey and fauna survey, no rare, threatened, or endangered species or their habitats would be affected in the proposed development.

- **Air quality, water quality or ambient noise levels would not be detrimentally affected.**

Short-term impacts on air quality are expected to be primarily related to dust generated by the construction activity. Dust control measures appropriate to the situation will be employed by the contractor, including where appropriate, the use of water wagons, erection of dust barriers and other methods for minimizing dust.

Short-term noise impacts at construction sites are a normal result of construction activity. The State Department of Health administers rules and regulations relating to the hours during which construction is permitted and the noise levels permitted during those

hours. The contractor will be required to apply for a permit from the State Department of Health should noise from construction activities exceed regulatory limits. The contractor will abide by the noise regulations incorporated into the permit.

Upon completion of the proposed landscape, grading, roadway and three-rail fence improvements the applicant expects an improvement to air quality and water quality at Moloaa Bay with a reduction in airborne soils since areas of bare soil will be reduced and the potential for soil runoff into the bay will also be reduced.

- **The project would not affect environmentally sensitive areas, such as flood plains, tsunami zones, erosion-prone areas, geologically hazardous lands, estuaries, fresh waters or coastal waters.**

The majority of the project site is in Zone X, an area determined to be outside the 500 year flood plain. However, a small portion of the property, closer to the coastline, is designated within the 100-Year Flood Zone VE (Elevation 23), by FEMA (coastal flood with velocity hazard, wave action; base flood elevations determined).

The proposed landscape and grading improvements will occur primarily outside of the 100-

Year Flood Zone, above the 23-foot elevation. Portions of the roadway and three-rail fence may occur within the 100-Year Flood Zone, however, these improvements will be designed to minimize impact from coastal floods with velocity.

The proposed developments will have a positive impact on the slopes of Moloaa Bay and the bay itself by providing better landscaping and reducing the amount of areas of bare soil and reducing the potential for soil runoff into the bay.

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

The proposed project will improve the scenic vista and view plane of the slopes of Moloaa Bay.

- **Requires substantial energy consumption.**

The proposed project will not require substantial long-term energy consumption.

M. DETERMINATION

Based on this Final Environmental Assessment and Conservation District Use Permit, a Finding of No Significant Impact (FONSI) for the proposed landscape improvements for Moloaa Bay Ranch is requested.

VII. DESCRIPTION OF PARCEL

A. EXISTING STRUCTURES/USE

See Plans provided in Appendix V. The existing roadway is the only improvement on the subject property, in the Conservation District. The applicant has submitted an application to the Planning Department, County of Kauai, for a Special Management Area Use Permit for the proposed landscape, grading, roadway and three-rail fence improvements.

B. EXISTING UTILITIES

Utilities, including water, electricity, and telephone are provided to the adjacent area outside of the Conservation District and except for water are not required for the planned grading, landscaping and roadway improvements proposed on the site. Temporary irrigation lines will be placed on the subject property to provide water for the planned landscape improvements.

C. EXISTING ACCESS

The project site is approximately five miles north of Anahola off an easement off of Koolau Road, which is located makai of Kuhio Highway.

The proposed project area is part of a larger parcel, Tax Map Key No. (4) 4-9-011: 001 that consists of two parts:

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Allotment 1-A (approximately 103.464 acres), and the Thronas lot (approximately 43.569 acres). The project area is about 45 acres of Allotment 1-A located along Moloaa Bay.

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR's authority to establish the trail.

In an abstract attached to a letter from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant's SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant's

discussion with staff at Na Ala Hele, the applicant recognizes DLNR, as the successor to the “Commissioner of Public Lands” and DLNR’s right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

Traditional and customary access to Moloaa Stream for specific neighbors in Moloaa is protected on the applicant’s deed for the property and will continue to be honored.

D. FLORA AND FAUNA

As mentioned earlier, the vegetation within the Conservation District and the Special Management Area on this property has been intensively altered by human activities, especially ranching, for many decades and is typical of highly disturbed areas within the Hawaiian Islands. The natural vegetation of this area before human alteration would have been coastal dry shrubland with a diverse mix of native

species. We find that one result in the elimination of grazing on the slopes has resulted in the proliferation of ironwood trees, an invasive tree that has proliferated like a weed since it was uncontrolled when grazing was terminated. The heavy shade and dense mat of the ironwood tree limits the growth of other plants and grasses resulting in bare soil under the mat of needles.

Diane Ragone, Ph.D. of the National Tropical Botanical Garden surveyed the subject property on June 8, 1999 and provided a Horticultural Report (Appendix III). This report found that none of the plants on the subject property are threatened or endangered species and reiterated the problems of erosion created by the invasive ironwood trees.

Phillip L Bruner, Environmental Consultant, has prepared an avifaunal and feral mammal field survey of Moloaa Bay Ranch, for the applicant. The field survey is titled “Avifaunal and Feral Mammal Field Survey of Moloaa Bay Ranch, Kauai” and dated January 30, 2003. Avifaunal and Feral Mammal Field Survey is provided in Appendix IV.

The Field Survey section “Summary and Conclusions” states as follows:

“The field survey examined all habitats on the property. The typical array of introduced birds and mammals were recorded. The relative abundance of these species was

likewise similar to that found on other surveys of nearby lands. The presence of courting Laysan Albatross was not entirely unexpected since there is an active breeding colony at Kilauea Point National Wildlife Refuge. Whether or not a long term successful breeding colony can be established on or near this Moloaa property will in part depend on the predator impact from dogs, cats and pigs on the eggs, young and even adults. Nesting Laysan Albatross on Oahu have often been predated by dogs (pers. Obser.). The presence of a fair number of wintering Pacific golden-Plover is due to the mowed lawn areas on the ridge tops. Plover can only forage in grasslands where the grass is kept low by either mowing or grazing mammals.

The absence of the Hawaiian Hoary Bat was a little unusual since it has been recorded on all of the other surveys I have conducted in this region of the island. The fact that it was missed on the survey was likely just a matter of chance.

The habitats on this property have all been modified by cutting and the spread of introduced species of plants. Native land birds like the Nene are able to utilize altered environments.”

E. TOPOGRAPHY

The subject site consists of hilly, mountainous land that slopes towards the shoreline of Moloaa Bay. The elevation ranges from mean sea level to 200 feet above mean sea level. A contour map is provided as part of the Grading Plan which is provided in Appendix V.

F. SHORELINE AREA

The subject site consists of a shoreline that includes, a sandy beach area and a rocky coast with low cliffs on a portion of the shoreline. Most of the proposed improvements, however, occur well mauka of the shoreline and will not affect the shoreline or the coastal ecosystem. The one improvement located closer to the shoreline, but beyond the 40-foot shoreline setback is the proposed three-rail fence planned to provide security and to better delineation of the trail on the property.

G. EXISTING COVENANTS, EASEMENTS AND RESTRICTIONS

The only covenant, easement or restriction on the project site is the trail easement described in detail earlier.

H. HISTORIC SITES

As mentioned earlier, Cultural Surveys Hawaii prepared an “Archaeological Assessment of an Approximately 40-Acre Parcel in Moloa’a *Ahupua’a*, Ko’olau District, Island of Kaua’i” in November 1999. This archaeological assessment was submitted to the State Historic Preservation Division for review and recommendations. The State Historic Preservation Division, in a letter dated November 8, 1999, determined that “It is an acceptable report. Two significant historic sites were

found (50-30-04-1033 – a buried cultural deposit and 50-30-04-1034 - trail). These sites are to be preserved. No further archaeological work is required.”

The State Historic Preservation Division, however, further stated that “One concern we have is why you did not try to collect a sample for radiocarbon dating from the exposed cultural deposit site 50-30-04-1033? Please explain this.”

Cultural Surveys Hawaii filed an Addendum to the Archaeological Assessment with the State Historic Preservation Division on December 24, 2002 and received a response letter from the Division, dated January 16, 2003, accepting the assessment report as final (with submission of the addendum which provided a radiocarbon date of AD 1400-1700 for site 50-30-04-1033).

The archaeological assessment, the addendum and the response letters from the State Historic Preservation Office are included in Appendix I.

VIII. COMMENCEMENT AND COMPLETION DATE

The proposed improvements will be implemented upon approval of required permits, including a Special Management Area Use Permit from the Planning Commission, County of Kauai; an Environmental Assessment accepted by the Department of Land and

Natural Resources; approval of a Conservation District Use Permit from the Board of Land and Natural Resources; and approval of a grading and grubbing permit from the Department of Public Works, County of Kauai. The applicant projects that these permits will be processed and approved within 1½ to 2 years and that implementation of proposed improvements will commence in the first quarter of 2006 and completed within six months.

IX. CITE AND DESCRIBE IN DETAIL THE PROPOSED IDENTIFIED LAND USE

A. L-3 EROSION CONTROL
P-9 STRUCTURES, EXISTING

“Erosion control, flood control, and other hazard prevention devices or facilities.” “Demolition, grading, removal or alteration of topographic features.” The applicant plans to grade the property to restore previous grades to washed out areas and even out the slopes on land in the Conservation District to curb erosion. Immediately after restoring the grade, the soil will be hydromulched and watered. Temporary irrigation will be provided to ensure that the grass will establish itself and mitigate potential for erosion. (Requires Board Permit)

B. P-4 LANDSCAPING, REMOVAL OF NOXIOUS
PLANTS

“Landscaping, defined as alteration (including clearing of plant cover.” The applicant proposes to implement a Reforestation Master Plan required by the Board of Land and Natural Resources as part of the action to resolve a violation of Chapter 13-5, Hawaii Administrative Rules, Chapter 183C, Hawaii Revised Statutes, for failing to obtain the appropriate approvals for unauthorized tree removal at Moloaa Bay Ranch, Moloaa, Koolau, Kauai, Hawaii. The trees of concern were 15 ironwood trees that were over 6-inches in diameter. The applicant plans to grass all bare areas on the slopes of Moloaa Bay Ranch and to provide for replacement, on a one for one basis, of the 15 ironwood trees that were removed with 15 False Kamani trees. The applicant plans to provide an additional 17 False Kamani trees and 9 Beach Heliotrope trees. (Requires a Departmental Permit)

In addition, the applicant plans to install a 3-rail perimeter security fencing (with a 4-foot height) to delineate the mauka boundary of an existing trail used by the public. (Requires a Departmental Permit)

C. P-9 STRUCTURES, EXISTING

“Replacement or reconstruction of existing structures and facilities as identified in the exempt classes established in section 11-200-8, except as provided in section 13-5-37 where the new structure will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.” The applicant plans to repair the existing roadway that has been washed out in certain areas. The existing roadway will be restored to it’s previous condition and retaining walls will be provided, as needed to ensure that the roadway will not be readily affected by heavy rains. The roadway qualifies as reconstruction of an existing facility identified in the exempt classes established in section 11-200-8. (Requires no permit from the Department or Board)

D. P-12 TREE REMOVAL

“Removal of more than five trees, six inches or greater in diameter measured at ground level.” The applicant plans to remove ironwood trees on the upper slopes of Moloaa Bay Ranch, within the Conservation District. These ironwood trees are an invasive species that drops needles that cover large areas of soil and restricts growth of ground cover which leads to serious erosion problems. In order to reduce

problems with soil erosion, these ironwood trees on the slopes of Moloaa Bay Ranch will be replaced on a one for one basis with Coconut Palms, False Kamani and Beach Heliotrope trees. (Requires Board Permit)

X. AREA OF PROPOSED USE

Approximately 40 acres.

XI. NAME AND DISTANCE OF NEAREST TOWN OR LANDMARK

The nearest landmark is Moloaa Bay which abuts the project site. The nearest town is Anahola, Kauai which is located about 5 miles south of the project site.

XII. LAND USE COMMISSION BOUNDARY INTERPRETATION

A Land Use Commission boundary interpretation is provided in Appendix VI.

XIII. SUBZONE BOUNDARY INTERPRETATION

The project site is in the limited and general subzones.

XIV. FEES

Enclosed is a cashier's check for \$2,250.00 in accordance with fee requirements of Chapter 13-5, HAR.

XV. PLANS

A. AREA PLAN

An Area Plan is included in Appendix V. A list with the names and addresses of abutting property owners is provided in Appendix VII.

B. SITE PLAN

A Site Plan is provided in Appendix V.

C. CONSTRUCTION PLAN

A Grading Plan is provided in Appendix V. A Reforestation Master Plan is provided in Appendix V.

D. MAINTENANCE PLANS

Maintenance Plans are not required for this project (does not involve power transmission, fuel lines, drainage systems, unmanned communication facilities or public roads).

E. ARCHAEOLOGICAL SITE PLAN

An archaeological site plan is included in the archaeological assessment provided in Appendix I.

XVI. CONSISTENT WITH FOLLOWING CRITERIA

A. 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 their long-term sustainability and the public health, safety and welfare.”

The proposed land use is consistent with the purpose of the Conservation District since the proposed improvements will help to protect and preserve the vegetation on the slopes of Moloaa Bay and will help to

reduce the potential for soil runoff into the Bay, protecting and preserving the Bay and the coastal resources provided by the Bay.

B. OBJECTIVES OF SUBZONE

The objective of the Limited subzone is “to limit uses where natural conditions suggest constraints on human activities.”

The proposed land use is consistent with this objective in that it does not provide for an increase in human activities on the slopes of Moloaa Bay, but proposes to provide a landscaped area that will reduce the potential for soil erosion and will protect and preserve the resources of the Bay. The project will, however, provide better delineation of an existing trail that is presently used by residents and visitors to Kauai. Passive activities such as hiking, provided by this trail represent appropriate human activities on the property.

The objective of the General subzone is “to designate open space where specific conservation uses may not be defined, but where urban use would be premature.”

The proposed land use is consistent with this objective in that it protects the slopes of Moloaa Bay, in which urban development is considered premature, since

there are other gently sloped lands situated in closer proximity to existing urban areas that would be more suited to future urban development.

C. CHAPTER 205A, HRS, "COASTAL ZONE
MANAGEMENT"

1. Objectives

- a. Provide coastal recreational opportunities accessible to the public;

The proposed land use will not affect public access to coastal recreational activities. Existing access over the trail will not be affected by the proposed land use.

- b. Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture;

The proposed land use will not affect the two significant historic sites that were found (50-30-04-1033 – a buried cultural deposit and 50-30-04-1034 - the Trail). These sites are to be preserved.

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

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

The proposed land use will protect the open space resource of the slopes above Moloaa Bay from further soil erosion.

- d. Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems;

The proposed removal of the invasive ironwood and grassing of the bare soil will protect the waters of the Moloaa Bay from potential soil erosion impact, which could adversely affect the coastal ecosystem.

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

The proposed land use will not affect the State's economy.

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

The proposed land use will reduce soil erosion on the slopes above Moloaa Bay.

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

The proposed land use represent the applicant's attempt to help preserve coastal resources

(ecosystem) at Moloaa Bay by eliminating the potential for soil erosion.

2. Policies

a. Recreation Resources:

- (1) Improve coordination and funding of coastal recreation planning and management; and

The planned land use will help to preserve the coastal recreational resource at Moloaa Bay by eliminating the threat of soil erosion.

- (2) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

- i. Protecting coastal resources uniquely suited for recreation activities that cannot be provided in other areas;

Moloaa Bay is known for its coral reefs that are considered a Heritage Resource of the Kawaihau Planning District and this unique resource will be protected by the actions of this land use planned to curb soil erosion.

- ii. Requiring replacement of coastal resources having significant

recreational value, including but not limited to surfing sites and sandy beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;

The proposed land use will not damage surf sites or sandy beaches and will in fact protect these areas from soil erosion.

- iii. Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

The Trail on the property will not be affected by the proposed improvements. The proposed 3-rail fence will provide better definition for the Trail and will keep unauthorized persons from straying onto private property. As explained above, although the Trail itself is on private property and the applicant is unaware of any access rights of the general public to use the Trail, the applicant has not attempted to close it from use by the public.

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

- iv. Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

The proposed improvements will not affect the supply of shoreline parks or other recreational facilities in the area.

- v. Encouraging expanded public recreational use of County, State, and federally owned or controlled shoreline lands and waters having recreational value;

The proposed land use will not affect shoreline lands or waters having recreational value and owned by the County, State or federal governments, except to reduce the potential for soil erosion into those waters.

- vi. Adopting water quality standards and regulating point and non-point sources of pollution to protect and where feasible restore the recreational value of coastal waters;

The proposed land use in reducing soil erosion impacts to the Moloaa Bay will help eliminate a non-point source of pollution to protect the

recreational value of the bay's coastal waters.

- vii. Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits, and crediting such dedication against the requirements of Section 46-6, HRS.

The proposed improvements are not part of a subdivision action that would trigger the requirement for dedication of land for recreational purposes.

b. Historic Resources

- (1) Identify and analyze significant archaeological resources;

As mentioned earlier, Cultural Surveys Hawaii prepared an "Archaeological Assessment of an Approximately 40-Acre Parcel in Moloa'a *Ahupua'a*, Ko'olau District, Island of Kaua'i" in November 1999. This archaeological assessment was submitted to the State Historic Preservation Division for review and recommendations. The State Historic Preservation Division, in a letter dated November 8, 1999, determined that "It is an acceptable report. Two significant historic sites were found (50-30-04-1033

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

– a buried cultural deposit and 50-30-04-1034 - trail). These sites are to be preserved. No further archaeological work is required.”

The State Historic Preservation Division, however, further stated that “One concern we have is why you did not try to collect a sample for radiocarbon dating from the exposed cultural deposit site 50-30-04-1033? Please explain this.”

Cultural Surveys Hawaii filed an Addendum to the Archaeological Assessment with the State Historic Preservation Division on December 24, 2002 and received a response letter from the Division, dated January 16, 2003, accepting the assessment report as final (with submission of the addendum which provided a radiocarbon date of AD 1400-1700 for site 50-30-04-1033).

The archaeological assessment, the addendum and the response letters from the State Historic Preservation Office are included in Appendix I.

- (2) Maximize information retention through preservation of remains and artifacts or salvage operations; and

The proposed land use will not affect the two significant historic sites that were found (50-30-04-1033 – a buried cultural

deposit and 50-30-04-1034 - Trail).
These sites are to be preserved.

- (3) Support State goals for protection, restoration, interpretation and display of historic resources.

The two significant historic sites on the property will be preserved.

c. Scenic and Open Space Resources

- (1) Identify valued scenic resources in the coastal zone management area;

The proposed land use will not adversely affect the scenic resources in the coastal zone management area. The planned improvements to protect against soil erosion will help to preserve the scenic resource of the slope bordering Moloaa Bay.

- (2) Insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

The proposed improvements involve limited structural improvements that will not have a significant adverse impact on views from the shoreline and to the shoreline from public viewing points.

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

- (3) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

The proposed land use will not affect shoreline open space and will not significantly impact scenic resources.

- (4) Encourage those developments, which are not coastal dependent to locate in inland areas.

The proposed landscape and soil erosion preventive measures are the only improvements occurring near the shoreline and are intended to protect the shoreline areas from soil erosion. The other improvements, including the 3-rail fence will be located a minimum of 45 feet from the shoreline and in many instances will be much further inland.

d. Coastal Ecosystems:

- (1) Improve the technical basis for natural resource management;

The proposed project will not impact this policy.

- (2) Preserve valuable coastal ecosystems of significant biological or economic importance;

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District Use Permit Application for Moloaa Bay Ranch

The reduction of the potential for soil erosion from this property will help preserve the coral reef recognized as an important heritage resource.

- (3) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and

The proposed project will not affect this policy as it does not affect stream alignment.

- (4) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate State water quality standards.

The proposed project will not affect this policy.

e. Economic Uses:

- (1) Concentrate in appropriate areas the location of coastal dependent development necessary to the State's economy;

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

The proposed land use does not involve development that would affect the State's economy.

- (2) Insure that coastal dependent development such as harbors and ports, visitor facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual and environmental impacts in the coastal zone management are; and

The proposed development does not involve these facilities and will not affect this policy.

- (3) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated area when:

- i. Utilization of presently designated locations is not feasible;
- ii. Adverse environmental effects are minimized; and
- iii. Important to the State's economy.

Final Environmental Assessment and Conservation
District Use Permit Application for Moloaa Bay Ranch

The proposed project does involve economic development activity and will not affect this policy.

f. Coastal Hazards:

- (1) Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence hazard;

The proposed development will not affect this policy.

- (2) Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard;

The only structural development in the tsunami wave hazard zone is the 3-rail fence, which with its open design will not impede wave action or affect upland areas.

- (3) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and

The 3-rail fence will be designed to comply with the requirements of the Federal Flood Insurance Program.

g. Managing Development:

- (1) Effectively utilize and implement existing law to the maximum extent possible in

managing present and future coastal zone development;

- (2) Facilitate timely processing of application for development permits and resolve overlapping of conflicting permit requirements; and
- (3) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the general public to planning and review process.

The proposed improvements will not affect these policies.

D. IMPACT TO EXISTING NATURAL RESOURCES

The proposed land use will not cause an adverse impact to existing natural resources within the surrounding area, but in fact will have a positive impact on Moloaa Bay by reducing the potential for soil erosion.

E. COMPATIBLE AND APPROPRIATE FOR THE AREA

The proposed land use includes a new three-rail fence and repair of an existing maintenance road as the only structures planned for the project. This three-rail fence and maintenance road repair are compatible and appropriate for the open nature of the project site and the surrounding area.

F. PRESERVE OR IMPROVE PHYSICAL AND ENVIRONMENTAL ASPECTS

The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved and improved upon by the proposed land use. The project will reduce the potential from soil runoff from the property and will provide grass and landscaping on areas of bare soil on the slopes of Moloaa Bay.

G. SUBDIVISION OF LAND

The proposed project does not involve the subdivision of land.

H. NOT DETRIMENTAL TO PUBLIC HEALTH, SAFETY AND WELFARE

The proposed project will not be materially detrimental to the public health, safety and welfare. The improvements will have a positive effect on the environment and will reduce the potential for soil runoff into Moloaa Bay.

**XVII. REFORESTATION PLAN APPROVED BY OFFICE OF
CONSERVATION AND COASTAL LANDS**

The letter from the Office of Conservation and Coastal Lands, Department of Land and Natural Resources (DLNR), dated October 7, 2003, approving the applicant's Reforestation Plan is included in Appendix VIII.

**XVIII. KUSAO & KURAHASHI, INC. LETTER TO DLNR DATED
FEBRUARY 20, 2003**

The letter from Kusao & Kurahashi, Inc. to the Office of Conservation and Coastal Lands, DLNR, dated February 20, 2003, detailing the erosion problem with the Ironwood trees and providing photographs of the site is included in Appendix IX.

XIX. AGENCY AND PUBLIC COMMENTS

The applicant has prepared point by point responses to each of the comments received during the agency and public review period for the Draft Environmental Assessment. Copies of the agency and public comment letters and the applicant's response are included in Appendix X. Agency and Public Comments.

XX. RECOMMENDATION

Based on this Final Environmental Assessment, a Finding of No Significant Impact (FONSI) for the proposed landscaping, tree removal and other improvements at Moloaa Bay Ranch. The proposed improvements will be developed in an environmentally sensitive manner and will not result in significant impact to the environment.

APPENDIX I
ARCHAEOLOGICAL ASSESSMENT



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING, ROOM 555
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND
STATE PARKS

January 16, 2003

Dr. David Shideler
Cultural Surveys Hawaii
733 N. Kalaheo Avenue
Kailua, Hawaii 96734

LOG NO: 31931
DOC NO: 0212NM17

Dear Dr. Shideler:

**SUBJECT: Historic Preservation Review – Addendum to Archaeological Assessment
At Moloa`a Ahupua`a, Ko`olau District, Island of Kaua`i
TMK 4-9-11: por. 1**

This letter reviews this Addendum Report which was submitted December 24, 2002 (Borthwick et al. 2002. *Carbon Dating Addendum to Archaeological Assessment of an Approximately 40-Acre Parcel in Moloa`a Ahupua`a, Ko`olau District, Island of Kaua`i [TMK 4-9-11: Por. 1]*, CSH ms.) for Moloa`a Bay Ranch LLC.

The report provides a radiocarbon date (AD 1400-1700) for SIHP 50-30-04-1033, a cultural layer. With the submission of the addendum, we can accept the assessment report as final.

If you have any questions, please call Nancy McMahon 742-7033.

Aloha,

P. Holly McEldowney, Acting Administrator
State Historic Preservation Division

c. Dee Crowell, Planning Department

NM:amk



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
Kakuhihewa Building, Room 555
601 Kamokila Boulevard
Kapolei, Hawaii 96707

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND
STATE PARKS
WATER RESOURCE MANAGEMENT

November 8, 1999

Mr. Doug Borthwick
Cultural Surveys Hawaii
733 N. Kalaheo Avenue
Kailua, Hawaii 96734

LOG NO: 24379 ✓
DOC NO: 9911NM03

Dear Mr. Borthwick:

**SUBJECT: Historic Preservation Review -- Archaeological Assessment of An
Approximately 40-Acre Parcel in Moloa'a Ahupua'a,
Ko'olau District, Island Of Kaua'i TMK: 4-9-11: por. 1
(Borthwick, Chiogioji and Hammatt, CSH, 1999)**

Thank you for the submission of the archaeological assessment report. It is an acceptable report. Two significant historic sites were found (50-30-04-1033 - a buried cultural deposit and 50-30-04-1034 - trail). These sites are to be preserved. No further archaeological work is required.

One concern we have is why you did not try to collect a sample for radiocarbon dating from the exposed cultural deposit site 50-30-04-1033? Please explain this.

If you have any questions, please call Nancy McMahon 742-7033.

Aloha,

DON HIBBARD, Administrator
State Historic Preservation Division

NM:amk

c. Dee Crowell, County of Kauai, Planning
Gary Fischer, P.O. Box 837, Hanalei, HI 96714

CARBON DATING ADDENDUM TO:

ARCHAEOLOGICAL ASSESSMENT
OF AN APPROXIMATELY 40-ACRE PARCEL
IN MOLOA`A *AHUPUA`A*, KO`OLAU DISTRICT,
ISLAND OF KAUA`I
(TMK 4-9-11: por.1)

by

Douglas Borthwick, B.A.
Rodney Chiogioji, B.A.
and
Hallett H. Hammatt, Ph.D.

Prepared for

Moloa`a Bay Ranch LLC

Cultural Surveys Hawaii
November 1999

INTRODUCTION

Back in 1999, Cultural Surveys Hawai'i, Inc. prepared an *Archaeological Assessment of an Approximately 40-acre Parcel In Moloa`a Ahupua`a, Ko`olau District, Island of Kaua`i (TMK 4-9-11: Por.1)* (Borthwick *et al.*) for Moloa`a Bay Ranch LLC. This study was accepted by the SHPD (November 8, 1999; LOG NO: 24379, DOC NO: 9911NM03) but the review letter asked for carbon dating information. One of the two sites designated was Site 50-30-04-1033, a buried cultural layer (see Borthwick *et al.* 1999:18-22).

CARBON DATING RESULTS

A carbon sample from a fire pit at a depth of 90 cmbs in Stratum IV of Site 50-30-04-1033, a buried cultural layer, was submitted for radiocarbon dating. This dated sample was from near the base of the cultural layer. The results were as follows

Beta Analytic Sample #	Measured Radiocarbon Age	¹³C/¹²C Ratio	Conventional Radiocarbon Age	Corrected Date (95.4% probability)
142192	310 +/- 70 BP	-25.7 o/oo	300 +/- 70 BP	1400-1950 AD

CONCLUSIONS

Unfortunately the corrected date range at a two sigma 95.4% probability, is quite wide spanning the late pre-contact period to modern times. Because of the absence of observed historic artifacts this cultural layer is thought most likely to date to the AD 1400 - 1700 period (for which the carbon date probability is reported as 89.3%). The origin of the cultural layer is understood to date to this period. Thus we conclude the origin of Site 50-30-04-1033 lies in the late pre-contact period.

**ARCHAEOLOGICAL ASSESSMENT
OF AN APPROXIMATELY 40-ACRE PARCEL
IN MOLOA`A AHUPUA`A, KO`OLAU DISTRICT,
ISLAND OF KAUA`I
(TMK 4-9-11: por.1)**

by

Douglas Borthwick, B.A.
Rodney Chiogioji, B.A.
and
Hallett H. Hammatt, Ph.D.

Prepared for

Moloa`a Bay Ranch LLC

Cultural Surveys Hawaii
November 1999

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I. INTRODUCTION

A. Project Background

At the request of Moloa`a Bay Ranch LLC, Cultural Surveys Hawai`i has completed an archaeological assessment of an approximately 40-acre, conservation-zoned parcel (TMK 4-9-11: por.1) at Moloa`a Bay, Moloa`a *Ahupua`a*, Ko`olau District, Kaua`i (Figures 1-3). The assessment was requested by the State Historic preservation Division/ Department of Land and Natural Resources (SHPD/DLNR) for inclusion in a Conservation District Use Amendment (CDUA) application by the landowner.

B. Scope of Work

The purpose of this archaeological assessment was to ascertain whether any archaeological sites are present on the subject parcel. Additionally, background research was conducted to provide the historical and archaeological context from which project area land use could be synthesized. The assessment does not meet the SHPD/DLNR requirements for a more intensive inventory-level survey but does provide sufficient data to assess the sites present and to make recommendations for future treatment.

The scope of work for the assessment includes:

1. Historical research to include study of archival sources, historic maps, Land Commission Awards and previous archaeological reports to construct a history of land use and to determine if archaeological sites have been recorded on or near this property.
2. Field inspection of the project area to identify any surface archaeological features and to investigate and assess the potential for impact to such sites. This assessment will identify any sensitive areas that may require further investigation or mitigation before future development projects proceed.
3. Preparation of a report to include the results of the historical research and the fieldwork with an assessment of archaeological potential based on that research, with recommendations for further archaeological work, if appropriate. It will also provide mitigation recommendations if there are archaeologically sensitive areas that need to be taken into consideration.

C. Methodology

As indicated above, the assessment includes a surface survey of the approximately 40-acre parcel and historical research. The surface survey took place on October 1, 1999, with background studies initiated just prior to that.

The surface survey was conducted by two archaeologists: Douglas Borthwick and Kaipo Akana. The survey was greatly facilitated by project foreman Bill Wong, who pointed out the conservation zone survey stakes and provided insights on project area land use data extending back into the 1940s.

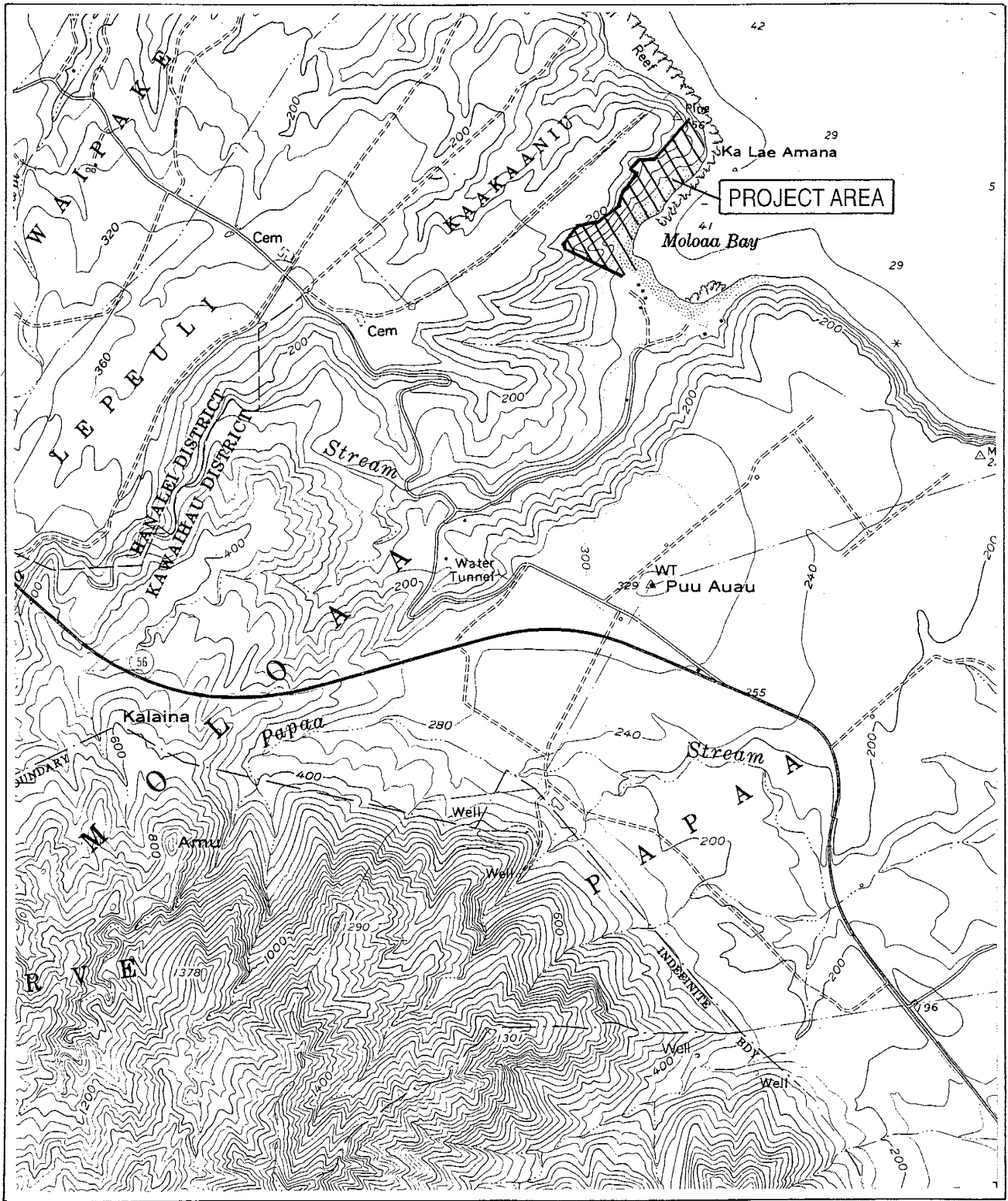
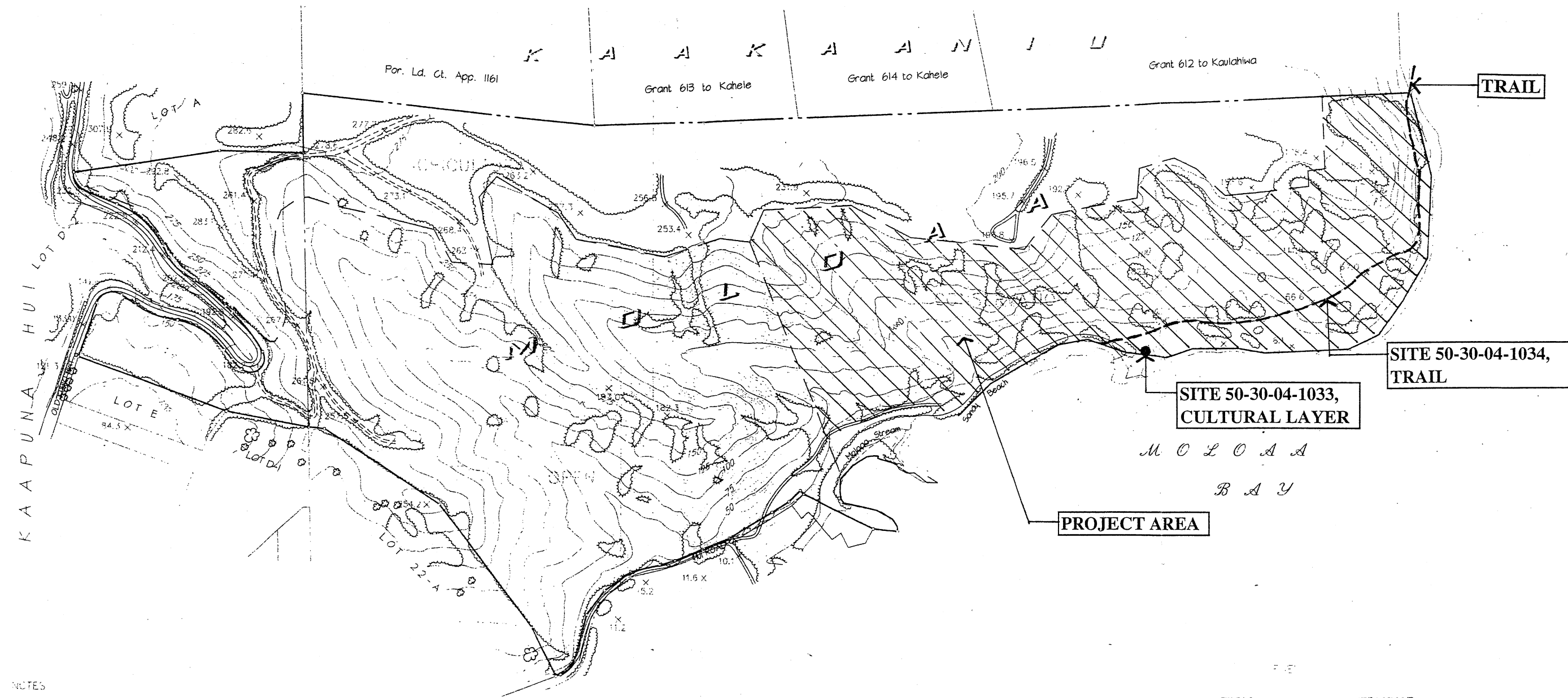
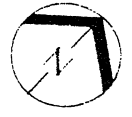


Figure 1 Portion of USGS 7.5 Minute Series Topographical Map of Kauai Island, Anahola Quadrangle, showing project area (hatched) in Moloa'a Ahupua'a



- NOTES
1. CONTOUR INTERVAL: 5'
 2. VERTICAL DATUM: MEAN SEA LEVEL.
 3. ORIGIN OF COORDINATES: KIKOO Δ
 4. COMPILED FROM PHOTOGRAMMETRIC METHODS FROM PHOTOGRAPHY TAKEN 8-28-1983 AT AN ALTITUDE OF 5800' ABOVE MEAN TERRAIN.
 5. ALL CONTOURS IN AREAS WHERE THE HEIGHT OF VEGETATION EXCEEDS FIVE FEET ARE TO BE INTERPRETED AS FORM LINES ONLY AND AS SUCH MAY BE SUBSTANDARD

- | | | | |
|-------------------------|--------------|-------|---------------------------------|
| ===== | BUILDING | ..... | INDEX CONTOUR |
| =====
=====
===== | PAVED ROAD | | INTERMEDIATE CONTOUR |
| ----- | UNPAVED ROAD | ..... | INDEX DEPRESSION CONTOUR |
| ..... |  | ..... | INTERMEDIATE DEPRESSION CONTOUR |
| ..... |  | ..... | DRAIN |
| ..... |  | ..... | SPOT ELEVATION |
| ..... |  | ..... | TREE TREELINE SCRIB |

MOLOAA BAY RANCH
Moloaa, Koolau, Kauai

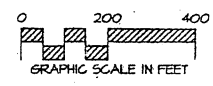


Figure 3 Project area topographic map showing archaeological sites

The survey consisted of pedestrian sweeps oriented generally north and south. Archaeologists were spaced 10 to 20 meters apart, depending on ground visibility and terrain.

One of the sweeps also included walking along the boulder-strewn base of the north facing cliff to investigate the wave-cut cliff face.

Sample photographs were taken of the project area and of two sites (i.e., cultural layer and trail; see site descriptions below). Besides the photographs, site documentation included: plotting site locations on the provided topographic map, drawing of the cultural layer profile, and collecting of a charcoal sample for possible later analysis.

Background research included: a review of previous archaeological studies on file at the State Historic Preservation Division of the Department of Land and Natural Resources; review of documents at the Kaua'i Historical Society, the Kaua'i Museum, Hamilton Library of the University of Hawai'i, the Hawai'i State Archives, the Mission Houses Museum Library, the Hawai'i Public Library, and the Archives of the Bishop Museum; study of historic photographs at the Hawai'i State Archives and the Archives of the Bishop Museum; and study of historic maps at the Survey Office of the Department of Land and Natural Resources.

D. Project Area Description

The project area is situated on the north side of Moloa'a Bay. It consists of conservation-zoned land that was previously utilized as pasture land.

The subject parcel extends from the boundary with Ka'aka'aniu (the adjacent *ahupua'a* to the northwest), southeastward towards Moloa'a Bay, then southward along the northwestern slope of the bay. The project area does not include the flat table lands which were former Kilauea Sugar Plantation fields.

The project area includes the cliff face of Āmana Point with a narrow bedrock and boulder wave-cut bench at the base. The bay frontage portion consists of a narrow bedrock and boulder-strewn bench deposits back to where Moloa'a Stream empties into the bay. The majority of the project area is the east-facing slope of Moloa'a Bay which consists of a steep to very steep soil with rock outcrop slope.

Soil types in the project area consist of beach sand (BS), badland (BL) and rough broken land (rRR) (Foote et al. 1974). Rainfall ranges between 50 and 75 inches per year. Vegetation consists mainly of various grasses, with ironwood, christmasberry, java plum, and lantana growing in shallow gulches and on rock outcrops. Beach *naupaka* is present within the narrow sandy stretch of beach. Elevation ranges from sea level to approximately 200ft. AMSL.

II. MOLOA`A AHUPUA`A: CULTURAL AND HISTORICAL DOCUMENTATION

A. Pre-Contact to early 1800s

The present project area is located within Moloa`a *Ahupua`a*. The *ahupua`a*'s resources, which would have been utilized by the pre-Western contact Hawaiian population, were still in evidence well into the 20th century; according to Handy and Handy (1972: 422):

Moloa`a had a good stream which watered many terraces along its three-mile course toward the sea. A half mile of relatively flat land inland from its bay was all terraced beautifully. Near the shore the soil consists of sand mixed with humus, which makes it ideal for sweet potatoes. There were still a few old breadfruit trees there in 1935. Upstream, where there used to be *lo`i*, all is now dry, owing to the stripping of timber from the land and to grazing cattle.

Handy and Handy also note that the *ahupua`a*'s name apparently derives from the abundant cloth fiber material once available to the Hawaiians there; they cite the following by the Hawaiian scholar Mary Kawena Pukui:

Keahi (a native of Kauai) and I went over to Kauai and when she was asked [the meaning of Moloa`a] she didn't know...In passing Moloa`a, Keahi pointed to some low hills *mauka* and *makai* of the highway and said "When I was a small girl, I used to come here with my *tutu-wahine* for *wauke*. These hills, now barren, were once so thickly overgrown that the *a`a* (roots) of the *wauke* were *molo* (matted) together, weaving into each other like the meshes of a mat...This was once a great *wauke* growing place...Molo-a`a, Matted-roots." (*Ibid.*)

The *ahupua`a* was not only characterized by its terrestrial resources. It was also noted for one of its seaweed. According to Frederick B. Wichman:

Moloa`a is still famous for the quality of its edible *limu* (seaweed). The *limu kohu* was brought here from South Kohala, on the island of Hawai`i by a chief of that place. The *limu* was placed under *kapu* and strictly reserved for the use of the *ali`i nui*. A beach and land section on the plains to the west of the valley is Ka`aka`a-niu, "rolling of the coconut," where the quality of seaweed was considered the finest on the island. (Wichman 1998: 95)

Moloa`a *Ahupua`a* is mentioned in three Hawaiian legends: of Kuapakaa, Palila, and Kapunohu (Fornander 1918-1919: 78-135, 136-153, 214-225). While none of three legends is actually situated in Moloa`a, the *ahupua`a* is named as a significant landmark, suggesting that Moloa`a was, at the very least, a well-known locality in the consciousness of the Kaua`i Hawaiians. Typical is the legend of Kapunohu. Kapunohu, a warrior of Hawai`i island, travels to Kaua`i where he challenges the Kaua`i warrior Kemamo to a test of strength in which the loser shall forfeit his life. The competition is to throw a slingstone or spear the farthest. The course is "from Koloa to Moloaa in Koolau" (Fornander 1918-1919: 224):

Kemamo then took up his sling and threw his stone, which went six miles and over, and it only fell and rolled after it had entered into the seventh mile, stopping at Anahola...Kapunohu then threw his spear, darting along from Koloa and over Niumalu...; then it went on and into the water in upper Wailua...; from this place it again took an upward flight flying along till it pierced through a ridge at Anahola...; from this place it went on past Moloaa, then past Waiakalua, then into Kalihikai, where it grew weaker and finally stopped at Hanalei.

Kemamo was therefore beaten and the conditions of their bet were carried out. Kapunohu became thereby king of Kauai. (*Ibid.*)

In the post-Western contact period, Moloa`a enters the historical record in the 1840s when Father Robert Walsh arrived at Koloa to establish the Catholic Church on Kaua`i. Traveling along the east side of the island early in 1842, Walsh spent the night in Moloa`a “at the house of Luapele, the konohiki of the place”; Walsh “took down the names of thirty-four natives who declared themselves desirous of studying the Catholic Faith” (Yzendoorn 1927: 175). In April 1842 Walsh and his assistant, Father Barnabe Castan, baptized 112 adults and 14 children at Moloa`a. Father Barnabe set up a station at Moloa`a:

Moloaa became a center of Catholicism during these early days. In the school built there, the girls worked at spinning and recited their lessons at the same time.

At Moloaa the Catholics had their first substantial success [on Kaua`i]...(Joesting 1984: 146)

By the mid-19th century, the Catholics were firmly established at Moloa`a. In his journal, William DeWitt Alexander, the son of a missionary at Waioli, described a trip around Kaua`i in 1849. Riding on horseback around northeast Kaua`i, Alexander noted:

About five miles from Anahola we crossed Molowa [Moloaa] valley a most beautiful spot. There is a village here, in which a Catholic priest resides, the inhabitants of which are mostly Catholics. The country near this place has been lately burnt over, but the vegetation is springing up anew. (Kauai Historical Society 1991: 124)

The Organic Acts of 1845 and 1846 initiated the process of the *Mahele* - the division of Hawaiian lands - which introduced private property into Hawaiian society. In 1848 the crown and the *ali`i* (royalty) received their land titles. Most of Moloa`a *Ahupua`a* was retained by the designated as Crown Land. *Kuleana* awards for individual parcels within the *ahupua`a* were subsequently granted in 1850. These awards were presented to tenants - native Hawaiians, naturalized foreigners, non-Hawaiians born in the islands, or long-term resident foreigners - who could prove occupancy on the parcels before 1845. Nineteen Land Commission Awards (LCAs) for individual parcels (including one to the Roman Catholic Church) were recorded in Moloa`a *Ahupua`a*. An historic map of 1931 shows that the LCAs were focused along the course of the Moloa`a Stream to the east of the present project area (Figure 4). Despite intensive search for the LCA documents associated with these awards (i.e., register and testimony records), none were located in the files of the

Hawai'i State Archives. However, given their locations along Moloa`a Stream, it is likely that these award parcels were taro *lo`i* and associated house sites. No LCAs were located within the present project area itself. The disposition of these awards may reflect a continuation into the post-contact era of the traditional Hawaiian settlement of Moloa`a.

Close to the middle of the 19th century, it is likely that the concentration of Land Commission Awards above the coastline and along Moloa`a Stream mirrored area where the *ahupua`a* population was centered. In a census of 1847, the first taken in the Islands by the Department of Public Education, a total population of 104 was recorded in Moloa`a (Schmitt 1969: 225). By comparison, there were 60 inhabitants recorded in Waipake and 23 in Lepeuli *ahupua`a* to the west of Moloa`a, and 23 inhabitants in Papaa and 280 in Anahola *ahupua`a* to the east..

B. 1850 to 1900

According to the government census of 1853 there were then 1,998 persons living in the Ko`olau District of Kaua`i in which Moloa`a is located (Schmitt 1977: 12-13). No specific population figure for the *ahupua`a* was recorded. The district population diminished during subsequent decades, dropping to 1,597 in 1878.

The Catholic presence in Moloa`a was further solidified with the construction of a stone church, St. Stephen's, in the 1850s. Reports sent from Moloa`a record the Catholics' success in the second half of the 19th century. A typical report, from 1864, noted:

At Moloaa, the habitual residence of Father Denis, the Faith has made consoling progress this year. Services are well attended; slothful Christians have come back to their duties, and Protestants have been converted...(in Damon 1931: 340)

During the 1860s, Moloa`a would be the focus of major land transactions involving the Hawaiian government, a new educational institution, and private individuals. Early in the decade, 2600 acres of land at Moloa`a and Papa`a were deeded to Punahou School by the government to augment the school's endowment. The land was sold almost immediately to Herman A. Widemann:

In 1861 Mr. Widemann of Lihue bought practically the entire Kauai land grant of 2,262 acres for \$1833.33 from the trustees of Punahou, perhaps with the intention of using it as a cattle and sheep ranch...(Damon 1931: 590)

Widemann's plans were unsuccessful and "in order to divide up the land among small holders, Mr. Widemann organized the Moloaa Hui, or Company, among the Hawaiians of that region, with shares at \$100 apiece, and sold the land to that Hui (*Ibid.*).

Describing a visit to Kaua`i in 1865, William T. Brigham, who would later become the first director of the Bishop Museum, recorded:

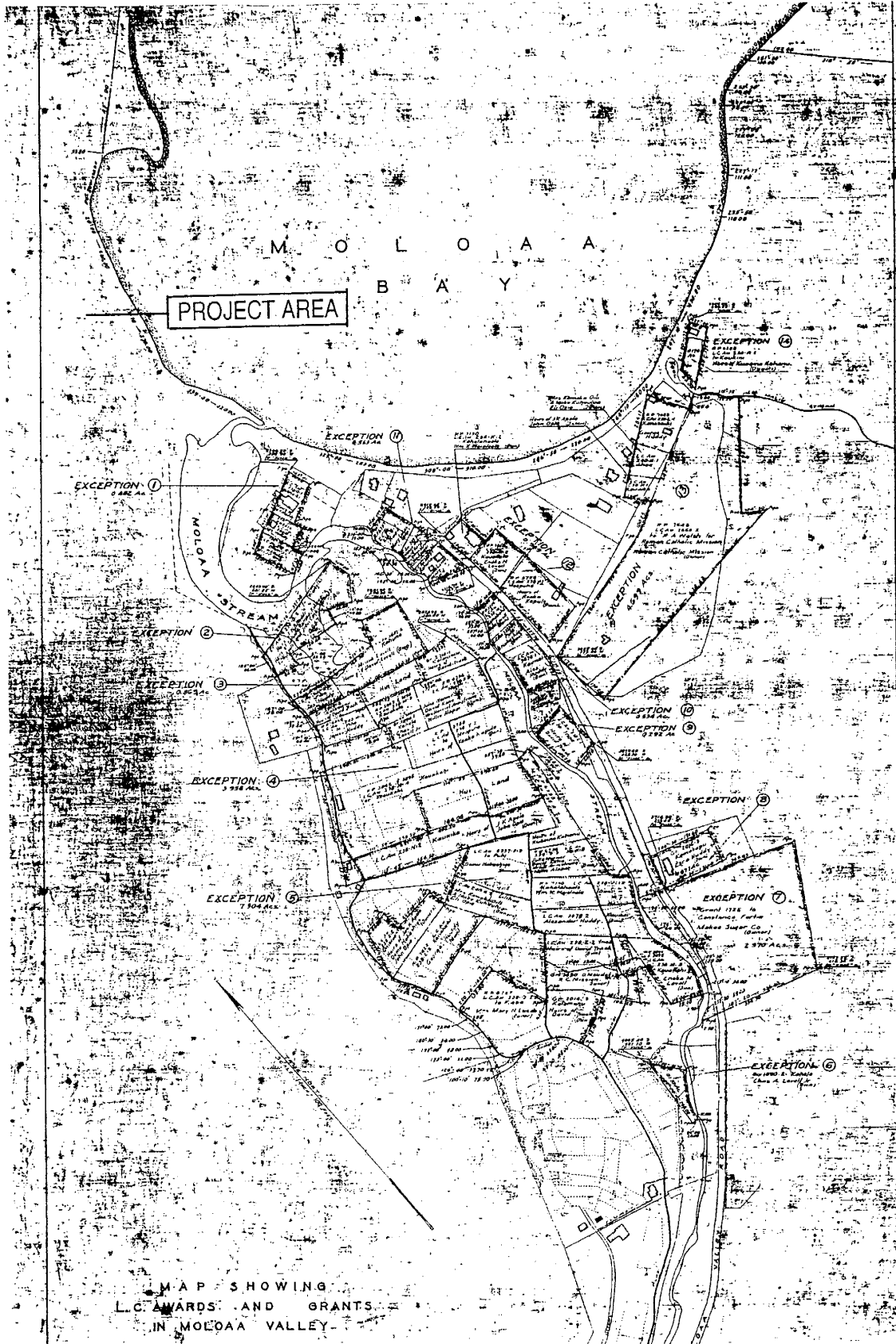


Figure 4 Portion of "Map of Moloaa Hui Land" by R.M. Towill, June 1931, showing locations of Land Commission Awards in Moloa'a Ahupua'a

Moloa'a was the next place we came to and it is the chief wood station at present on this part of Kauai. Here several vessels have been wrecked, and only the week before a schooner ran on the rocks through the carelessness of the master. (Kauai Historical Society 1991: 142)

What "wood station" means is unclear. However, it suggests that Moloa'a may have been a major site for the exporting of firewood to Honolulu.

During the second half of the 19th century, taro *lo'i* on Kaua'i - including those at Moloa'a - were in large part converted to rice fields by Chinese farmers. These Chinese had come originally to the islands to work on the sugar plantations. As the commercial sugar industry expanded throughout the Hawaiian Kingdom, the need for increased numbers of field laborers prompted passage of contract labor laws. In 1852 the first Chinese contract laborers arrived in the islands. Contracts were for five years, and pay was \$3 a month plus room and board. Upon completion of their contracts, a number of the immigrants remained in the Hawaiian kingdom, many becoming merchants or rice farmers.

The Hawaiian islands were well-positioned for rice cultivation. A market for rice in California had developed as increasing numbers of Chinese laborers immigrated there since the mid-19th century. Similarly, as Chinese immigration to the islands also accelerated, a domestic market opened.

At Moloa'a, as in other locales, groups of Chinese began leasing former taro lands for conversion to rice farming. Sadly, the taro lands' availability throughout the islands in the later 1800s reflected the declining demand for taro as the native Hawaiian population diminished. (As noted above, the Ko'olau District's population diminished by 401 persons between 1853 and 1878.)

During the last decades of the 19th century, the population of the Kawaihau District, a new apportioning of north Kaua'i lands that includes Moloa'a, would rebound, growing from a total of 1882 in 1884 to 2,101 in 1890, to 2,762 in 1896, and 3,067 in 1900 (*Ibid.*:13). That growth was spurred by the establishment of commercial sugar cane planting in the district. The origins of the Kilauea Sugar Plantation Company date to 1863 when Charles Titcomb purchased land at Kilauea *Ahupua'a* from Kamehameha IV and began ranching and growing sugar cane. In 1877, Titcomb sold his lands to Captain John Ross and E.P. Adams. Subsequently, Robert A. Macfie, Jr. bought Ross's interest. The Kilauea sugar mill was one of only four mills on Kaua'i in the 1870s.

An 1899 map of Moloa'a indicates that settlement in the *ahupua'a* continued to be focused near the coastline along Moloa'a Stream and the Roman Catholic church property (Figure 5). There is no indication on the map of any house lot or other habitation site within the present project area. The map also shows how rice had supplanted taro in the irrigated lands surrounding the Moloa'a house sites. Moloa'a had become one of the significant rice-growing localities on northeastern Kaua'i by the end of the 19th century (Coulter and Chee 1937: 15).

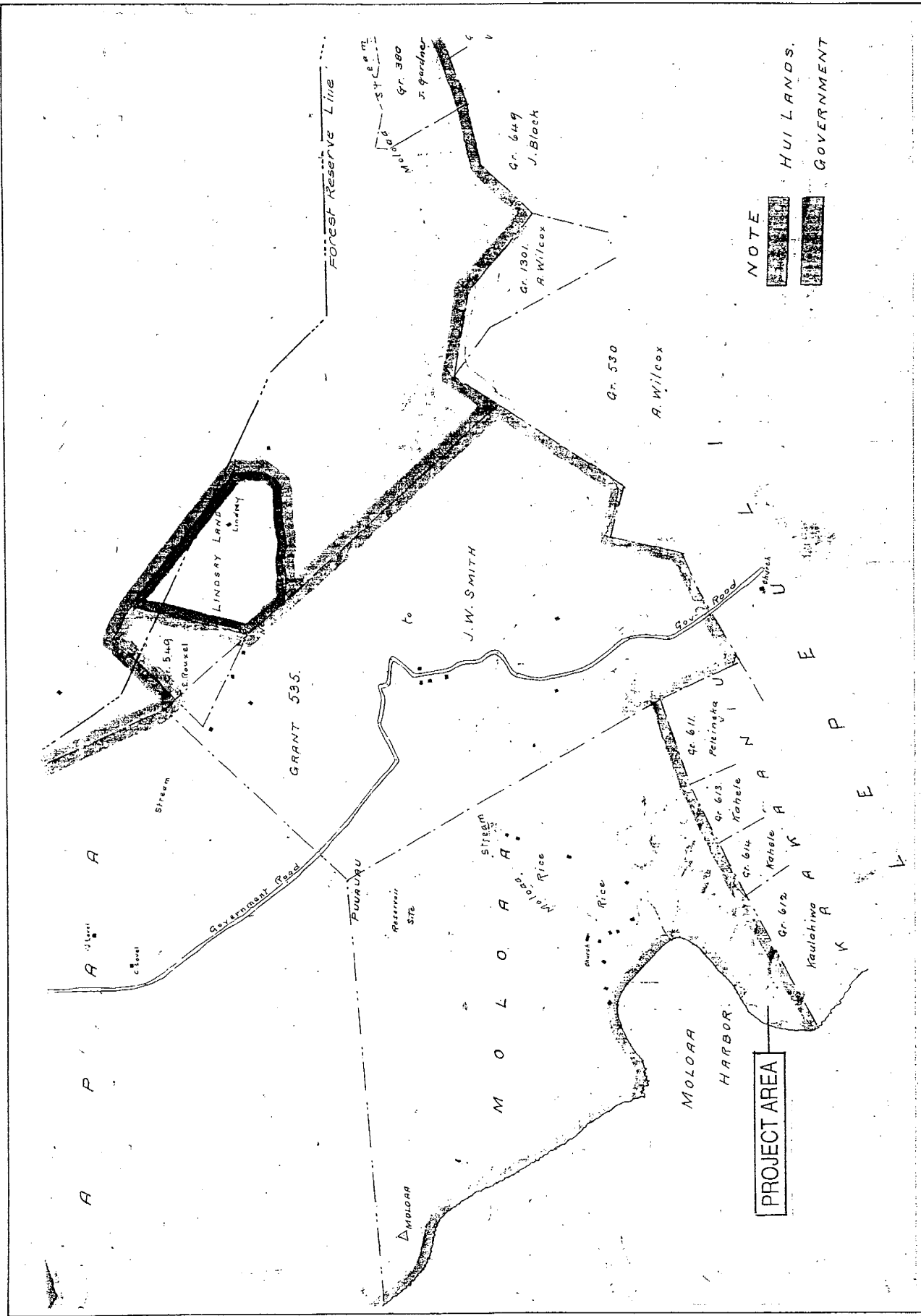


Figure 5 Portion of "Preliminary Map of Moloa'a Hui Lands, Koolau, Kauai", surveyed by M.D. Monsarratt, April 1899, showing house sites, church, and rice lands along Moloa'a Stream

B. 1900 to Present

Twentieth-century documentation indicates that, while other portions of Moloa`a would undergo mostly agricultural development, the present project area remained undeveloped except for use as pasturage.

A 1924 aerial photograph of the coastline at Moloa`a shows agricultural endeavors surrounding the project area which appears to be naturally vegetated (Figure 5).

A map of 1931 shows that the land above the present project area was then owned by the Kilauea Sugar Company (Figure 7). By the 1930s, Kilauea Sugar Company had a total of 3875 acres in cane (Wilcox 1996: 85). A map of the company's lands in the 1930s indicates that the present project area was located just beyond Kilauea Sugar's easternmost cane fields (Figure 8).

Sugarcane was not the only extensive crop planted in or around Moloa`a during the early decades of the 20th century. Writing in the early 1930s, Ethel Damon noted: "Today as one travels along the uplands of Kilauea, Moloa`a, and Anahola, neatly ridged pineapple fields stretch away for miles toward the sea and up into the foothills" (Damon 1931: 357). Lihue Plantation had, earlier in the 19th century, purchased much of the former Moloaa Hui lands with the intention of future expansion into north Kaua`i. These were lands, planted in pineapple, that Damon observed (*Ibid.*: 919).

In the 1940s, Moloa`a would be devastated by a natural disaster. During the tsunami of April 1, 1946:

Violent destruction was caused at Moloaa, though without loss of life. Every one of the dozen houses was destroyed. The shore line at the head of the bay was cut back about 70 feet, leaving cliffs of alluvium 6 feet high...Rocks weighing about 5 tons were thrown up on the beach. Near the beach the water rose to heights of 30 to 35 feet above sea level. It swept inland along the valley, carrying debris from the houses at the beach as much as 0.7 mile inland, to a height of about 40 feet above sea level. (Shepard 1950: 416)

Kilauea Sugar Plantation closed in 1971, forcing the area's population to search for new agricultural work. "Besides cattle, which had long been an industry in this area, papaya, guava, prawn ventures, and agricultural subdivisions were established..." (Wilcox 1996: 85).

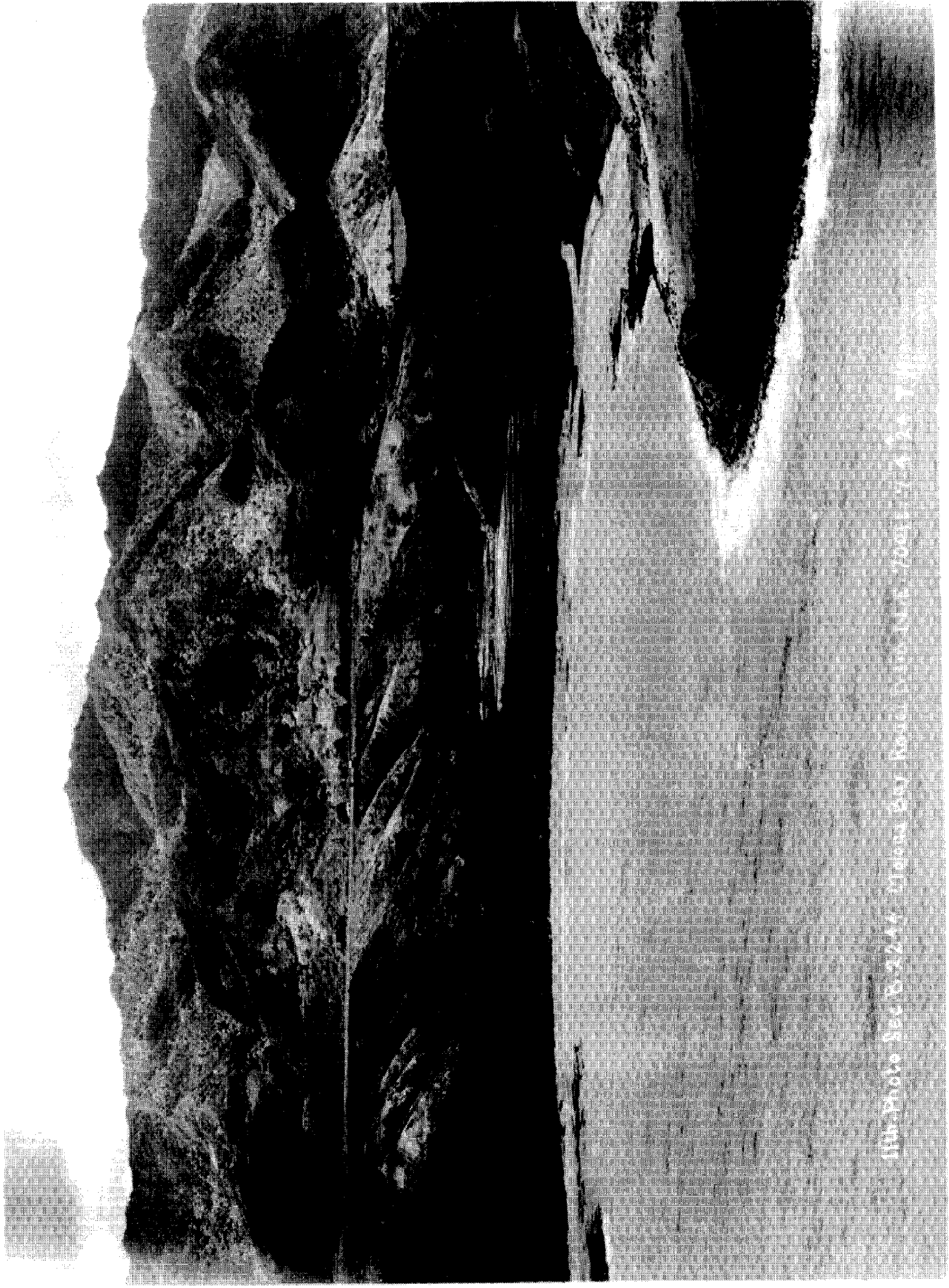


Figure 6 1924 aerial photograph of Molokai coastline (Bernice P. Bishop Museum Archives)
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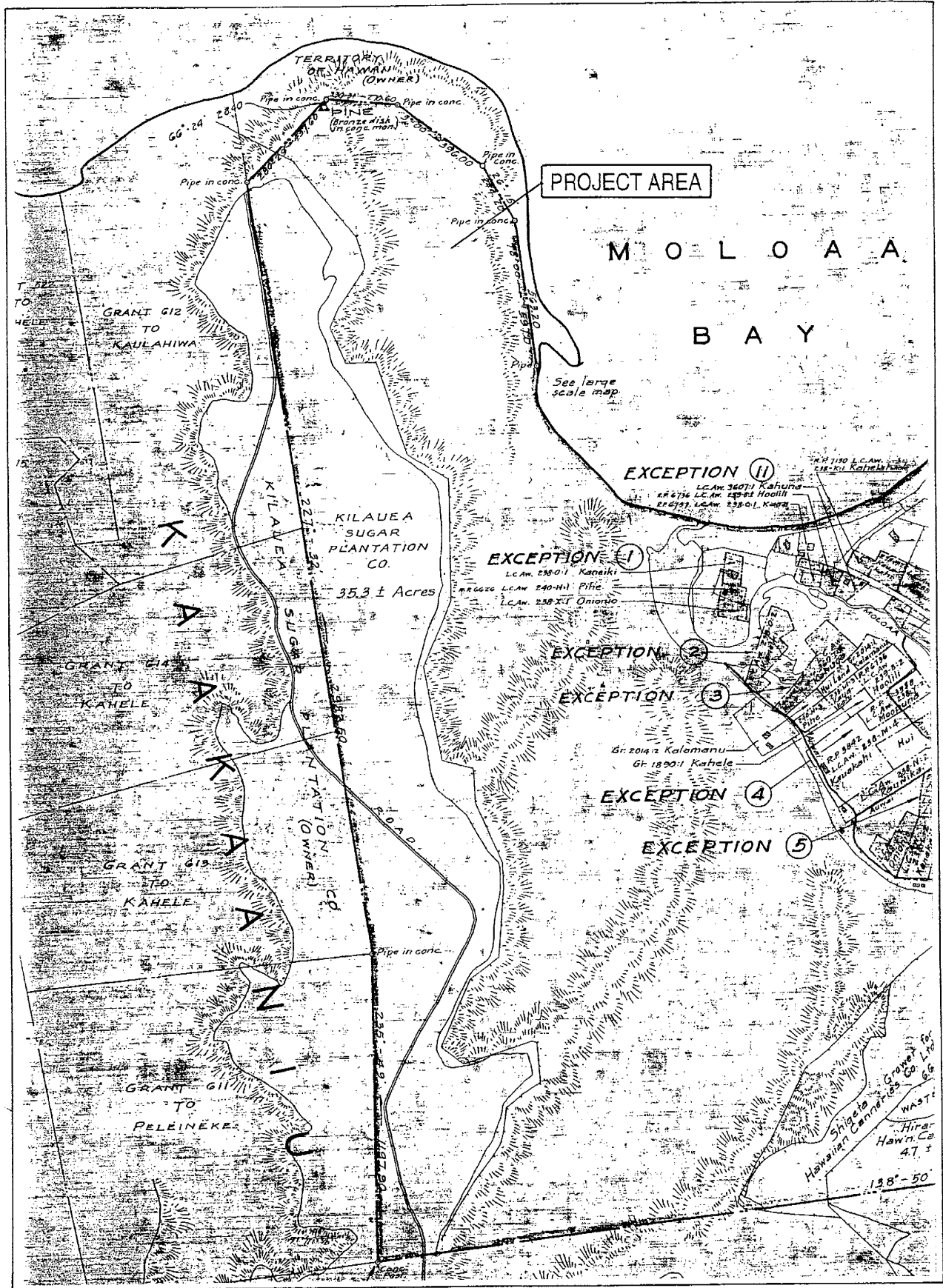


Figure 7 Portion of "Map of Moloaa Hui Land", surveyed by R.M. Towill, June 1931, showing project area and adjacent land owned by Kilauea Sugar Plantation

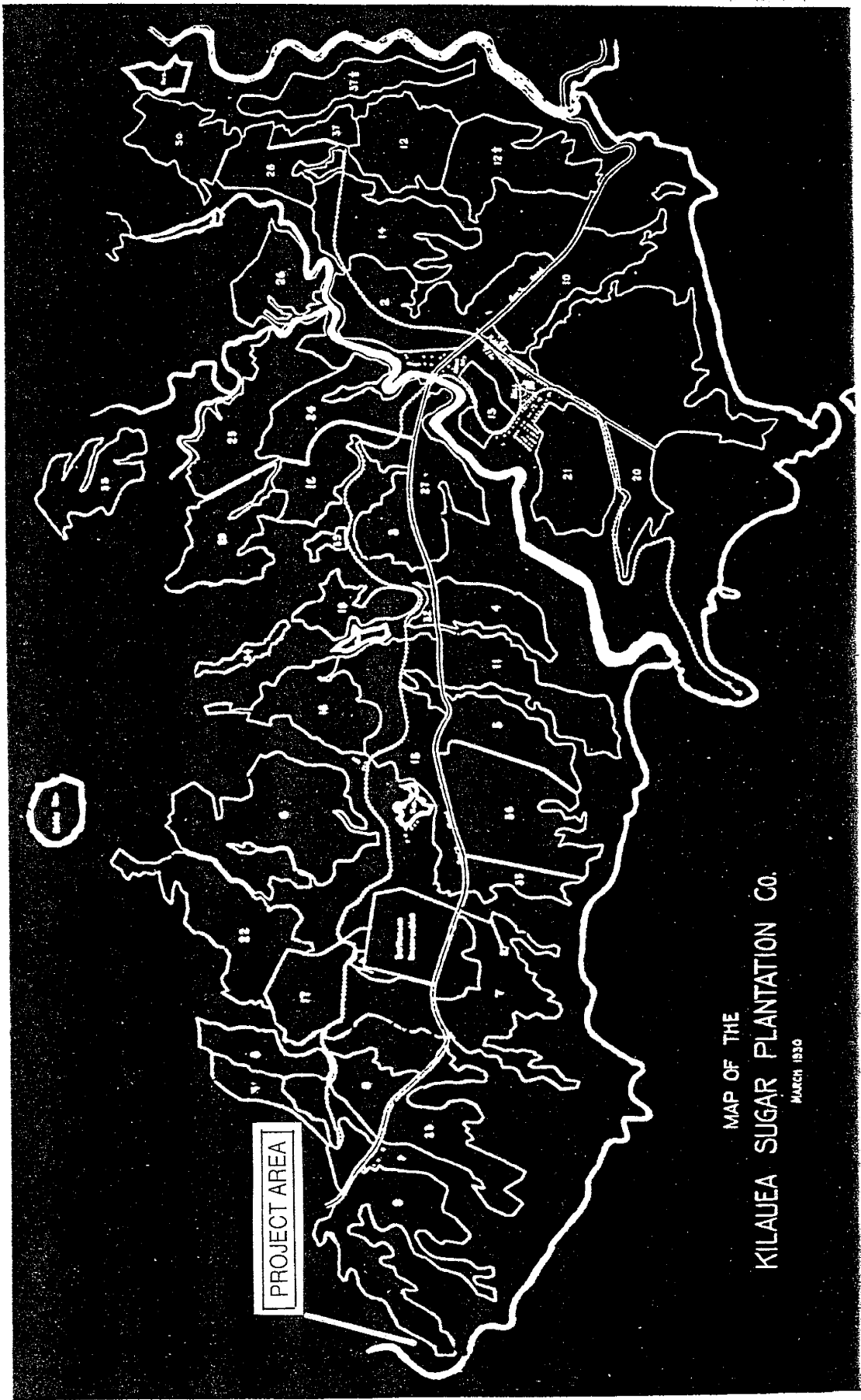


Figure 8 Kilauea Sugar Plantation Company fields in the 1930s (from Condé and Best 1973: 153)

III. PREVIOUS ARCHAEOLOGICAL RESEARCH

Some of the earliest archaeological information about the area comes from Thomas Thrum's (1906) study of *heiau* sites on Kaua'i. Thrum lists the location of two *heiau* in the *ahupua`a* of Papa`a, south of Moloa`a *ahupua`a*. Pāpa`a *heiau*, located at Kawaipapa, was said to be a walled *heiau* 60 x 80 feet (approximately 18 x 24 m). Pāpa`a *heiau* was dedicated to Kamohoalii, but was used as a cattle pen at the time of Thrum's studies. The second was Puwouwou *heiau*. By the time Thrum located it, it had been destroyed. Thrum also mentions Kapua`a *heiau* located in Lepeuli *ahupua`a*, north of Moloa`a *ahupua`a*. This *heiau* was said to be circular, 50 feet in diameter, with walls four feet high.

The three *heiau* were mentioned again in Bennett's (1931), *Archaeology of Kauai*. The Pāpa`a *heiau* is listed as Site 124, and the Puwouwou *heiau*, Site 125. Puwouwou *heiau* sits atop Pu`u Auau and was described as being a "place of refuge" (Bennett 1931; 131). According to Bennett the *heiau* was cleared to make way for pineapple fields. Site 126, Kapua`a *heiau*, of which Bennett indicated that nothing remained, was said to be located behind the present day Japanese school in Lepeuli *ahupua`a*. Neither Bennett nor Thrum mention archaeological sites in Moloa`a *ahupua`a*.

In an archaeological inventory survey of 15.44 acres in `Aliomanu and Pāpa`a, (two *ahupua`a* south of the current project area) Hammatt and Ida (1992) recorded State site # 50-30-4-1896, a single human burial situated on a sloping bank above the shore (Feature A), and an adze-grinding stone located 100 feet mauka of the burial (Feature B). This site has been evaluated as culturally and informationally significant. State site # 50-30-4-1897, a cultural layer discovered on a beach terrace on the north end of the project area, was evaluated as informationally significant.

In a letter to Melvin Kaufman (property owner), Kikuchi (1982) describes the results of an archaeological assessment of a lot (43-A) for Moloa`a Hui Lands in `Aliomanu *ahupua`a*. Surface findings included a broken fragment of an adze, an adze flake, and a worked beachrock sander. But, Kikuchi states that nothing of archaeological importance was found.

Scientific Consultant Services Inc., conducted an Archaeological Inventory Survey of 725 acres of former sugarcane fields located on a tableland between Moloa`a and Pāpa`a Gulches and surrounding ravines (McGerty and Spear 1998). Although the majority of the project area was located in Pāpa`a, it did extend into the southern portion of Moloa`a Gulch.

Four side ravines of the Moloa`a Gulch were surveyed. Ravine No. 1 contained an abundance of *noni* (*Morina citrifolia*). Ravine No. 3 revealed feral populations of traditionally cultivated plants. These plants included *kī* (*Cordyline fruticosa*), *kalo* (*Colocasia esculenta*), and *mai`a* (*Musa* sp.). A terrace constructed in the traditional manner (except for the addition of cement) was built near a spring at the back of the ravine and *mai`a*, *kalo*, and white ginger (*Hedychium coronarium*) grew there. Other findings in the area included exotic plant species and modern construction material (pipes and

cement). No archaeological sites or features were identified but SCS suggests the possibility of subsistence cultivation activities, possibly dating back to pre-contact times due to the presence of these feral plant species and the fresh water spring.

The locations of the two *heiau* sites mentioned previously, Pāpa`a #124 and Puwouwou #125 were investigated but due to modern cultivation activities no intact remains were located (McGerty and Spear 1998).

IV. PREDICTIVE MODEL

Based on the background studies there are no previously identified sites in the project area. Though commercial sugarcane cultivation occurred on the table lands immediately adjoining the project area, due to the steep terrain no sugarcane or pineapple was commercially grown within the project area. The primary use of the project area during historic times was probably pasturage.

Historical data indicated that Moloa`a was intensively utilized during traditional times. The valley floor was extensively terraced for taro *lo`i* with habitation throughout the fields and at the mouth of the bay. Historic and traditional accounts also indicate that a prime *limu* (seaweed) foraging area was located in the adjacent (*i.e.* northwest) *ahupua`a* of Ka`aka`anui. The location, presently referred to as Larsen's Beach, is still renowned for its *limu kohu*. The route to and from Ka`aka`aniu's reef and beach from Moloa`a would have been and continues to be through the present project area.

Based on our present research few sites are anticipated. The steep terrain, years of pasture usage on the edge of commercial sugarcane fields suggests little likelihood of major surface sites. Early archaeological studies (*e.g.*, Thrum 1906; Bennett 1931) did not report on any sites within the project area. Historical data (*e.g.* LCA documentation) indicates that primarily traditional habitation and agriculture was focused on the well-watered valley floodplain with no *kuleana* (LCA) awarded within the project area.

V. RECONNAISSANCE SURVEY RESULTS

Two archaeological sites were found and documented during the one-day surface survey of the project area. The sites include a buried cultural layer Site 50-30-04-1033 and a narrow unmodified trail, Site 50-30-04-1034.

No other archaeological sites were identified during the surface survey. The vast majority of the project area appears to have been historically impacted by sugarcane and cattle operations. Commercial sugarcane cultivation occurred right up to the edge of the present project area. Based on observed characteristics it is probable that bulldozing of sugarcane fields resulted in a lot of rocks and soil being pushed over the edge into the project area. Pastoral use is evidenced by old fence lines, old overgrown roadways, and pasture-type grasses.

Vegetation is another clue to past land use, most of the thickets in the project area are relatively recent growths of Christmasberry, Java Plum and Ironwood trees. The clumps or thickets are generally situated on the rock outcrops or in the steep narrow gullies where bulldozer clearing would be the most difficult. This suggests past bulldozing for "pasture improvements," as do the old overgrown roadways.

Site Descriptions

State Site #	50-30-04-1033
Site Type:	Burial cultural layer
Function:	Habitation
Features:	1

Description: site 50-30-04-1033 consists of a buried cultural layer situated directly backshore of a boulder point on the western side of Moloa`a Bay. The cultural layer was observed in a wave-cut soil profile behind the boulder point (See Photo Figures *&*). The observed length of the cultural layer was roughly 10 meters North/South. The inland extend was not determined but is presumed to extend under the narrow level shoreline bench. The bench is approximately 20 meters wide and is covered in short pasture-type grasses.

The stratigraphy of the exposed portion of Site -1033 consists of three strata (I, II, and III) overlying the cultural layer (Stratum IV) with sand as the observed basal layer Stratum V (Figure 9)

Stratum I consists of dark-yellowish brown (10 YR 3/4) clay loam with coralline sand grains visible. Stratum I ranges from 10 to 60 cm. thick and contains the grass mat surface vegetation. Stratum I appears to be alluvial slope wash from immediately upslope of this relatively level shoreline bench. Stratum II consists of similar upslope clay loam alluvium but with a lower sand content. Stratum III consists of very pale brown (10 YR 7/4) gravelly sand and broken marine shell mix. Stratum III may represent tidal wave (or *tsunami*) inundation. Stratum IV cultural layer consists of dark-grayish brown (10 YR 4/2)

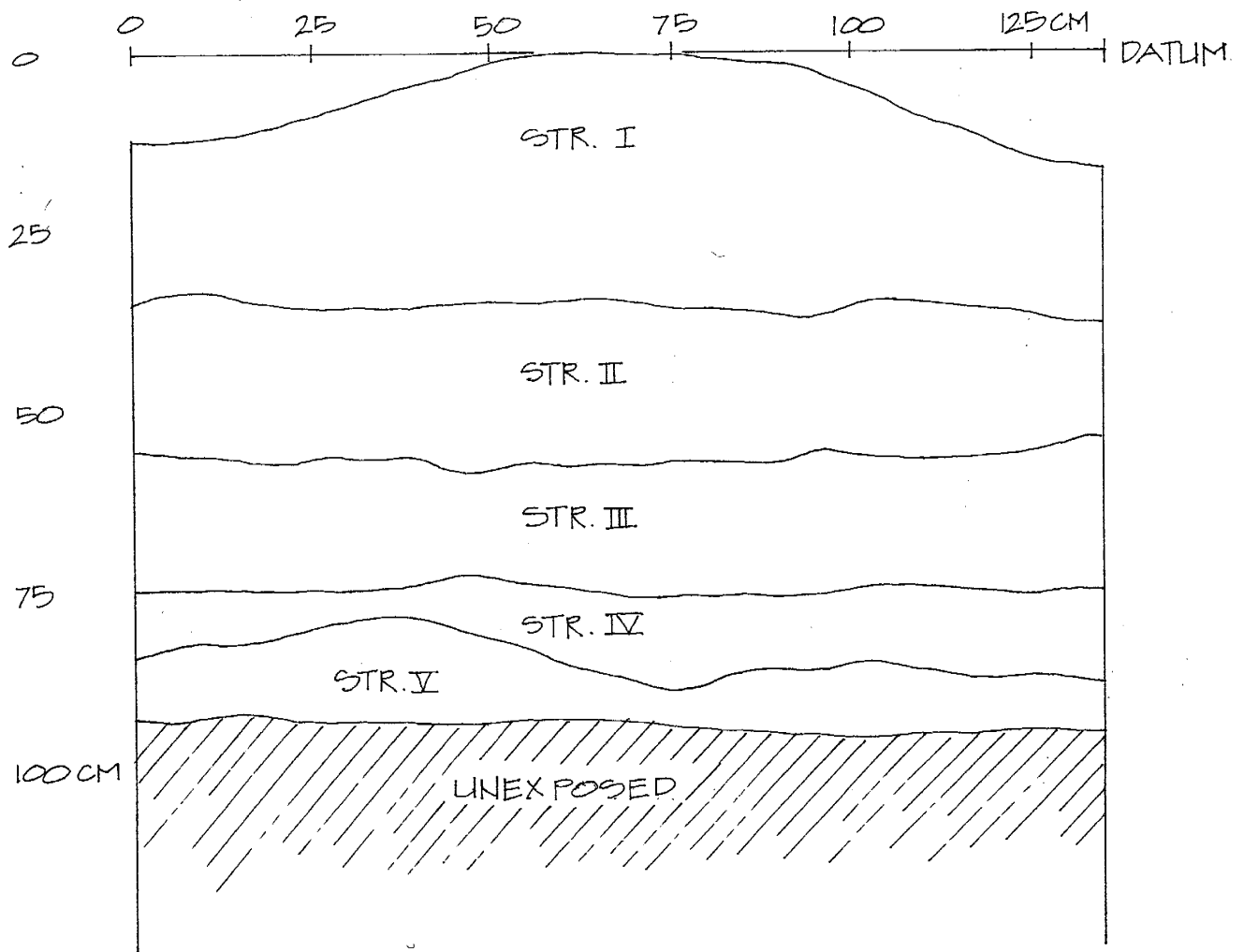


Figure 9 Sample profile of Site 50-30-04-1033

loamy sand. Observed eroding out of Stratum IV was charcoal, shell midden (e.g., cowry, pipipi, opihi and wana) and fragmented fishbone. Stratum V appeared to be culturally sterile beach sand, but not much of this layer was observed.

There were no observed historic-era artifacts from within the cultural layer, which along with the traditional midden observed, suggests a pre-contact age range. A sample from a charcoal concentration was collected for possible later analysis.

Based on observed characteristics the cultural layer probably represents pre-contact (i.e., Pre A.D. 1776) habitational use of this narrow shoreline bench. The historic and modern land uses (i.e., sugarcane, pasturage) appear to have accelerated erosion from upslope, creating the dark-brownish clay overburden. An interesting aspect of this site is Stratum III, the gravelly beach deposit which may be evidence of *tsunami* inundation. Historic accounts of the 1946 *tsunami* indicate Moloa`a was one of the hardest hit areas with houses pushed up to .5 miles inland and wave heights up to 35 feet. Based on these accounts the site area would have definitely been inundated.

State Site #	50-30-04-1034
Site Type:	Trail Segment
Function:	Transportation
Features:	1

Description: site 50-30-04-1034 consists of a narrow, .5 meter-wide trail segment. The trail has no observable constructions but is distinguishable as a well-worn, trodden path. The observed segment extends from Moloa`a Bay beach, through the project area into the adjacent property in Ka`aka`aniu (See Photo Figures *). From the beach the trail ascends gradually to an elevation of approximately 70 ft. amsl, then goes cross-slope on a narrow ledge on the cliff face of Āmana Point, then out of the project area.

The trail allows for access to and from Moloa`a Bay and Larsen's Beach in Ka`aka`aniu. The fringing reef fronting Larsen's Beach is well known as prime limu (edible seaweeds) grounds, especially the *limu kohu* variety. Historical accounts relate the connection between Moloa`a and the limu harvesting area, and local informant, Bill Wong, indicated the use of the trail from when he was very young, ca. 1940s. Though no documentation has been uncovered to date, concerning the trail, it is presumed to be both a traditional and historic-era access route.

V. SUMMARY, SIGNIFICANCE AND RECOMMENDATIONS

A. Summary

Cultural Surveys Hawai'i conducted an archaeological assessment of the approximately 40-acre conservation-zoned parcel on the northwestern side of Moloa'a Bay. The assessment included background literature research and a surface survey.

The background literature search indicated that no previously identified sites were within the project. Mid-1800s Land Commission documents place the focus of agriculture and habitation within the alluvial flood plain where there was extensive taro *lo'i* terracing with dispersed permanent residences. No *kuleana* (LCA) were awarded in the project area (see Figures 4 & 5).

Historic land use within the project area was primarily cattle pasturage as it was too steep for commercial sugarcane cultivation. Sugarcane cultivation occurred on the level table lands adjoining the subject parcel (See Figures 7 & 8) associated land clearing operations have deposited large boulders and increased soil erosion into the project area.

The surface survey was conducted by two archaeologists walking multiple cross-slope transects. During the survey two sites were identified. The sites consist of a buried cultural layer, Site 50-30-04-1033, and a unmodified trail segment, Site 50-30-04-1034.

Site -1033, the buried cultural layer is situated where the sandy beach ends at a natural boulder point. Behind or inland of the boundary point is a relatively level and narrow shoreline bench. High surf has cut a .5 m. to 1 m. deep face into the shoreline bench exposing the cultural layer. The cultural layer is from .5 m. to .9 m. below the present soil surface. Observed eroding out of the cultural layer were traditional marine midden components of cowry, *opihi*, *pipipi*, fishbone and charcoal. No historic-era artifacts were observed, suggesting a primarily pre-contact deposit.

The trail segment, Site -1034, allows for access to and from Moloa'a Bay and Larsen's Beach in the adjoining (northwest) *Ahupua'a* of Ka'aka'aniu. Traditional and historical accounts (including local informant) indicate that the fringing reef fronting Larsen's beach is renowned for its *limu kohu* (Clark 1990, Wickman 1998, Bill Wong per. comm. 1999). Based on these accounts and the well-worn path, it is presumed that the trail segment represents an access route older than fifty years. The trail itself is a narrow shallow unmodified trodden path utilized both by tourists and *kama'āina*.

No other sites were observed during the survey. The majority of the project area ranges from moderate to steeply sloping soil with rock outcrop terrain. During the survey particular attention was paid to wave-cut and cliff-face exposures and erosional slope wash cuts. No cultural features or strata other than Site -1033 were observed.

B. Significance

Significance assessments are based on the broad criteria established for the National and State Registers of Historic Places.

The five criteria are:

- A Site reflects major trends or events in the history of the state or nation.
- B Site is associated with the lives of persons significant in our past.
- C Site is an excellent example of a site type.
- D Site may be likely to yield information important in prehistory or history.
- E Site has cultural significance; probable religious structures (shrines, *heiau*) and/or burials present. (State of Hawai'i criterion)

The two sites, 50-30-04-1033, a buried cultural layer, and 50-30-04-1034, a trail segment are assessed solely under Criterion D. Each site has already yielded important information in terms of location, type, function, probable age, and regional context. Both sites have the potential to yield further information. The buried cultural layer, Site -1033 may yield more detailed information on site and regional chronology and function. Similarly, further research on the trail may yield more information on age and additional destinations.

C. Recommendations

The two sites, 50-30-04-1033 and -1034 are recommended for preservation as is. No ground disturbing activities such as bulldozing, mechanized vegetation clearing or construction activity should occur on these sites.

No other archaeological constraints are deemed warranted for the remaining majority of the project area. However, in the unlikely event inadvertently discovered archaeological features are encountered appropriate government agencies (*e.g.*, SHPD/DLNR) should be notified.

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PHOTOGRAPHIC APPENDIX

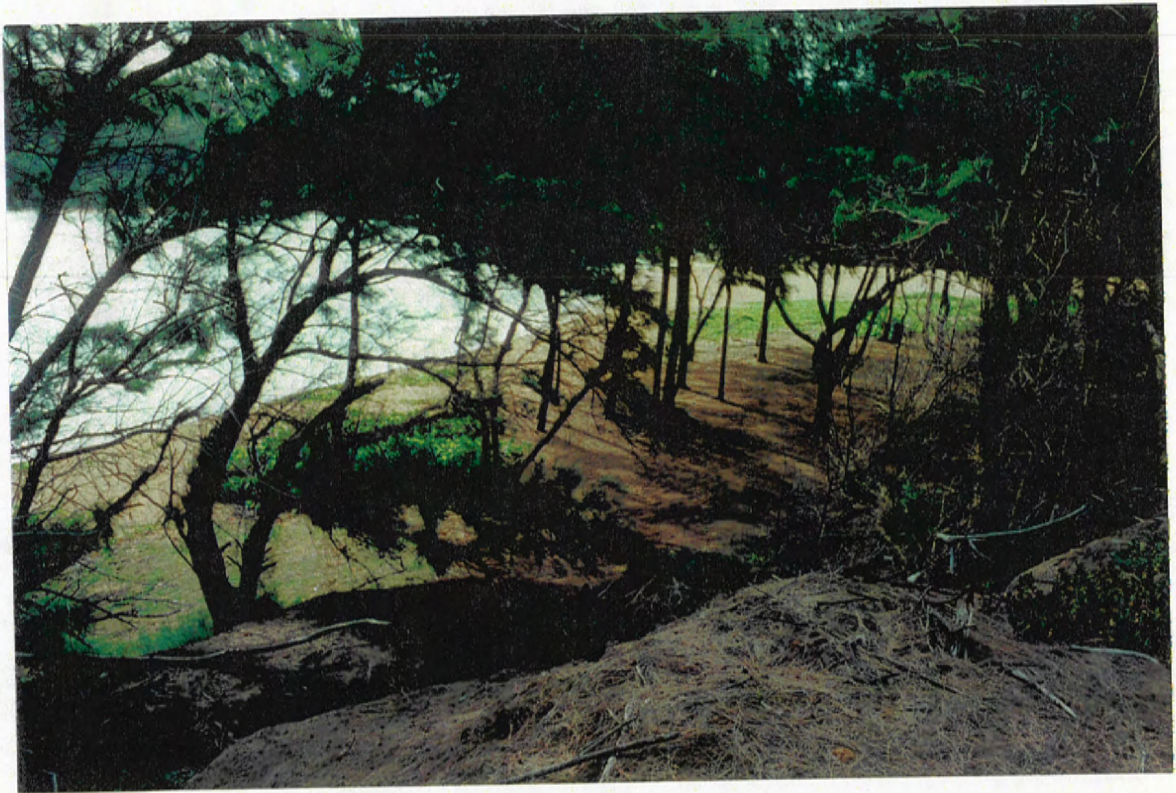


Figure 10: View of portion of Project Area beach terrain (view to south)



Figure 11: Example of erosion cut soil profiles investigate for stratigraphic data (view to east)



Figure 12: Sample of sloping terrain (view to west)



Figure 13: Sample of sloping terrain, showing typical erosion cut soil exposures (view to west)



Figure 14: Location of State Site 50-30-04-1033, buried cultural layer in level grassy area behind Boulder Point (view to east)



Figure 15: Boulder-strewn shoreline bench, large boulder outcrops on slope with Site 50-30-04-1033 right edge of photo (view to east)



Figure 16: Wave-cut exposure of Site 50-30-04-1033, buried cultural layer at base, showing slopewash overburden (view to west)



Figure 17: Close-up of stratigraphy at Site 50-30-04-1033, buried cultural layer and overburden (view to west)



Figure 18: Site 50-30-04-1034 Trail, section northwest of beach on soil slope, trail is narrow, unmodified trodden path in center of photo (view to north)



Figure 19: Trail, site 50-30-04-1034, on bedrock ledge of Mana Point cliff, trail visible as unmodified trodden path in center of photo (view to northwest)

APPENDIX II

CULTURAL IMPACT ASSESSMENT

**Limited Cultural Impact Assessment for an
Approximately 40-acre Coastal Property in
Moloa'a *Ahupua'a*, Ko'olau District Island of Kaua'i,**

TMK 4-9-11: por. 1

by

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Prepared for
Moloa'a Bay Ranch, LLC Property
P.O. Box 539
Anahola, Hawai'i 96703

by

Cultural Surveys Hawai'i, Inc.

July 2003

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I. INTRODUCTION

A. Project Background

At the request of Moloa‘a Bay Ranch LLC, Cultural Surveys Hawai‘i, Inc. has completed a limited cultural impact assessment for an approximately 40-acre, conservation-zoned parcel (TMK 4-9-11: por. 1) at Moloa‘a Bay, Moloa‘a *Ahupua‘a*, Ko‘olau District, Kaua‘i (Figures through 4). The cultural impact assessment is a component of the Environmental Assessment (EA) in compliance with the application for a Conservation District Use Application (CDUA).

The purpose of the cultural impact assessment is to consider the effects future developments and disturbances may have on Hawai‘i’s culture, and traditional and customary rights. The Hawai‘i State Constitution, Article XII, Section 7 protects “all rights” of native Hawaiians that are “customarily and traditionally exercised for subsistence, and cultural and religious purposes.” Act 50 (SLH 2000) was passed as an attempt to balance the scale between traditional lifestyles and development and economic growth. Act 50 provides that environmental impact statements: (1) Include the disclosure of the effects of a proposed action on the cultural practices of the community and State; and (2) Amends the definition of “significant effects” to include adverse effects on cultural practices.

The Scope of Work (SOW) was designed to meet the Guidelines For Assessing Cultural Impacts as adopted by the Office of Environmental and Quality Control (OEQC) (1997), as well as, the requirement of any other State and County agencies involved in the review process for the proposed project. The “Guidelines for Assessing Cultural Impacts” issued by the OEQC discuss the types of cultural resources, practices and beliefs that might be assessed. The Guidelines state:

The type of cultural practices and beliefs subject to assessment may include subsistence, commercial, residential, agricultural, access-related, recreational, and religious and spiritual customs. The types of cultural resources subject to assessment may include traditional cultural properties or other types of historic sites, both man-made and natural, including submerged cultural resources, which support such cultural practices and beliefs.

The focus of the cultural impact assessment has been historic and archaeological research and consultation and interviews with knowledgeable parties. An effort was made to conduct interviews with *kūpuna* and *kama‘āina* who were knowledgeable about Moloa‘a, and cultural resources, practices and beliefs within the general Moloa‘a *Ahupua‘a*.

B. Scope of Work

In compliance with the OEQC guidelines and Act 50, the following Scope of Work (SOW) was designed to satisfy the requirements of a cultural impact assessment as it relates to the identification of traditional and customary rights within the project area.

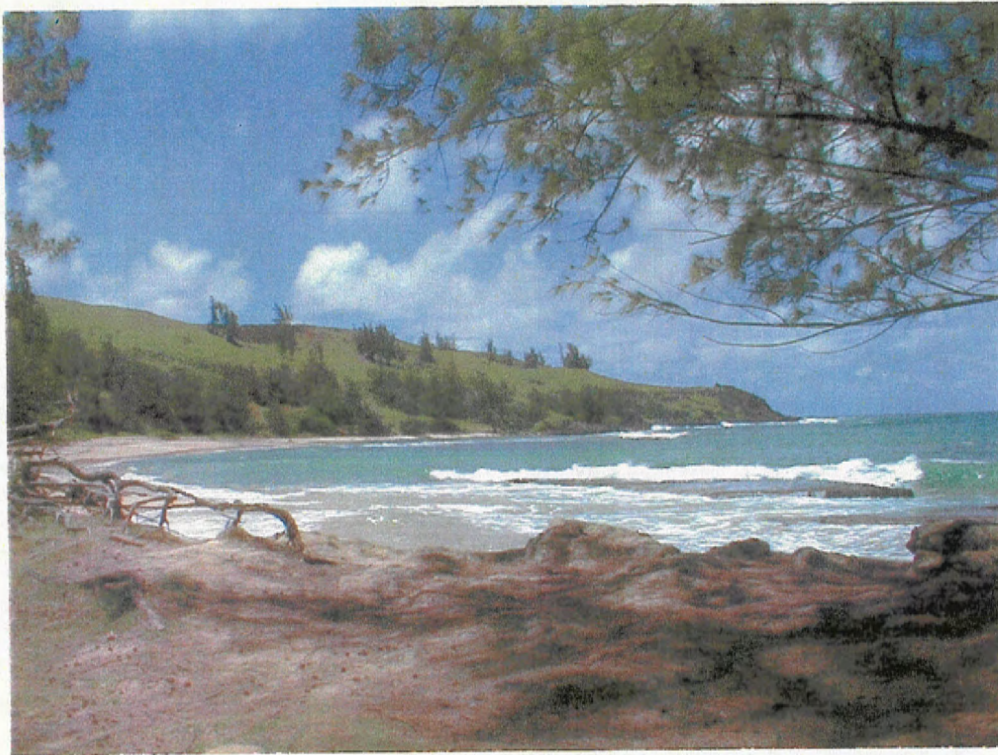


Figure 3 Photograph of Moloa`a Bay with project area in background. Photo taken to North.

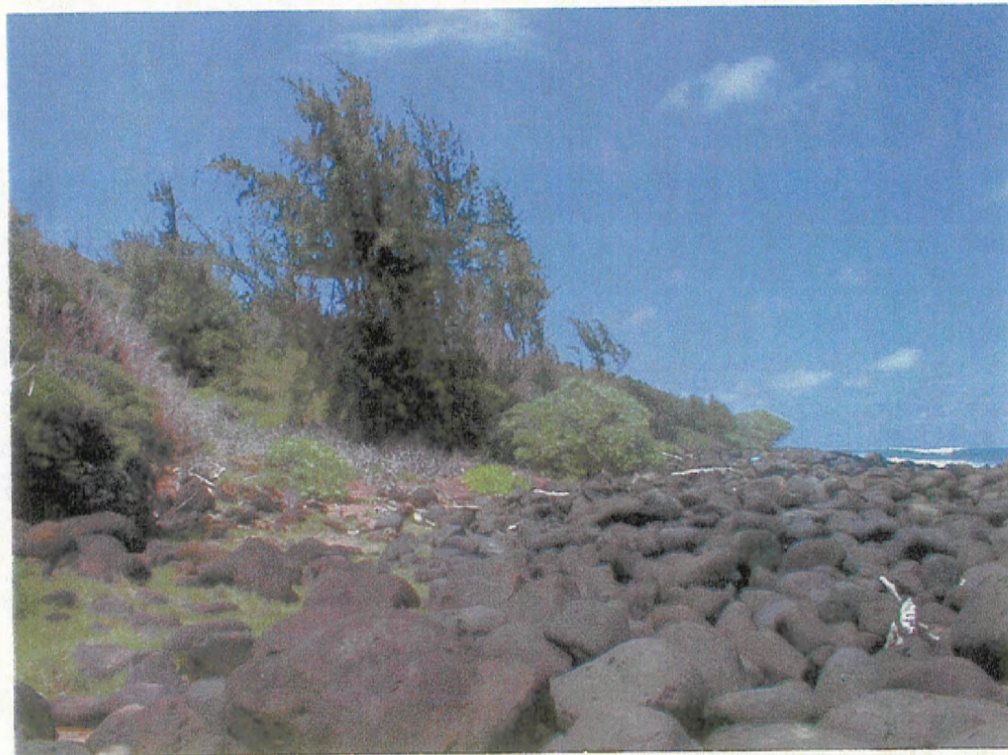


Figure 4 Photograph of project area. Photograph taken to Northwest.

The scope of work includes:

- 1) Examining historic documents, Land Commission Awards, and historic maps, with the specific purpose of identifying traditional and customary activities. Such activities would include the gathering of plant, animal and other resources, in addition to agricultural pursuits, as may be indicated in the historic record.
- 2) Reviewing existing archaeological information pertaining to site distribution, as this may enable us to reconstruct traditional land use activities, as well as identify and describe past and/or present cultural resources, practices, and beliefs associated with the project area and surrounding vicinities.
- 3) Conducting limited oral interviews with persons knowledgeable about the historic and traditional practices in the project area.
- 4) Preparation of a report on the above items summarizing gathered information as related to traditional practices and land use. The report will assess the impact of the proposed action on the cultural practices and any features identified.

C. Methods

1. Historic Research

Historic documents, maps and photographs were research at: the Hawai'i State Archives; Hawai'i State Survey Office; Bernice Pauahi Bishop Museum archives and library; the State Historic Preservation Division (SHPD) library; and the Cultural Surveys Hawai'i, Inc. library.

2. Identification of Knowledgeable Informants

Hawaiian organizations, government agencies, community members and cultural and lineal descendents with ties to Moloa'a were contacted to (1) identify potential knowledgeable individuals with cultural expertise and knowledge of Moloa'a *Ahupua'a* and surrounding vicinity, and (2) to identify cultural concerns and potential impacts relative to future disturbances and or developments on the coastal property project area. An effort was made to locate informants who either grew up in Moloa'a, or who in the past, used Moloa'a Bay and surrounding vicinity for traditional and cultural purposes. In addition, informal talk-story with community members familiar with the project area was ongoing throughout the consultation period.

3. Identification of Knowledgeable Interview Informants

Based on recommendations from organizations and the community, interviews were conducted with: Mr. Mark Boiser, Mr. Herb Silva, and Ms. Bella Ida. Mr. Val Ako and Mrs. Elizabeth Ako sat in during the interview conducted with Bella Ida and was able to also share some *mana'o* of Moloa'a. The informants were individuals who are either current or past residents of Moloa'a, and have strong family and cultural ties to the area.

4. The Interview Process

Once potential participants were identified, they were contacted by telephone. If the individual contacted express willingness to participate, an appointment was scheduled. The interviews lasted an hour to two hours. The interviews were recorded and notes were taken.

II. PROJECT AREA DESCRIPTION

A. Project Area Description

The project area is situated on the north side of Moloa'a Bay. It consists of conservation-zoned land that was previously utilized as pasture land.

The subject parcel extends from the boundary with Ka'aka'aniu (the adjacent *ahupua'a* to the northwest), southeastward towards Moloa'a Bay, then southward along the northwestern slope of the bay. The project area does not include the flat top table land which were former Kilauea Sugar Plantation fields.

The project area includes the cliff face of Āmana Point with a narrow bedrock and boulder wave-cut bench at the base. The bay frontage portion consists of a narrow bedrock and boulder-strewn bench deposits back to where Moloa'a Stream empties into the bay. The majority of the project area is the east-facing slope of Moloa'a Bay, which consists of a steep to very steep soil with rock outcrop slope.

B. Natural Setting

Soil types in the project area consists of beach sand (BS), badland (BL) and rough broken land (rRR) (Foote *et al.* 1974). Rainfall ranges between 50 and 75 inches per year. Vegetation consists mainly of various grasses, with ironwood (*Casuarina equisetifolia*), christmasberry (*Schinus terebinthifolius*), java plum (*Syzygium cuminii*) and lantana (*Lantana camara*) growing in shallow gulches and on rock outcrops. Beach *naupaka* (*Scaevola glabra*) is present within the narrow sandy stretch of beach. Elevation ranges from sea level to approximately 200ft. amsl.

III. HISTORICAL BACKGROUND

A. Pre-Contact to early 1800s

The present project area is located within Moloa`a *Ahupua`a*. The *ahupua`a*'s resources, which would have been utilized by the pre-Western contact Hawaiian population, were still in evidence well into the 20th century; according to Handy and Handy (1972: 422):

Moloa`a had a good stream which watered many terraces along its three-mile course toward the sea. A half mile of relatively flat land, inland from its bay was all terraced beautifully. Near the shore the soil consists of sand mixed with humus, which made it ideal for sweet potatoes. There were still a few old breadfruit trees there in 1935. Upstream, where there used to be *lo`i*, all is now dry, owing to the stripping of timber from the land and to grazing cattle.

Handy and Handy also note that the *ahupua`a*'s name apparently derives from the abundant cloth fiber material once available to the Hawaiians there; they cite the following by the Hawaiian scholar Mary Kawena Pukui:

Keahi (a native of Kauai) and I went over to Kauai and when she was asked [the meaning of Moloa`a] she didn't know...In passing Moloa`a, Keahi pointed to some low hills *mauka* and *makai* of the highway and said "When I was a small girl, I used to come here with my *tutu-wahine* for *wauke*. These hills, now barren, were once so thickly overgrown that the *a`a* (roots) of the *wauke* were *molo* (matted) together, weaving into each other like the meshes of a mat...This was once a great *wauke* growing place...Molo-a`a, Matted-roots." (Ibid.)

Other translations of Moloa`a attest to the importance of the crawling root of the *wauke* used as die for *kapa* staining [Mark Boiser, May 31, 2003 personal communication]. It is said that in both historic and prehistoric times Moloa`a was saturated with *wauke*.

The *ahupua`a* was not only characterized by its terrestrial resources. It was also noted for one of its seaweed. According to Frederick B. Wichman:

Moloa`a is still famous for the quality of its edible *limu* (seaweed). The *limu kohu* was brought here from South Kohala, on the island of Hawai`i by a chief of that place. The *limu* was placed under *kapu* and strictly reserved for the use of the *ali`i nui*. A beach and land section on the plains to the west of the valley is Ka`aka`a-niu, "rolling of the coconut," where the quality of seaweed was considered the finest on the island. (Wichman 1998: 95)

Moloa`a *Ahupua`a* is mentioned in three Hawaiian legends: of Kuapakaa, Palila, and Kapunohu (Fornander 1918-1919: 78-135, 136-153, 214-225). While none of the three legends is actually situated in Moloa`a, the *ahupua`a* is named as a significant landmark, suggesting that Moloa`a was, at the very least, a well-known locality in the consciousness of the Kaua`i Hawaiians. Typical is the legend of Kapunohu. Kapunohu, a warrior of Hawai`i island, travels to Kaua`i where he challenges the Kaua`i warrior Kemamo to a test of strength in which the loser shall forfeit his life. The competition is to throw a slingstone or spear the farthest. The course is "from Koloa to Moloaa in Koolau" (Fornander 1918-1919: 224):

Kemamo then took up his sling and threw his stone, which went six miles and over, and it only fell and rolled after it had entered into the seventh mile, stopping at Anahola...Kapunohu then threw his spear, darting along from Koloa and over Niumalu...; then it went on and into the water in upper Wailua...; from this place it again took an upward flight flying along till it pierced through a ridge at Anahola...; from this place it went on past Moloaa, then past Waiakalua, then into Kalihikai, where it grew weaker and finally stopped at Hanalei.

Kemamo was therefore beaten and the conditions of their bet were carried out. Kapunohu became thereby king of Kauai. (*Ibid.*)

In the post-Western contact period, Moloa'a enters the historical record in the 1840s when Father Robert Walsh arrived at Koloa to establish the first Catholic Church on Kaua'i. Traveling along the east side of the island early in 1842, Walsh spent the night in Moloa'a "at the house of Luapele, the *konohiki* of the place"; Walsh "took down the names of thirty-four natives who declared themselves desirous of studying the Catholic Faith" (Yzendoorn 1927: 175). In April 1842 Walsh and his assistant, Father Barnabe Castan, baptized 112 adults and 14 children at Moloa'a. Father Barnabe set up a station at Moloa'a:

Moloaa became a center of Catholicism during these early days. In the school built there, the girls worked at spinning and recited their lessons at the same time.

At Moloaa the Catholics had their first substantial success [on Kaua'i]...(Joesting 1984: 146)

By the mid-19th century, the Catholics were firmly established at Moloa'a. In his journal, William DeWitt Alexander, the son of a missionary at Waioli, described a trip around Kaua'i in 1849. Riding on horseback around northeast Kaua'i, Alexander noted:

About five miles from Anahola we crossed Molowa [Moloaa] valley a most beautiful spot. There is a village here, in which a Catholic priest resides, the inhabitants of which are mostly Catholics. The country near this place has been lately burnt over, but the vegetation is springing up anew. (Kauai Historical Society 1991: 124)

The Organic Acts of 1845 and 1846 initiated the process of the *Mahele* - the division of Hawaiian lands - which introduced private property into Hawaiian society. In 1848 the crown and the *ali'i* (royalty) received their land titles. Most of Moloa'a *Ahupua'a* was retained and designated as Crown Land. *Kuleana* awards for individual parcels within the *ahupua'a* were subsequently granted in 1850. These awards were presented to tenants - native Hawaiians, naturalized foreigners, non-Hawaiians born in the islands, or long-term resident foreigners - who could prove occupancy on the parcels before 1845. Nineteen Land Commission Awards (LCAs) for individual parcels (including one to the Roman Catholic Church) were recorded in Moloa'a *Ahupua'a*. An historic map of 1931 shows that the LCAs were focused along the course of the Moloa'a Stream to the east of the present project area (Figure 5). Given their locations along Moloa'a Stream, it is likely that these award parcels were taro *lo'i* and associated house sites. No LCAs were located within the present project area itself. The disposition of these awards may reflect a continuation into the post-contact era of the traditional Hawaiian settlement of Moloa'a.

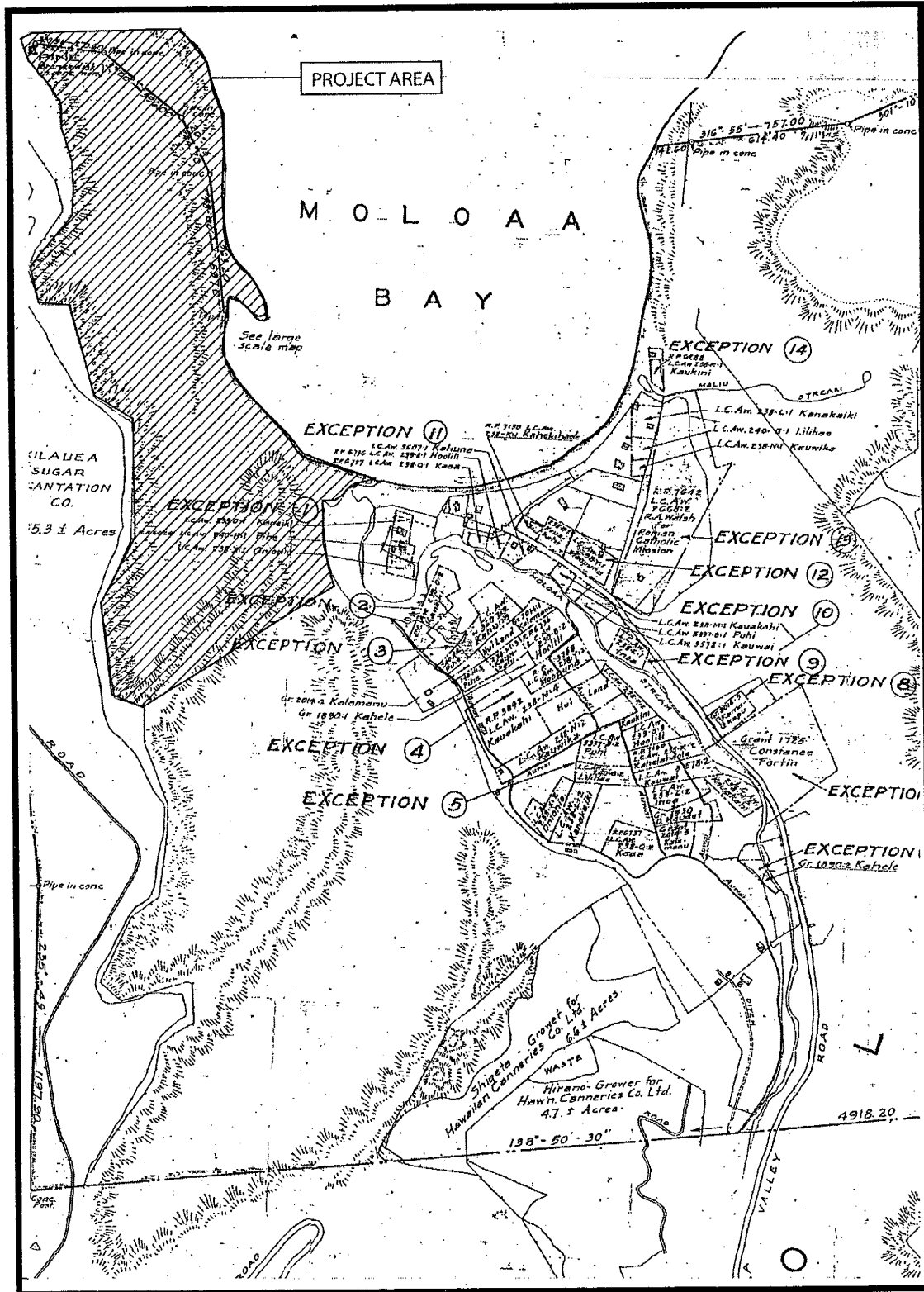


Figure 5 Portion of "Map of Moloa'a Hui Land" by R.M. Towill, June 1931, showing locations of Land Commission Awards in Moloa'a Ahupua'a.

Close to the middle of the 19th century, it is likely that the concentration of Land Commission Awards above the coastline and along Moloa`a Stream mirrored area where the *ahupua`a* population was centered. In a census of 1835, a total of population of 115 was recorded in Moloa`a; 102 adults and 13 children. Moloa`a was the fourth highest populated *ahupua`a* in the Ko`olau district at this time, representing 11 percent of the total population for the district, after Anahola, Pīla`a, and Kilauea. By comparison, there were 78 inhabitants recorded in Waipake and 85 in Lepeuli *ahupua`a* to the west of Moloa`a, and 45 inhabitants in Pāpa`a and 223 in Anahola *ahupua`a* to the east (Schmitt 1973: 25).

B. 1850s to 1900

According to the government census of 1853 there were then 1,998 persons living in the Ko`olau District of Kaua`i in which Moloa`a is located (Schmitt 1977: 12-13). No specific population figure for the *ahupua`a* was recorded. The district population diminished during subsequent decades, dropping to 1,597 in 1878.

The Catholic presence in Moloa`a was further solidified with the construction of St. Stephen's, in 1854. St. Stephen's Catholic Church consisted of a frame schoolhouse, a frame rectory, and a stone church (Schoofs 1978: 225). Reports sent from Moloa`a record the Catholics' success in the second half of the 19th century. A typical report, from 1864, noted:

At Moloaa, the habitual residence of Father Denis, the Faith has made consoling progress this year. Services are well attended; slothful Christians have come back to their duties, and Protestants have been converted...(in Damon 1931: 340)

St. Stephens became the second largest Catholic missions on the island of Kaua`i by the mid 1800s, after St. Raphael's in Koloa. However, tragedy struck in 1869 when a tidal wave destroyed St. Stephen's church resulting in the dispersal of the Moloa`a Catholic community (Schoofs 1978: 228). Subsequent industrial developments caused the closure of several of the original Catholic churches on Kaua`i (including Moloa`a). Majority of the original missions were relocated or abandoned, with larger chapels built in other Hawaiian villages that were more heavily populated.

During the 1860s, Moloa`a would be the focus of major land transactions involving the Hawaiian government, a new educational institution, and private individuals. Early in the decade, 2,600 acres of land at Moloa`a and Pāpa`a were deeded to Punahou School by the government to augment the school's endowment. The land was sold almost immediately to Herman A. Widemann:

In 1861 Mr. Widemann of Lihue bought practically the entire Kauai land grant of 2,262 acres for \$1833.33 from the trustees of Punahou, perhaps with the intention of using it as a cattle and sheep ranch...(Damon 1931: 590)

Widemann's plans were unsuccessful and "in order to divide up the land among small holders, Mr. Widemann organized the Moloaa Hui, or Company, among the Hawaiians of that region, with shares at \$100 apiece, and sold the land to that Hui (Ibid.).

J.H.K. Kaiwi, secretary of the 'Āina Hui O Moloa`a, in 1916 gave a brief description of its landholding (Lai 1985: 149):

Ahupuaa Moloaa (school land)	460 acres
Ahupuaa Papaa B (school land)	1,046 acres
Ahupuaa Aliomanu (school land)	647 acres
Ahupuaa Kaapuna (Smith land) L.C.A. 535	537 acres
E. Rowell Land—Grant 549	33 acres
Uka—RP or Grant 4044, LCA 6645	
3 roods, 29 perches	

There were 34 individuals who owned shares in the *hui* including: A.S. Wilcox, five shares; Hee Fat, four; Enoka Lovell, two; Robert Puuki, one-fourth share; Aloiau, three; and the heirs of Charles Miller, one share (Lai 1985: 149).

Describing a visit to Kaua`i in 1865, William T. Brigham, who would later become the first director of the Bishop Museum, recorded:

Moloaa was the next place we came to and it is the chief wood station at present on this part of Kauai. Here several vessels have been wrecked, and only the week before a schooner ran on the rocks through the carelessness of the master. (Kauai Historical Society 1991: 142)

What “wood station” means is unclear. However, it suggests that Moloa`a may have been a major site for the exporting of firewood to Honolulu.

During the second half of the 19th century, taro *lo`i* on Kaua`i - including those at Moloa`a - were in large part converted to rice fields by Chinese farmers. These Chinese had come originally to the islands to work on the sugar plantations. As the commercial sugar industry expanded throughout the Hawaiian Kingdom, the need for increased numbers of field laborers prompted passage of contract labor laws. In 1852 the first Chinese contract laborers arrived in the islands. Contracts were for five years, and pay was \$3 a month plus room and board. Upon completion of their contracts, a number of the immigrants remained in the Hawaiian kingdom, many becoming merchants or rice farmers.

The Hawaiian islands were well-positioned for rice cultivation. A market for rice in California had developed as increasing numbers of Chinese laborers immigrated there since the mid-19th century. Similarly, as Chinese immigration to the islands also accelerated, a domestic market opened.

At Moloa`a, as in other locales, groups of Chinese began leasing former taro lands for conversion to rice farming. Sadly, the taro lands' availability throughout the islands in the later 1800s reflected the declining demand for taro as the native Hawaiian population diminished. (As noted above, the Ko`olau District's population diminished by 401 persons between 1853 and 1878.)

During the last decades of the 19th century, the population of the Kawaihau District, a new apportioning of north Kaua`i lands that includes Moloa`a, would rebound, growing from a total of 1,882 in 1884 to 2,101 in 1890, to 2,762 in 1896, and 3,067 in 1900 (Ibid.:13). That growth was spurred by the establishment of commercial sugar cane planting in the district. The origins of the Kilauea Sugar Plantation Company date to 1863 when Charles Titcomb purchased

land at Kilauea Ahupua`a from Kamehameha IV and began ranching and growing sugar cane. In 1877, Titcomb sold his lands to Captain John Ross and E.P. Adams. Subsequently, Robert A. Macfie, Jr. bought Ross's interest. The Kilauea sugar mill was one of only four mills on Kaua`i in the 1870s.

An 1899 map of Moloa`a indicates that settlement in the *ahupua`a* continued to be focused near the coastline along Moloa`a Stream and the Roman Catholic church property (Figure 6). There is no indication on the map of any house lot or other habitation site within the present project area. The map also shows how rice had supplanted taro in the irrigated lands surrounding the Moloa`a house sites. Moloa`a had become one of the significant rice-growing localities on northeastern Kaua`i by the end of the 19th century (Coulter and Chee 1937: 15).

C. 1900s to Present

Twentieth-century documentation indicates that, while other portions of Moloa`a would undergo mostly agricultural development, the present project area remained undeveloped except for use as pasturage.

A 1924 aerial photograph of the coastline at Moloa`a shows agricultural endeavors surrounding the project area which appears to be naturally vegetated (Figure 7).

A map of 1931 shows that the land above the present project area was then owned by the Kilauea Sugar Company (Figure 8). By the 1930s, Kilauea Sugar Company had a total of 3,875 acres in cane (Wilcox 1996: 85). A map of the company's lands in the 1930s indicates that the present project area was located just beyond Kilauea Sugar's easternmost cane fields (Figure 9).

Sugarcane was not the only extensive crop planted in or around Moloa`a during the early decades of the 20th century. Writing in the early 1930s, Ethel Damon noted: "Today as one travels along the uplands of Kilauea, Moloa`a, and Anahola, neatly ridged pineapple fields stretch away for miles toward the sea and up into the foothills" (Damon 1931: 357). Lihue Plantation had, earlier in the 19th century, purchased much of the former Moloa`a Hui lands with the intention of future expansion into north Kaua`i. These were lands, planted in pineapple, that Damon observed (Ibid.: 919).

In the 1940s, Moloa`a would be devastated by a natural disaster. During the tsunami of April 1, 1946:

Violent destruction was caused at Moloaa, though without loss of life. Every one of the dozen houses was destroyed. The shore line at the head of the bay was cut back about 70 feet, leaving cliffs of alluvium 6 feet high...Rocks weighing about 5 tons were thrown up on the beach. Near the beach the water rose to heights of 30 to 35 feet above sea level. It swept inland along the valley, carrying debris from the houses at the beach as much as 0.7 mile inland, to a height of about 40 feet above sea level. (Shepard 1950: 416)

Kilauea Sugar Plantation closed in 1971, forcing the area's population to search for new agricultural work. "Besides cattle, which had long been an industry in this area, papaya, guava, prawn ventures, and agricultural subdivisions were established..." (Wilcox 1996: 85). By this

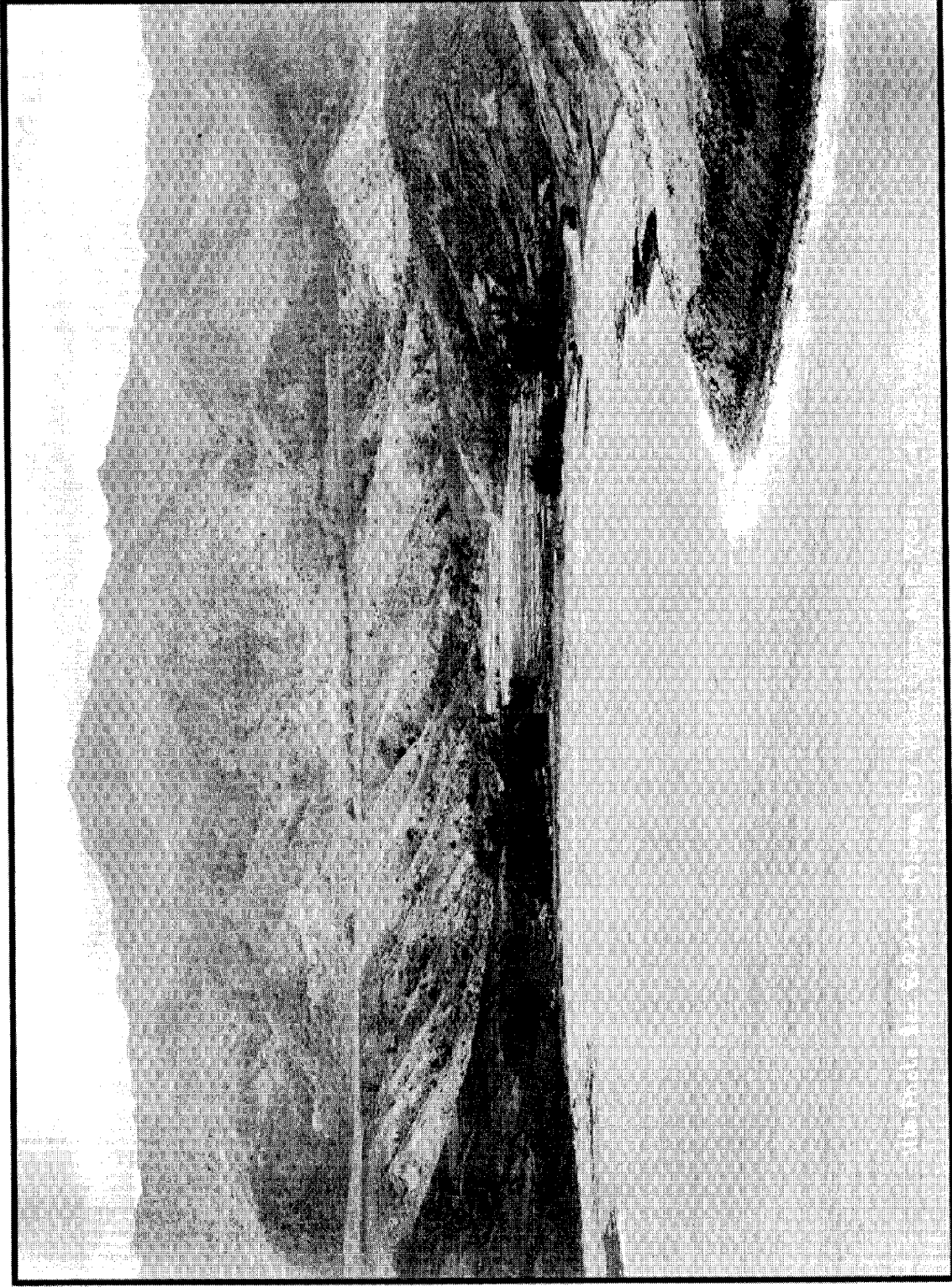


Figure 7 1924 aerial photograph of Molokai's coastline (Bernice P. Bishop Museum Archives).

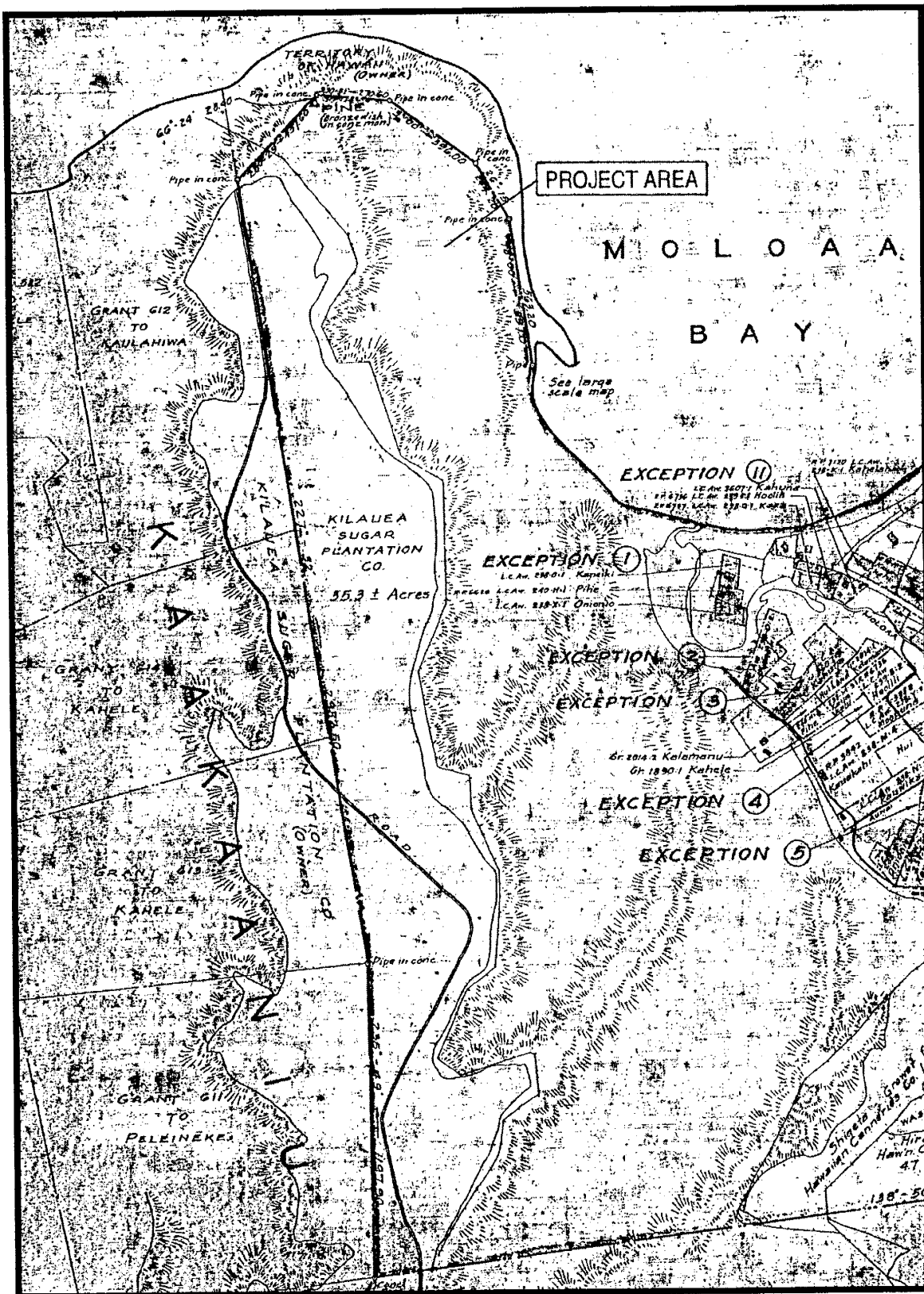


Figure 8 Portion of "Map of Moloaa Hui Land", surveyed by R.M. Towill, June 1931, showing project area and adjacent land owned by Kilauea Sugar Plantation.

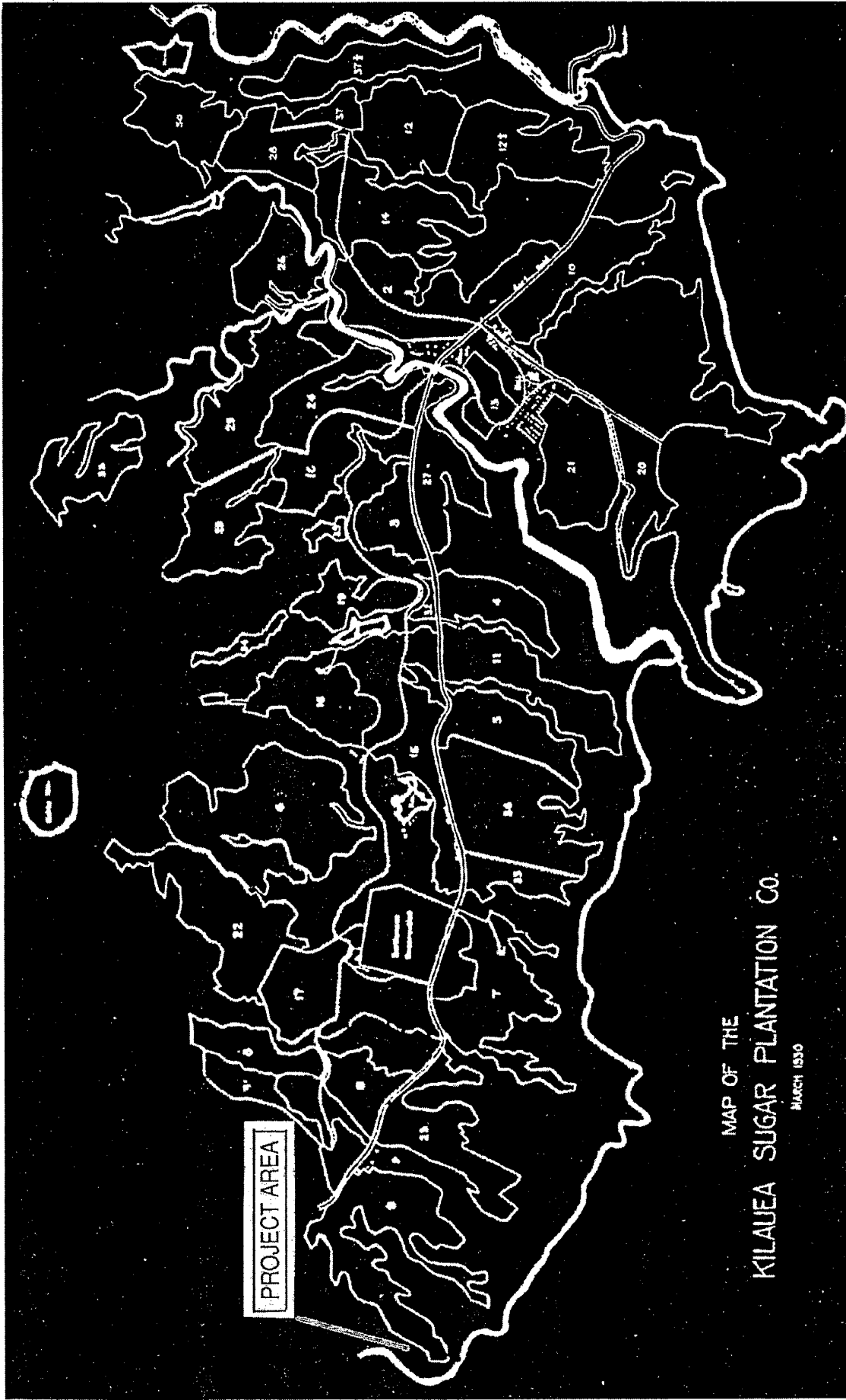


Figure 9 Kilauea Sugar Company fields in the 1930s (from Conde and Best 1973: 153).

time, majority of the local families in Moloa‘a relocated to Anahola and Kiluaca, where job opportunities were more stable. However, many of the local *kuleana* families retained their *kuelana* lands, returning resgularly to continue family traditions and cultures, which included gathering marine resources at Moloa‘a Bay.

Today, there are less than half a dozen original *kuleana* families who live in Moloa‘a. Many families have sold their *kuleana* lands due to high property taxes and large scale investment developments. Issues concerning lack of public access to *kuleana* lands by outsiders who purchase adjacent parcels have also taken their toll—forcing many local families to sell. Timeshares and bed and breakfast businesses have are the prime business endeavors in Moloa‘a today.

IV. PREVIOUS ARCHAEOLOGICAL RESEARCH

Some of the earliest archaeological information about the area comes from Thomas Thrum's (1906) study of *heiau* sites on Kaua'i. Thrum lists the location of two *heiau* in the *ahupua`a* of Pāpa`a, south of Moloa`a *ahupua`a*. Pāpa`a *heiau*, located at Kawaipapa, was said to be a walled *heiau* 60 x 80 feet (approximately 18 x 24 m). Pāpa`a *heiau* was dedicated to Kamohoali'i, but was used as a cattle pen at the time of Thrum's studies. The second was Puwouwou *heiau*. By the time Thrum located it, it had been destroyed. Thrum also mentions Kapua`a *heiau* located in Lepeuli *ahupua`a*, north of Moloa`a *ahupua`a*. This *heiau* was said to be circular, 50 feet in diameter, with walls four feet high.

The three *heiau* were mentioned again in Bennett's (1931), *Archaeology of Kauai*. The Pāpa`a *heiau* is listed as Site 124, and the Puwouwou *heiau*, Site 125. Puwouwou *heiau* sits atop **Pu u Anau** and was described as being a "place of refuge" (Bennett 1931; 131). According to Bennett the *heiau* was cleared to make way for pineapple fields. Site 126, Kapua`a *heiau*, of which Bennett indicated that nothing remained, was said to be located behind the present day Japanese school in Lepeuli *ahupua`a*. Neither Bennett nor Thrum mention archaeological sites in Moloa`a *ahupua`a*.

In an archaeological inventory survey of 15.44 acres in `Aliomanu and Pāpa`a, (two *ahupua`a* south of the current project area) Hammatt and Ida (1992) recorded State site # 50-30-4-1896, a single human burial situated on a sloping bank above the shore (Feature A), and an adze-grinding stone located 100 feet *mauka* of the burial (Feature B). This site has been evaluated as culturally and informationally significant. State site # 50-30-4-1897, a cultural layer discovered on a beach terrace on the north end of the project area, was evaluated as informationally significant.

In a letter to Melvin Kaufman (property owner), Kikuchi (1982) describes the results of an archaeological assessment of a lot (43-A) for Moloa`a Hui Lands in `Aliomanu *ahupua`a*. Surface findings included a broken fragment of an adze, an adze flake, and a worked beachrock sander. But, Kikuchi states that nothing of archaeological importance was found.

Scientific Consultant Services Inc., conducted an Archaeological Inventory Survey of 725 acres of former sugarcane fields located on a tableland between Moloa`a and Pāpa`a Gulches and surrounding ravines (McGerty and Spear 1998). Although the majority of the project area was located in Pāpa`a, it did extend into the southern portion of Moloa`a Gulch.

Four side ravines of the Moloa`a Gulch were surveyed. Ravine No. 1 contained an abundance of *noni* (*Morina citrifolia*). Ravine No. 3 revealed feral populations of traditionally cultivated plants. These plants included *kī* (*Cordyline fruticosa*), *kalo* (*Colocasia esculenta*), and *mai`a* (*Musa* sp.). A terrace constructed in the traditional manner (except for the addition of cement) was built near a spring at the back of the ravine and *mai`a*, *kalo*, and white ginger (*Hedychium coronarium*) grew there. Other findings in the area included exotic plant species and modern construction material (pipes and cement). No archaeological sites or features were identified but SCS suggests the possibility of subsistence cultivation activities, possibly dating back to pre-contact times due to the presence of these feral plant species and the fresh water spring.

The locations of the two *heiau* sites mentioned previously, Pāpa`a #124 and Puwouwou #125 were investigated but due to modern cultivation activities no intact remains were located (McGerty and Spear 1998).

Archeological Sites within the Project Area

In 1999, Cultural Surveys Hawai`i, Inc. completed an archeological assessment for the current 40-acre coastal property project area (Borthwick *et al.* 1999). Two archaeological sites were found and documented during the one-day surface survey. The sites included a buried cultural layer State Site 50-30-04-1033 and a narrow unmodified trail, Site 50-30-04-1034 (Figure 9).

Site 50-30-04-1033 consists of a buried cultural later situated where the sandy beach ends at a natural point. Behind or inland of the boundary point is a relatively level and narrow shoreline bench. High surf has cut a half to one centimeter deep face into the shoreline bench that exposed the cultural layer. The cultural layer extends one-half meter to one meter below the present soil surface. Based on the presence of traditional midden (that included cowry, *opihī*, *pipipi*, fishbone and charcoal) observed within the cultural layer, the site was determined to be pre-contact in age.

Site 50-30-04-1034 consists of a narrow, half meter-wide trail segment. The trail has no observable constructions, but was described as a well-worn, trodden path. The trail extends from Moloa`a Bay beach, through the project area into the adjacent property in Ka`aka`aniu. From the beach the trail ascends gradually to an elevation of approximately 70 ft. AMSL, then goes cross-slope on a narrow ledge on the cliff face of Āmana Point, and then outside the project area. The trail permits access to and from Moloa`a Bay and Larsen`s Beach in Ka`aka`aniu. The trail is believed to have existed prior to the 1940s and is understood to be an important access route in both traditional and historic times.

Sites Site 50-30-04-1033 and 50-30-04-1034 were considered significant as sites that may be likely to yield information important in prehistory or history. Both sites were recommended for preservation. It was further recommended that there be no ground disturbing activities such as bulldozing, mechanized vegetation clearing or construction activities on the sites. Additional recommendations prohibit ground disturbing activities on the historic properties.

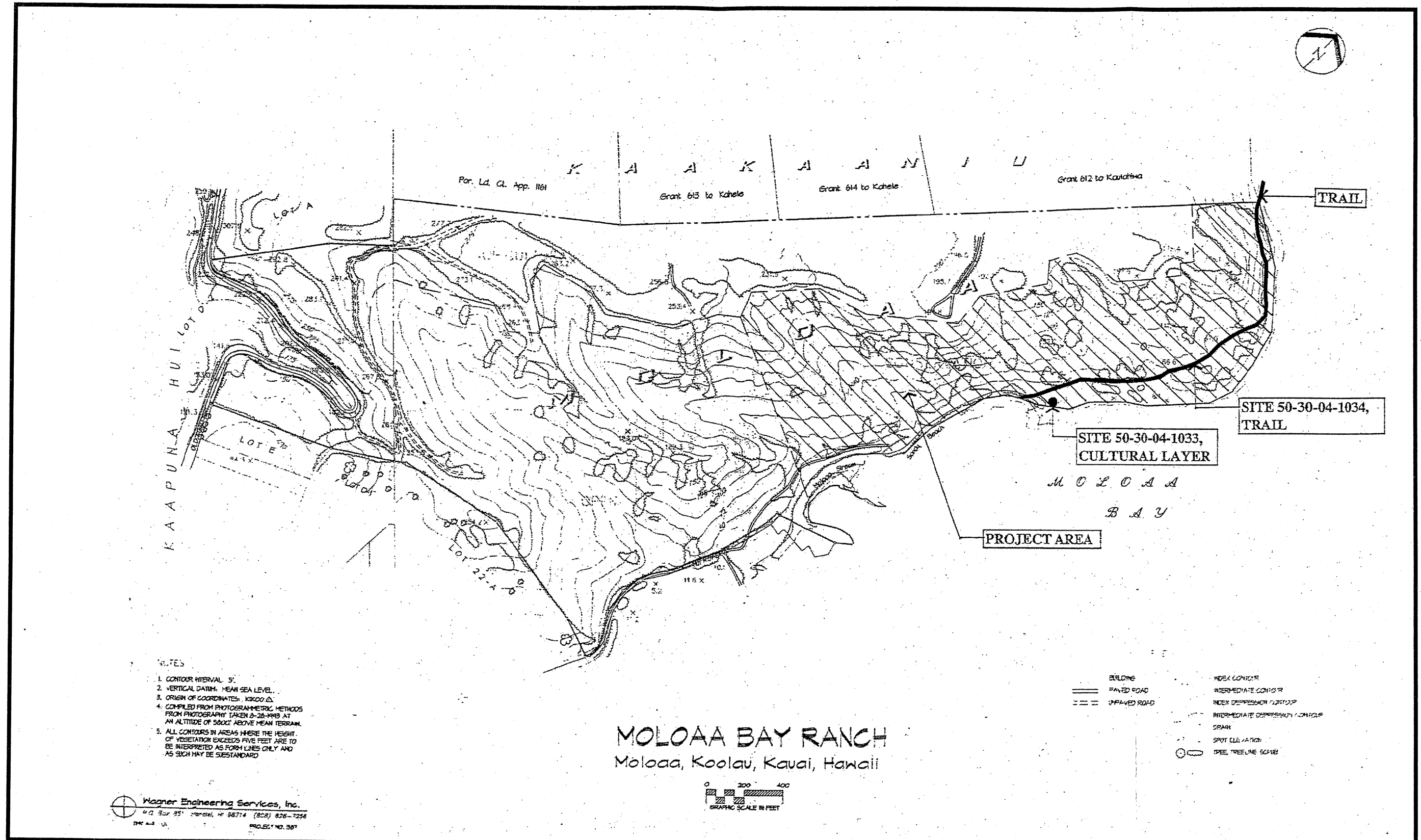


Figure 10 Project area topographic map showing archaeological sites.

V. RESULTS OF THE COMMUNITY CONTACT PROCESS

Throughout the course of the cultural impact assessment, an effort was made to contact and consult with Hawaiian cultural organizations, government agencies, and individuals who might have knowledge of and/or concerns about traditional cultural resources, practices and beliefs specifically related to the coastal regions of Moloa'a. This effort was made by letter, telephone or in-person contact. In the majority of cases, letters—along with a map of the project area—were mailed with the following text:

In collaboration with Moloa'a Bay Ranch, LLC, Cultural Surveys Hawai'i, Inc. is conducting a Cultural Impact Assessment for a coastal Moloa'a property (TMK 4-9-11: 1). This assessment is being completed to fulfill requirements for a Conservation District Use Application (CDUA) by the landowner. The purpose of this assessment is to determine if there will be any possible impacts to traditional cultural practices by existing and proposed developments. A map indicating the location of the property is enclosed for your reference.

We are seeking your *kōkua* and guidance regarding the following aspects of our study:

1. General history and present and past land use of the study area.
2. Knowledge of cultural sites which may be impacted by the project, for example historic sites, archaeological sites, and burials.
3. Knowledge of traditional gathering practices in the study area, both past and on-going.
4. Cultural associations with the study area through legends, traditional use or otherwise.
5. Referrals of *kūpuna* or anyone else who might be willing to share their general cultural knowledge of the study area.
6. Any other cultural concerns the community might have related to cultural practices in the nearby area.

The individuals, organizations, and agencies attempted to be contacted and the results of any consultation are presented in the Table 1 below.

Results of the Community Contact Process

Key:

Y = Yes

N = No

D = Declined to comment

A = Attempted (at least 3 attempts were made to contact individual, with no response)

U = Contacted via letter, but no known phone number

Table 1 Results of Community Contacts.

Name	Affiliation	Contacted	Personal Knowledge (Y/N/D)	Comments
Ahahui Ka' ahumanu	----	U	----	----
Aiu, Dr. Pua	Office of Hawaiian Affairs	A	----	----
Akamu, Noel	Department of Hawaiian Homelands/Land Management	Y	N	Expressed concerns regarding potential for burials in sandy area, as well soil erosion due ground disturbing activities in the area. Made referrals.
Akana, Kaipo	Kaua'i Archaeologist	A	----	----
Ako, Valentine	Kapa'a Resident	Y	Y	Interviewed May 31, 2003.
Anahola Farmers Association	----	U	----	----
Anahola Hawaiian Homes Association	----	U	----	----
Baptiste, Bryan	Kaua'i Mayor	A	----	----
Boiser, Mark	<i>Kūleana</i> family of Moloa'a	Y	Y	Interviewed May 30, 2003.
Bushnell, Andrew	Kaua'i Health Heritage Coastal Corridor Committee	Y	N	No comment. Made referral.
Castillo, Kau'i	Queen Lili'uokalani Children's Center	Y	N	No comment.
Chase, Bill	Moloa'a Watershed Committee	Y	Y	Expressed concerns regarding recent developments resulting in environmental issues and resource problem in Moloa'a Bay. Also voiced concerns regarding public access issues.
Chun, Dennis	Kaua'i Community College	A	----	----
Cummings, Winifred	Anahola Homesteaders Coalition	A	----	----
Denson, David	Queen Lili'uokalani Children's Trust Has <i>kuleana</i> land in Moloa'a	Y	Y	Gathers medicinal plants in <i>mauka</i> areas of Moloa'a. Knows several fishermen from other areas who gather in Moloa'a Bay. Made referrals.

Results of the Community Contact Process

Derrickson, Scott	State Office of Planning	Y	Y	Expressed concerns regarding runoff of sediment into Moloa'a Bay by ground disturbing activities that cause erosion. Also indicated concerns regarding public access for fishing and other cultural practices. Made specific recommendations in regards to grubbing in the area.
Field-Grace, Sondra	'Ili Noho Kai O Anahola	A	----	----
Hashimoto, Annie	Hanalei Hawaiian Civic Club	U	----	----
Hawaiian Farmers of Hanalei	----	U	----	----
Hoe, Kathryn	Has <i>kuleana</i> land in Moloa'a	Y	D	No comment.
Ida, Gerald	Kaua'i Archaeologist	A	----	----
Iida, Ron	Royal Order of Kamehameha, Kaumuali'i Chapter No.3	A	----	----
Kalai, Tim and Hope	Moloa'a Watershed Committee	Y	Y	Made referrals. Commented on the many families that gather at Moloa'a Bay. Also expressed concerns regarding public-right-of-way and recent declines in marine resources due to developments in the area. Commented on a rare plant (<i>mau'u la'ili</i>) found in a Moloa'a used as a semi-permanent tattooing ink.
Kalama, Nathan	<i>Kūmū Hula</i>	Y	Y	Made referral.
Kanoho, Ezra	State Representative 13th District	A	----	----
Kanoho, Kau'i	Pūnana Leo O Kaua'i	Y	Y	No comment.
Kaohi, Lionel	Kaumuali'i Hawaiian Civic Club			
Kapaka-Arboleda, La France	Office of Hawaiian Affairs/Kaua'i Island Burial Council	Y	Y	Made referrals. Indicated no knowledge of burials within the project area.
Kapeliela, Kana'i	State Historic Preservation Division, Burials Program	A	----	----
Kaua'i Hawaiian Civic Club	----	U	----	----
Kauo, Lorna	Anahola Resident	A	----	----
Kekua, Kehau	Lili'uokalani (Kaua'i)	A	----	----
Kimoto, Ernest	Office of Hawaiian Affairs	A	----	----
Kubo, Leslie		A	----	----
Lauretta, Mike	Kaua'i Land Division	Y	Y	No comment.

Results of the Community Contact Process

Licon, Roland	Department of Hawaiian Home Lands	Y	N	No comment.
Lovell, Carol	Kaua'i Museum	A	----	----
Lovell-Obatake, Cheryl	<i>Kuleana</i> Family of Moloa'a	Y	Y	Commented on issues regarding open public access to gather marine resources
Markell, Ka'iana	State Historic Preservation Division/Burials Program	A	----	----
McEldowney, Holly	State Historic Preservation Division	A	----	----
McMahon, Nancy	State Historic Preservation Division/Kaua'i Island Archaeologist	Y	Y	Indicated two state sites in the project area. Has no knowledge of any additional archeological sites within Moloa'a <i>ahupua'a</i> . Indicated no knowledge of burials within the project area.
Nishimoto, Waren	University of Hawai'i	A	----	----
Pereira, Jennie Loke	Has <i>kuleana</i> land in Moloa'a.	Y	Y	One of the original family members of Moloa'a. Commented on the need for open public access to gather marine resources. Also expressed concerns regarding environmental and ecological problems resulting from recent grading for large scale developments in the area.
Perry, Warren	Royal Order of Kamehameha, Kaunuali'i Chapter No. 3	A	----	----
Requilman, Mary	Kaua'i Historical Society	A	----	----
Rivera, Larry	Entertainer	A	----	----
Rivera-Bond, Leilani	Kapa'a Resident	A	----	----
Rogers, Puanani	Hui Ho'okipa O Kaua'i	Y	Y	Made referrals. Indicated that public access has been restricted by private landowners in recent years. Expressed concerns regarding open access to gather resources.
Silva, Herbert	Kuleana family of Moloa'a	Y	Y	Interviewed July 26, 2003
Sprout, Kāpua	Earth Justice	Y	Y	Expressed concern regarding public access issues. Family has fished in Moloa'a Bay for generations.
Sprout, Linda	Kiluaea Coalition	Y	Y	Deferred comment to later time.
Torio, James	Anahola Homesteaders Council	Y	Y	Made referrals. Expressed concern regarding public access and depletion of marine resources in recent years. Also expressed concern regarding environmental issues.
Tsuchiya, Rick	Kaua'i Historic Preservation Review Committee	Y	N	No comment. Made referrals.

Results of the Community Contact Process

Wann, Presley	Kaua'i Island Burial Council	A	----	----
Yent, Martha	Hawai'i State Archaeologist	A	----	----
Yim, Father Louis		Y	N	Provided historic information regarding St. Stephen's Catholic Church.

VI. SUMMARY OF INTERVIEWS

Mark Boiser

Mr. Mark Boiser was born to George Kaleiohi, Junior and Caroline Huddy and is one of four siblings. His family ties to Moloa'a spans several generations. Mr. Boiser is one of the few original descendent to permanently live in Moloa'a today. His mother and father had two *kuleana* parcels in Moloa'a: one near the bay and one *mauka* along the banks of Moloa'a Stream. The property near the bay was sold last year and Mr. Boiser currently lives on the property on the bank of Moloa'a Stream. Mr. Boiser grew up with his family on the property in Moloa'a Bay where he recalls some of his fondest childhood memories.

During the interview, Mr. Boiser was able to share historical accounts conveyed to him by his grandmother, as well as the abundant resources in Moloa'a Bay. Growing up, Mr. Boiser and his grandmother would frequent Moloa'a Bay and Moloa'a Stream to fish and gather marine resources, further indicating how his family was able to successfully survive off the resources of the land and ocean. He also commented on the importance of *limu kohu* in Moloa'a Bay and the recent decline in marine resources due to recent mechanical clearing activities.

Mr. Boiser indicated public access as the primary concern within the project area. He spoke on the recent restrictions of public access by private landowners, as well as the lack of parking and the overall negative ambiance of Moloa'a in recent years. He also communicated that many family traditions are been lost by the restriction of public access. Mr. Boiser indicated to knowledge of archaeological sites within the project area, however he did comment on burials recovered in the vicinity of the project area. According to Mr. Boiser, four human burials were recovered during the tidal wave of 1958 on both sides of Moloa'a Stream.

Mr. Boiser represents the voice of many Hawaiians fighting for their cultural rights. He is a strong cultural activist with great compassion for preserving the Hawaiian cultural heritage, as well as insuring the integrity and sovereignty of the Hawaiian people. He lives by the traditional ways of *lōkahi* and *ho'oponopono* and follows his endeavors with full motivation.

Herbert Silva, Junior

Mr. Herbert Silva, Junior was born to Herbert Silva, Senior and Barbara Silva and is the oldest of five children. His ties to Moloa'a originates from his paternal grandmother who had property in Moloa'a prior to the 1890s. His paternal grandparents were Eunice Kuhaulua and Antone Silva. Eunice Kuahulua was born in Moloa'a in 1895 and died in the mid 1950s. Mr. Silva's paternal grandfather, Antone Silva, was an engineer for the various sugar mills on Kaua'i, O'ahu, and Moloka'i. Job opportunities outside Moloa'a forced both his paternal grandparents to moved from Moloa'a in the mid 1930s. Mr. Silva's recollection of Moloa'a however, stem from his father who was an entrepreneur and advent fishermen. He recalls his father casting fishing lines and picking *limu kohu* throughout his childhood.

Mr. Silva commented on the abundant schools of *'opelu* and *akule* in Moloa'a Bay, and further indicated Moloa'a Bay as a rich source for *limu kohu*. As Mr. Silva indicated, that people

of all ethnic backgrounds come to Moloa'a to gather. Today, Mr. Silva, along with Mr. Mark Boiser, are the only two residents of native ancestry from the area to gather. At minimal, Mr. Silva says he gathers resources at least once a month in the Bay, but commented on the importance of allowing the resources to replenish. He also commented on the numerous turtles that frequent the northeast side of the project area. He further indicated that once or twice a year, the turtles come ashore and lie for a few hours.

Issues expressed by Mr. Silva included the restricted access to public areas by private landowners and the decline in marine resources in Moloa'a Bay and Moloa'a Stream affected by mechanical clearings by private landowners. He communicated no knowledge of burials or archeological sites within the project area. However, he did indicate that there may have been one kuleana land on the top of the project area in the vicinity of Kalai Amana. He indicated that he was not sure what the family name is, and did not have any further knowledge about the property.

He also noted that sediment runoff due to mechanical clearing on the property area did compromise the integrity of the reef system. He indicated that the more development and disturbance incurred to the property will result in more erosion and the subsequent destruction of the marine resources by way of sediment runoff.

Currently, Mr. Silva is working towards establishing a non-profit organization for coastal management by private landowners. According to Mr. Silva his belief is that Moloa'a only has only 20 more years before all of its resources are depleted or affected by development. His non-profit organization would introduce land owners to the importance of conservation and educate them on the various resources, as well as the importance of sustaining and preserving the resources.

Isabella Ai Ida

Ms. Isabella "Bella" Ai Ida was born and raised in Moloa'a by her *hanai* parents, Jose Miguel H.M. Castro and Elizabeth Kapule Castro. Ms. Ida was born June 20, 1920 and is 83-years-old. Ms. Ida's ties to Moloa'a stem from her *hanai* parents who lived in Moloa'a all their lives. Her *hanai* parents both passed away in 1932. Ms. Ida grew up on the Hanalei, or north side, of Moloa'a Stream and attended Ko'olau School. She eventually moved from Moloa'a to Honolulu in the late 1930s after the passing of her *hanai* parents.

During the interview, Ms. Ida told stories of some of her most treasured childhood memories of gathering various marine resources in both Moloa'a Bay and Moloa'a Stream. One of her fondest memories include making *pulehu* down in the bay with her mother's sister and staying there overnight camping and eating marshmallow treats. She commented on the numerous types of fish and marine resources she would gather as a child. Ms. Ida further demonstrated the many ways in which she would prepare the fish and other resources gathered. In addition, she was also able to indicated medicinal plants gathered specifically in Moloa'a and their preparation styles. Ms. Ida indicated no knowledge of burials or archeological sites within the project area.

The primary concern expressed by Ms. Ida was open public access for locals to gather resources. She also voiced great sadness regarding the rapid developments in Moloa'a. Ms. Ida

indicated that she has not returned to Moloa'a in years because the overall ambiance and cultural heritage of Moloa'a has changed drastically over the last ten years.

Mr. Val Ako and Mrs. Elizabeth Ako sat in on the interview conducted with Ms. Ida and were also able to provide historic accounts, family traditions, and cultural concerns in reference to Moloa'a Bay. Mrs. Elizabeth Ako is the last descendent of Moloa'a in her generation and has recently sold her *kuleana* land in Moloa'a. One of her fondest memories was returning to Moloa'a during the summers to visit her grandparents as a teenager. During the summer she would spend time with her grandfather gathering *limu kohu* in Moloa'a Bay and selling it to local markets in gallon jars. The money she generated from the selling of the *limu kohu* paid for her tuition to attend Kamehameha School. Both Mr. and Mrs. Ako indicated no knowledge of burials or archaeological sites within the project area. They expressed concern regarding public access, preservation of resources, and the decline of the ambiance of Moloa'a in the last ten years.

VII. CULTURAL RESOURCES AND TRADITIONAL PRACTICES

Throughout the early 20th century, the project area was utilized as pasture land and in more recent years has been converted to conservation-zoned land. Traditionally, Moloa'a was heavily populated by Hawaiian families as indicated by the numerous Land Commission Award claims within the *ahupua'a*. Moloa'a Stream and Moloa'a Bay played an integral part in the subsistence for the people of Moloa'a, as well as adjacent *ahupua'a*. Along with Pīla'a and Ka'aka'aniu, Moloa'a is treasured as one of the few places in the State where one can still pick *limu koku*.

In pre-contact times, the *ahupua'a* of Moloa'a may have sustained more than a thousand people. Industrial pursuits by sugar cane and pineapple companies added to the increasing number of people who were moving to Moloa'a in the early 1900s. By the mid 1940s, many of these original Moloa'a families had relocated to other areas such as Kilauea and Anahola as businesses began to withdraw from Moloa'a. The closing of the cannery in the early 1970s illustrated the second wave of migration out of Moloa'a as many families moved due to job relocation.

Today, there are less than half a dozen original *kuleana* families who live in Moloa'a either full time or part-time. However, families who had left to live permanently elsewhere have not gone astray, as many families still return to Moloa'a regularly to gather marine resources in Moloa'a Bay and to continue family traditions. However, in recent years, public access has been restricted by private landowners, and there is a clear consensus among all the *kama'āina* consulted, that access to gather resources has become a pressing issue. Lack of parking coupled with restricted public access by private landowners make it difficult for locals to access areas to gather resources and to participate in recreational activities.

The increasing number of timeshares, large scale developments, and bed and breakfast endeavors has drastically changed the overall traditional and cultural ambiance of Moloa'a. Unfortunately, many individuals who were born and raised in Moloa'a are now reluctant to visit.

The information from the historic documentation, archaeological research, and *kama'āina* interviews presented in detail above, provided significant details relating to traditional cultural resources, practices and beliefs within the coastal Moloa'a project area. Discussions of specific aspects of Hawaiian culture within the project area are presented below. The concluding discussion examines resources and practices identified within the project area in the broader context of the encompassing Moloa'a *ahupua'a*.

It should be noted that, based on the research of this assessment the following concerns were expressed by *kama'āina*: shoreline access to gather marine resources; impacts future mechanical activities may have on the marine resources; possible human burials; archaeological sites; and impacts to the overall ambiance of Moloa'a Bay.

A. Burials

During the archeological assessment, no burials were encountered within the project area. Additionally, research of written documents further indicates no known burials within the project area. However, inadvertent burials are known to exist in sandy sediment throughout the State of

Hawai'i, which warrants extreme precaution within the sandy beachfront of the project area. High surf, mechanical grading, and wind cause erosion that may expose inadvertent burials in these areas. Human burials are documented in adjacent *ahupua'a* with very similar sediment types and topographic conditions. There is a possibility that heretofore unrecorded burial sites are present within the project area.

It was conveyed by one informant that the tidal wave of 1958 had exposed four burials, all in the upright position, located near the mouth of Moloa'a Stream [personal communication with Mark Boiser, May 30, 2003]. However, no written documentations were found confirming any burial finds. Concerns related to this possibility are addressed below.

B. Hawaiian Trails

One route traversing through the project area from Moloa'a Bay beach, northwest to the adjacent property in Ka'aka'aniu was observed. This trail segment was assigned Historic State Site 50-10-04-1034 during an earlier archeological assessment. The trail is distinguished as a well-worn, trodden path, with no observable constructions.

Testimonies by *kama'āina* indicate that the trail is a critical oceanfront or *makai* route for locals, connecting Moloa'a with the adjacent Ka'aka'aniu *ahupua'a*. The fringing reef fronting Larsen's Beach in Ka'aka'aniu is well known as prime *limu* (edible seaweed) grounds, especially the *limu kohu* variety. Informants relate the importance of this *makai* trail that allows access between Moloa'a and *limu* harvesting areas. On any given day, one can find current, former and non-residents of Moloa'a utilizing the trail to gather *limu kohu*. Although there is no documentation indicating the history of the trail *per se*, it is presumed to be both a traditional and historic-era access route.

Kama'āina communicated, however, that in recent years, public access to portions of the trail have been prohibited by the private landowner. Restrictions make it difficult for locals to access principle areas to gather marine resources and to participate in onshore fishing activities.

C. Native Hunting Practices

No specific native Hawaiian hunting practices were identified within the coastal Moloa'a project area in the historic documentation, archeological investigations, or *kama'āina* interviews.

Game animals hunted on Kaua'i include pigs, goats, black-tailed deer and a variety of game birds. Black-tailed deer were introduced in 1961 and are not found near the project area. *Kama'āina* did indicate wild pig hunting in the upper Moloa'a valley areas. No hunting of game birds (all exotic introductions) has been reported within the project area.

D. Native Gathering Practices for Marine Resources

Moloa'a Bay is known for its abundant marine resources and is perhaps one of the last living reef systems on the island of Kaua'i. Recent grading activities may have compromised the integrity of the reef resources. *Kama'āina* are known to frequent the area at all hours of the day to fish for *akule*, *āholehole*, *'o'opu*, *ō'i'o*, *nenuē*, *manini*, *'owama*, *'upāpalu*, and *menpachi*. Other marine resources gathered include *'opihi*, *pipipip*, lobster, *wana*, *'ina*, *limu kohu*, and *limu 'ele'ele*. Turtles also frequent the area, and locals indicated that once or twice a year a turtle will come ashore.

Moloa'a, along with the adjacent *ahupua'a* of *Ka'aka'aniu* and Pila'a is famous for its *limu kohu*, which is gathered during all times of the year by locals. As one informant indicated "it is the best *limu*...the reddest, the longest, and the best tasting in the State of Hawai'i [personal communication with Mark Boiser May 31, 2003]. Historically, *limu kohu* was abundant throughout the fringe reefs of Moloa'a, however recent grading activities have compromised the integrity of the reef and today, *kama'aina* indicate that *limu kohu* has substantially declined.

Locals enter Moloa'a Bay on either side of Moloa'a Stream. Parking in the bay area is limited and locals are restricted to parking on the side of the narrow highway in very dangerous areas. Once in the bay, locals indicate that access to the best areas to gather marine resources is along the northeastern side of the bay, immediately within the northeastern edge of the project area. Access is made from the bay via an earthen trail leading along the boulder laid shelf, northeast to a terminal point at the top of Ka Lae Amana Point. A barbwire fence restricts complete access around the high point from Moloa'a to Ka'aka'aniu, however it was communicated by many *kama'aina* who have accessed the area for generations that the route was historically open to the public.

The access route is identified as a significant historic trail and was assigned State Site 50-30-04-1034 during an earlier archaeological assessment. Although no documentation or maps indicating the trail pre 1930s, it is presumed that the trail played an integral role in subsistence activity in both historic and prehistoric times

E. Native Gathering Practices for Plant Resources

Historically, Moloa'a was covered in mulberry (*Broussonetia papyrifera*), or what Hawaiians call *wauke*. The inner bark of the *wauke* was valued as a source of the highest quality of tapa cloth (Wilson 1978:59). The meaning of Moloa'a originated from the matted and inter-twinned roots of the *wauke* plant that once covered the grounds of Moloa'a. Developments over the last decade has substantially reduced the number of *wauke* in Moloa'a and today the endemic species in Moloa'a is very rare.

Ironwood trees were also known to exist within the project area, however recent grading in the project area eliminated majority of these ironwood trees. Historic documents indicate that ironwood may have been exported from Moloa'a in the early to mid 1800s.

Kama'aina commented that gathering of medicinal plants such as *noni* (*Morinda citrifolia*), *'awa* (*Piper methysticum*), *wauke* (*Broussonetia papyrifera*), bamboo (*Schizostachyum glaucifolium*), and mountain apple (*Syzygium malaccense*) is made in upland regions of Moloa'a valley.

However, no specific native Hawaiian gathering practices for plant resources were identified within the project area in the historic documentation, archaeological investigations, or *kama'aina* interviews. Recent developments and past cattle ranching have effectively eliminated traditional plant resource areas within the project area, and have restricted any portion of the project area from cultural usage.

F. Cultural Properties

As noted in the Previous Archaeology section of this report (Section IV), historic sites related to traditional Hawaiian habitation have been recorded during archaeological

investigations of the project area. During the archaeological assessment, two historic sites were identified: State Site 50-30-04-1033 (cultural layer) and State Site 50-30-04-1034 (trail).

State Site 50-30-04-1033 consists of a cultural layer located where the sandy beach ends at a natural boulder point (refer to Figure 9). Erosion by high surf has cut a one-half to one meter deep face into the shoreline bench that has exposed the cultural layer. The cultural layer extends one-half meter to one meter below the existing soil surface, and contains traditional marine midden consisting of cowry, *opihi*, *pipipi*, fishbone and charcoal. The material observed suggests a primarily pre-contact deposit.

A trail segment (State Site 50-30-04-1034) has also been identified traversing the project area between Moloa'a Bay and Ka'aka'aniu on the northeastern side of the project area. The trail is unmodified and consists of a well-worn, trodden path that allows for access to and from Moloa'a Bay and Larsen's Beach in the adjoining *Ahupua'a* of Ka'aka'aniu. Traditional and historic accounts indicate that the fringing reef fronting Larsen's beach is renown for its *limu koku* and locals continue to access the trail for gathering of a variety of marine resources. Access along this trail for gathering has played a critical part in the subsistence of the people of Moloa'a in both present and historic times.

Consultation with *kama'āina* indicate that public access on portions of the trail have been restricted in recent years.

VIII. RECOMMENDATIONS

A. Summary

The cultural impact assessment attempted to identify potential effects present and future development activities may have on traditional cultural practices and traditions. The following areas were focused upon during the course of the assessment: burials, Hawaiian trails, hunting and gathering practices for plant and animal resources, and archaeological and historic properties. Through consultation with informants, reviews of archaeological reports and historic research, five concerns were identified: shoreline access to gather marine resources; impacts future mechanical activities may have on the marine resources; possible human burials; archaeological sites; and impacts to the overall ambiance of Moloa`a Bay.

Moloa`a Bay is accessible to the public by two public right-of-ways: one to the north and one to the south of Moloa`a Stream. Through informant testimonies, it was very apparent that access to the northeastern flank of the project area is an important area for locals who fish and gather marine resources. The fringe reef on the northeastern side of the project area is known to be one of the few places remaining in the State of Hawai`i where the rare variety of *limu kohu* can still be gathered. A trail, leading from Moloa`a bay, northeast through the edge of the project area, terminates at the high point between Moloa`a Bay and the adjacent *ahupua`a* of Ka`aka`aniu. Locals, as well as tourist, are known to frequent this trail at all times of the day. In recent years, portions of the trail have been restricted to the public. Restrictions imposed by private landowners limit gathering of marine resources in the most prime gathering area in Moloa`a Bay. All the *kama`āina* who commented on the cultural impact assessment expressed concern regarding public access via this trail.

Another major concern voiced by *kama`āina* is the impacts future mechanical activities may have on marine resources in the Bay as well as in Moloa`a Stream. Recent mechanical grading within the project area has occurred, and locals expressed that sediment runoff into the stream and into the bay have impacted the marine resources, including the *limu kohu*. Moloa`a bay may be one of the last living nearshore reef systems in Kaua`i, and locals from all over Kaua`i frequent the bay to gather a variety of marine resources. Locals have voiced strong concerns regarding the integrity of the resources within the bay and stream.

No discoveries of human burials have been documented within the project area, but a subsurface cultural layer exists approximately one-half meter below the current surface. Human burials are known to exist in sandy areas throughout the state of Hawai`i, and concerns regarding inadvertent burials along the beachfront and along Moloa`a Stream is of concern. One informant did indicate that prehistoric human burials were inadvertently exposed during the tidal wave of 1958 at the mouth of Moloa`a stream. Consultation with Ms. Nancy McMahan of the State Historic Preservation Division and Ms. La France Kapaka-Arboleda of the Kaua`i Island Burial Council resulted in no known documented burials or "talk story" of human burials within the project area.

Two archaeological sites are known to exist within the coastal Moloa`a project area. Historic State Site 50-30-04-1033 consists of a cultural layer located where the sandy beach ends at a natural boulder point. Erosion by high surf has cut a one-half to one-meter deep face into the

shoreline bench that has exposed the cultural layer. The cultural layer is approximately one-half meter to one meter below the current surface. The cultural layer consisted of marine midden of various cowry, 'opihi, pipipi, fishbone and charcoal, which suggests a pre-contact deposit.

Historic State Site 50-30-04-1034 is the aforementioned trail that traverses the project area on the northeast side, between Moloa'a Bay and Ka'aka'aniu. The trail is unmodified and consists of a well-worn, trodden path that allows for public access to the Moloa'a Bay from Larsen's Beach in Ka'aka'aniu. The fringe reef adjacent to the eastern side of the trail is one of the few places where *limu kohu* is still available for gathering. Access via this trail has played a critical role in the subsistence of the Moloa'a people in historic, and presumably in pre-contact times. As mentioned previously, access to sections of the trail has been restricted to the public in recent years.

Concerns were also expressed regarding possible impacts on Moloa'a Bay by development in adjacent areas. Many *kama'aina* indicated that within the last ten years, timeshares and bed and breakfast endeavors have drastically changed the overall ambiance of Moloa'a. The change has been so drastic that several *kama'aina* consulted indicated that they no longer go to Moloa'a Bay because they do not feel welcomed. No trespassing signs displayed by private landowners in adjacent bay properties ward off locals who have been coming to the bay to gather marine resources for generations. Public parking also adds to the frustration of locals who are forced to park in dangerous areas off the highway or on hairpin turns on Moloa'a Road. Many *kama'aina* are reluctant to visit the area because of the rapid changes occurring in Moloa'a. The sense of traditional Hawaiian lifestyles and fond memories of family traditions in Moloa'a make visiting too overwhelming for some locals today.

B. Recommendations

The following recommendations are suggested to mitigate cultural concerns identified during the preparation of this cultural impact assessment.

Open public access along the shoreline of the project area should be maintained at all times. Individuals should have the right to access these areas for traditional cultural practices, which include the gathering of marine resources. It is important that the landowner observe and maintain the State shoreline setback for public access.

Regarding future mass grading and development activities within the project area, it is recommended that grubbing be completed during the driest months of the year and limited to very a small section at a time (as in bit-by-bit grubbing). Soil sheeting should be placed down in areas where grubbing has occurred to prevent runoff into Moloa'a Stream and Bay. It is further recommended that any tree removals should be done in consultation with the Department of Land and Natural Resources - State Historic Preservation Division (DLNR/SHPD). Grubbing and mass grading along the coast needs to be done very carefully.

As noted in the archaeological investigation of the project area, an historic trail and a subsurface cultural layer has been recorded within the project area. As indicated in the archaeological assessment (Borthwick *et al.*,1999), both sites were recommended for preservation. Further recommendations indicated no ground disturbing activities such as bulldozing, mechanical vegetation clearing or construction activities on these sites. Any proposed impacts to the sites should be planned in consultation with the State Historic Preservation (SHPD) and the Kaua'i Island Burial Council.

Although no burials are indicated within the project area, the sandy sediment along the beach front and slopes of the project area, as well as the presence of a subsurface cultural layer, both warrant concerns regarding human burials. Regarding the discovery of burials, state law (Chapter 6E, Hawai'i Revised Statutes) requires the following:

1. Stop all disturbing activities in the immediate area.
2. Leave all remains in place.
3. Immediately notify the State Department of Land and Natural Resources- State Historic Preservation Division (DLNR/SHPD) and the county police department.

Further procedures are in place to ensure that proper treatment of any burial finds is coordinated with appropriate agencies, including the DLNR/SHPD and the Kaua'i/Ni'ihau Island Burial Council.

Moloa'a Bay is one of the few places on Kaua'i where marine resources are still viable for locals. Damage to nearshore reefs, lateral shoreline access, and impacts to cultural and customary practices can occur without very careful land development activities. It is therefore critical that the recommendations outlined above be enforced at all times.

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APPENDIX III
HORTICULTURAL (FLORA) REPORT



NATIONAL TROPICAL BOTANICAL GARDEN
CHARTERED BY CONGRESS TO CREATE A NATIONAL RESOURCE IN TROPICAL BOTANY

Report on plants observed growing in Conservation District zone
Moloaa Bay Ranch, Kauai—June 8, 1999

Diane Ragone, Ph.D.

At the request of Greg Kingsley Project Manager, I surveyed the plants growing in the Conservation District zone of Moloaa Bay Ranch, Kauai on Tuesday, June 8, 1999. The area surveyed encompassed the coastline and hillsides up to the top of the ridge, from the fence at the north boundary of the property to the Moloaa stream. Following a report on the plants observed and recommendations for management of this area:

It is obvious that the vegetation within the conservation zone on this property has been intensively altered by human activities, especially ranching, for many decades and is typical of highly disturbed areas within the Hawaiian Islands. The natural vegetation of this area before human alteration would have been a coastal dry shrubland with a diverse mix of native species. Alteration of these shrub lands by grazing has replaced the native vegetation with invasive trees, shrubs, grasses, and annual and perennial herbaceous weeds. The attached Plant List details the trees, shrubs, and dominant perennial herbs found on the site. Ironwood, Indian fleabane, lantana, and java plum are the most prevalent species with extensive stands of ironwood on the slopes. The heavy shade and dense mat of ironwood needles in these areas limits the growth of other plants, including important ground covers and low-growing shrubs, resulting in serious erosion and degradation.

Recommendation: eradicate all naturalized and invasive species and re-vegetate the slopes with a mix of appropriate native and indigenous species (see below), Polynesian-introduced plants, grasses, groundcovers, and other plants which can tolerate the harsh, coastal conditions of this site. The only caution would be to make sure that the species selected are not known to be invasive or noxious species. Numerous xeriphytic (adapted to dry conditions) and mesic species will be suitable. Re-

vegetation of this area is essential to prevent further degradation and erosion which negatively impacts the adjacent off-shore marine environment, especially the coral reefs.

Only twelve native and/or indigenous species (naturally found in Hawaii as well as in other areas) were observed (see attached Plant List). None of these are threatened or endangered species. In fact, only two species are endemic (found only in the Hawaiian Islands): *Wikstroemia uva ursi* and *Lipochaeta succulenta*. The most numerous species were *Scaevola sericea* with several hundred plants observed and fewer than 50 *Ipomoea pes-capra*. Fewer than 20 plants each were observed for the other species, and only one plant of *Lipochaeta succulenta* was observed. The native plants were primarily located along and directly above the rocky shoreline on the exposed cliffs near the fenced property boundary. Only *Scaevola sericea* and *Ipomoea pes-caprae* were numerous elsewhere in this area, and were mainly located along or adjacent to the rocky shore.

Recommendation: the native and indigenous species are adapted to the harsh, windswept coastal conditions of this site. The existing plants, especially ground covers and low-growing shrubs, should be used as stock plants to provide propagating material (seeds and/or cuttings) to increase their numbers. Other native species known to occur in dry coastal shrublands on Kauai should also be planted to re-vegetate this area and stabilize the slopes (a list of suggested species is available upon request).

Native, indigenous, and naturalized trees, shrubs observed growing
in Conservation District zone of Moloaa Bay Ranch

Scientific name	Family	Common name	Status
<u>Native and/or Indigenous</u>			
<i>Colubrina asiatica</i>	Rhamnaceae	anapanapa	Indigenous
<i>Hibiscus tiliaceus*</i>	Malvaceae	hau	Indigenous
<i>Ipomoea pes-caprae</i>	Convolvulaceae	pohuehue	Indigenous
<i>Jacquemontia ovalifolia</i>	Convolvulaceae	pauohiaka	Indigenous
<i>Lipochaeta succulenta</i>	Asteraceae	nehe	Endemic
<i>Osteomeles anthyllidifolia</i>	Rosaceae	ulei	Indigenous
<i>Scaevola sericea</i>	Goodeniaceae	naupaka	Indigenous
<i>Sida fallax</i>	Malvaceae	ilima	Indigenous
<i>Thespesia populnea*</i>	Malvaceae	milo	Possibly indigenous
<i>Waltheria indica*</i>	Sterculiaceae	uhaloa	Possibly indigenous
<i>Wikstroemia uva ursi var. kauaiensis</i>	Thymelaeaceae	akia	Endemic
<i>Hibiscus tiliaceus*</i>	Malvaceae	hau	Indigenous
<u>Naturalized and Invasive</u>			
<i>Abutilon grandifolium</i>	Malvaceae	hairy abutilon	
<i>Canavalia cathartica</i>	Fabaceae	maunaloa	
<i>Casuarina equisetifolia</i>	Casuarinaceae	ironwood	
<i>Chenopodium spp.</i>	Chenopodiaceae	goosefoot	
<i>Grevillea banksia</i>	Proteaceae	Kahili flower	
<i>Lantana camara</i>	Verbenaceae	lantana	
<i>Leucaena leucocephala</i>	Fabaceae	koa haole	
<i>Pluchea indica</i>	Asteraceae	Indian fleabane	
<i>Pluchea symphytifolia</i>	Asteraceae	Sourbush	
<i>Portulaca oleracca</i>	Portulacaceae	pigweed	
<i>Portulaca pilosa</i>	Portulacaceae	none	
<i>Psidium cattleianum</i>	Myrtaceae	strawberry guava	
<i>Psidium guajava</i>	Myrtaceae	guava	
<i>Schinus terebinthifolius</i>	Anacardiaceae	Christmas berry	
<i>Senna occidentalis</i>	Fabaceae	coffee senna	
<i>Syzygium cumini</i>	Myrtaceae	Java plum	
<i>Terminalia catappa</i>	Combretaceae	tropical almond	
<i>Tetragonia tetragonioides</i>	Aizoaceae	New Zealand spinach	

Reference: *Manual of the Flowering Plants of Hawaii*. 1990. 2 Vol. Wagner *et. al.* University of Hawaii & Bishop Museum Presses.

**MOLOAA BAY RANCH
CONSERVATION AREA REVEGETATION / MANGAGEMENT PLAN
MARCH 26, 1999**

The following summarizes the plan for managing, maintaining, and landscaping of the approximate 45 acres of conservation zoned land located at Moloaa Bay Ranch, Koolau, Kauai, Hawaii.

The existing vegetation consists of well established pangola pasture grass, small iron wood trees, plum trees, and hale koa brush. This area was being maintained as pastureland as late as 1982. At that time the brush and the ironwood trees did not exist.

Our proposal is to remove the existing iron wood trees, hale koa brush, and plum trees at ground level. This vegetation is not mature vegetation, the largest tree in the conservation is not more than eight inches in diameter and most are much smaller. Once this vegetation is removed it will be immediately replaced with ground covers or grass to control topsoil erosion and later will be followed with the vegetation identified on the attached landscape plan.

The vegetation removed will be replaced with species identified as being tropical and better suited to the area. Attached you will find a conservation landscape plan which identifies the following trees, palms, and ground cover to be planted in the conservation zone:

- African Tulip Tree
- Beach Heliotrope Tree
- False Kamani Tree
- Ficus Benjamina Tree
- Geometry Tree
- Monkeypod Tree
- Silver Buttonwood Tree
- Blue Latan Palm
- Cocunut Palm
- Joannis Palm
- Pritchardia Fan Palm
- Hala
- Naupaka

The above plan will visually enhance the area and have a positive impact on the land by removing the acidic ironwood needles and replacing those with vegetation which will thrive in the area and hold the soil in place. Moloaa Bay Ranch, LLC requests the authorization of the State to proceed with implementing the attached landscape plan.

MOLOAA BAY RANCH
6950 KOOLAU ROAD
ANAHOLA, HAWAII 96703

CONSERVATION LANDS TREE PLANTING

As part of the overall landscape plant for the conservation area, we have proposed removing some Iron Wood trees as well as the Hale Koa and some other materials.

In their place we can plan on planting the following list of trees and ground covers to compensate for the removal of the above materials.

Hala Tree	25 Gal	33
Beach Helitrope Trees	25 Gal	37
Coconut Trees	Various	655
Manila Palms	FS	145
Pritchardia Fan Palms	15 Gal	95
Bottle Palms	15 Gal	35
Monkey Pod Trees	25 Gal	9
Total Trees		1,009

Ground covers that will be planted will be used to replace the Hale Koa as well as other brush. These plants will aid in keeping the soil from eroding as well as add to the beauty of the conservation area. These plants are salt tolerant and should do well in the area they are planted.

Wax Banyan	1 Gal	800
Naupaka	1 Gal	3,500
Total Ground Covers to be planted		4,300

These totals exceed the amounts that will be removed. We feel that the trees planted will add to the natural beauty of Moloaa Bay as well as add to the natural landscaping.

APPENDIX IV

**AVIFAUNAL AND FERAL MAMMAL
FIELD SURVEY**

**AVIFAUNAL AND FERAL MAMMAL FIELD SURVEY
OF MOLOAA BAY RANCH, KAUAI**

**Prepared for:
Randal Sakumoto of McCorriston Miller Mukai Mackinnon LLP
and
Molooa Bay Ranch**

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**Revised
24 February 2003**

INTRODUCTION

The purpose of this report is to present the findings of a two day (17, 18 December 2002) field survey of Moloaa Bay Ranch property located at Moloaa Bay, Kauai (Fig. 1). Pertinent published and unpublished sources are also noted in the report. These sources help document the results of the field survey and provide a broader perspective the potential bird and mammal resources in this area of Kauai. The goals of the field survey were:

- 1- Document the birds and mammals currently found on and near the property.
- 2- Obtain data on the relative abundance of birds at this site.
- 3- Search all habitats on the property and determine the natural resources important to native and migratory species of birds.

SITE DESCRIPTION

Moloaa Bay Ranch is located on the windward side of Kauai. The property contains a mixture of grass covered ridges and forested valleys. The shoreline fronting the property has both rocky and sandy beaches. No wetlands occur on the site but Moloaa Stream adjoins the east boundary. Vegetation throughout the property is primarily composed of introduced species. Ongoing landscaping efforts keep the ridge tops mowed. A few man-made, rubber lined ponds are located on the ridge tops. The

valleys had no running water at the time of the survey but showed signs of ephemeral stream activity following heavy prolonged rains.

SURVEY PROTOCOL

The field survey was conducted over two sequential days (17, 18 December 2002). The weather during the survey period was partly cloudy with easterly winds at 10-15 mph. These conditions made for easy data collection. A series of ranch roads accesses virtually all of the property. The field survey was conducted along these roads and by walking into valleys and other areas not accessible by roads. A series of ten minute point counts were made in all habitats on the property (Fig. 1). All birds seen or heard at these point counts were tallied and form the basis for the relative abundance estimates given in the results portion of this report. Data in the form of observations of native and migratory species seen between the points counts were also kept along with sightings of uncommon introduced species. Data were collected both early and late in the day when birds are most active and detectable. The night of 17 December was used to search for the presence of the introduced Barn Owl (*Tyto alba*) and the native endangered Hawaiian Hoary Bat (*Lasiurus cinereus semotus*). A Petterson Ultrasound Detector D-100 was used to listen for vocalizing bats. This device was employed throughout the

property and along the beach at Moloaa Bay. Feral mammal observations were gathered by visual and auditory means as well as by the presence of tracks and scats. No trapping was conducted to determine the numbers of mammals in this area. Such an effort was unwarranted and beyond the time and scope of this survey.

Scientific and common names used in this report follow Pyle (2002), Honacki et al. (1982), Tomich (1986) and van Riper and van Riper (1982).

RESULTS

NATIVE BIRDS: (Seabirds)

Three species of seabirds were observed on the survey. Red-footed Boobies (*Sula sula*) and Great Frigatebirds (*Frigata minor*) were seen flying just offshore and Laysan Albatross (*Phoebastria immutabilis*) were seen both flying over the property and resting on the ground along the cliff line on the NW corner of the site. The largest single count of Laysan Albatross seen resting on the property was 12 birds. None were nesting but several were actively displaying courtship behavior: bill clapping, sky calling and wing lifting (Harrison 1990). A breeding colony of Laysan Albatross is located nearby at Kilauea Point National Wildlife Refuge. None of the seabirds recorded on the survey are threatened or endangered. Newell Shearwater (*Puffinus auricularis newelii*) is a

threatened seabird that nests at higher elevations on Kauai. They likely fly over this property when making their way back and forth from their nest burrows and the open ocean where they feed. Bright light can distract them and they may strike power lines. Light shields attached to highway lights are being used on Kauai to reduce this threat.

NATIVE BIRDS: (Land Birds)

The only native land bird recorded on the survey was the endangered Nene or Hawaiian Goose (*Branta sandvicensis*). Two pairs of Nene were seen on both days of the survey. Nene have been reintroduced to Kauai in an attempt to re-establish a breeding population on the island. The State of Hawaii (Department of Land and Natural Resources 2000) introduced Nene to the Hanalei National Wildlife Refuge. Nene are now seen in a wide variety of habitats all over the island of Kauai.

The Hawaiian Owl also known as the Short-eared Owl or Pueo (*Asio flammeus sandwichensis*) is the only other native land bird that likely occurs in this area. No Pueo were recorded on this survey. This species nests on the ground in areas with tall grass. It forages over open grasslands, agricultural fields as well as forests. Pueo are listed by the State of Hawaii as endangered on Oahu but not on the other islands (Pratt et al. 1987, Hawaii Audubon Society 1993). All other native land birds would typically be found at higher elevations.

NATIVE BIRDS: (Waterbirds)

No native waterbirds were tallied on the survey. Black-crowned Night-Heron (*Nycticorax nycticorax*) and Koloa or Hawaiian Duck (*Anas wyvilliana*) were found on a survey of the adjoining property (Bruner 1989a). The small artificial, rubber lined ponds located on the ridge tops on the Moloaa Bay Ranch property may be used by night herons since they contain fish. However, no night herons were seen on the survey and there was no evidence in the form of fecal remains around the edges of the ponds that would indicate the herons were foraging at these ponds.

MIGRATORY BIRDS:

Three species of migratory shorebirds were found on the survey. None of these species are listed as threatened or endangered. Two Wandering Tattler (*Heteroscelus incanus*) and three Sanderling (*Calidris alba*) were tallied on the beach near the mouth of Moloaa Stream on both days of the survey. The most abundant migrant recorded on the survey was the Pacific Golden-Plover (*Pluvialis fulva*). A total of 29 plover were counted over the course of the survey. This shorebird is the most abundant migrant in Hawaii. Extensive long-term studies have yielded much information on the life history of this species (Johnson et al. 1981, 1989, 1993, 2001). Pacific Golden-Plover are territorial on both the breeding grounds in western Alaska and on the wintering grounds in Hawaii and the insular Pacific (Bruner 1993, Johnson and Connors 1996). All of the plover recorded on this survey were on the mowed grass areas that cover the tops of the ridges.

The only other migratory shorebird that likely could be found at this location is the Ruddy Turnstone (*Arenaria interpres*). They also utilize lawns as well as sandy beaches.

INTRODUCED BIRDS:

A total of 21 species of introduced birds were tallied on the survey. Table One gives the names of these species and their relative abundance. None of these species is listed as threatened or endangered. A similar list on introduced species was recorded on an earlier survey on an adjoining property (Bruner 1989a). Other field surveys in comparable habitats in this region of Kauai have also contained the same general array of introduced species (Bruner 1979, 1985, 1989b, 1989c, 1996, 2002).

MAMMALS:

Three cats (*Felis catus*) and seven Roof Rats (*Rattus rattus*) were seen on the property during the evening observations of 17 December. Six feral Pigs (*Sus scrofa*) were seen in the valleys. Evidence of pig rooting was widespread in the valleys. No mice were recorded but likely occur on the property. The endangered Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) was found on a survey of the adjoining property (Bruner 1989). However, no bats were recorded on this survey despite the extensive use of the Ultrasound Detector. Hawaiian Hoary Bats roost individually in trees (Tomich 1986, Kepler and Scott 1990). They forage in a wide variety of habitats including grasslands,

forests, agricultural lands and urban areas. The widespread occurrence of this endangered mammal on Kauai (Kepler and Scott 1990) and sightings from adjoining lands (Bruner 1989a) would strongly suggest that they likely occur on this property even though they were not recorded on the night of 17 December 2002.

SUMMARY AND CONCLUSIONS

The fields survey examined all habitats on the property. The typical array of introduced birds and mammals were recorded. The relative abundance of these species was likewise similar to that found on other surveys of nearby lands. The presence of courting Laysan Albatross was not entirely unexpected since there is an active breeding colony at Kilauea Point National Wildlife Refuge. Whether or not a long term successful breeding colony can be established on or near this Moloaa property will in part depend on the predator impact from dogs, cats and pigs on the eggs, young and even adults. Nesting Laysan Albatross on Oahu have often been predated by dogs (pers. obser.). The presence of a fair number of wintering Pacific Golden-Plover is due to the mowed lawn areas on the ridge tops. Plover can only forage in grasslands where the grass is kept low by either mowing or grazing mammals.

The absence of the Hawaiian Hoary Bat was a little unusual since it has been recorded on all of the other surveys I have conducted in this region of the island. The fact that it was missed on the survey was likely just a matter of chance.

The habitats on this property have all been modified by cutting and the spread of introduced species of plants. Native land birds like the Nene and Pueo are able to utilize altered environments. The earlier removal of ironwood trees to stem erosion on the slopes of Moloaa Bay and the plan to replant the area with native and indigenous (non-invasive trees) will not have an adverse effect on the birds and mammals that frequent the area.

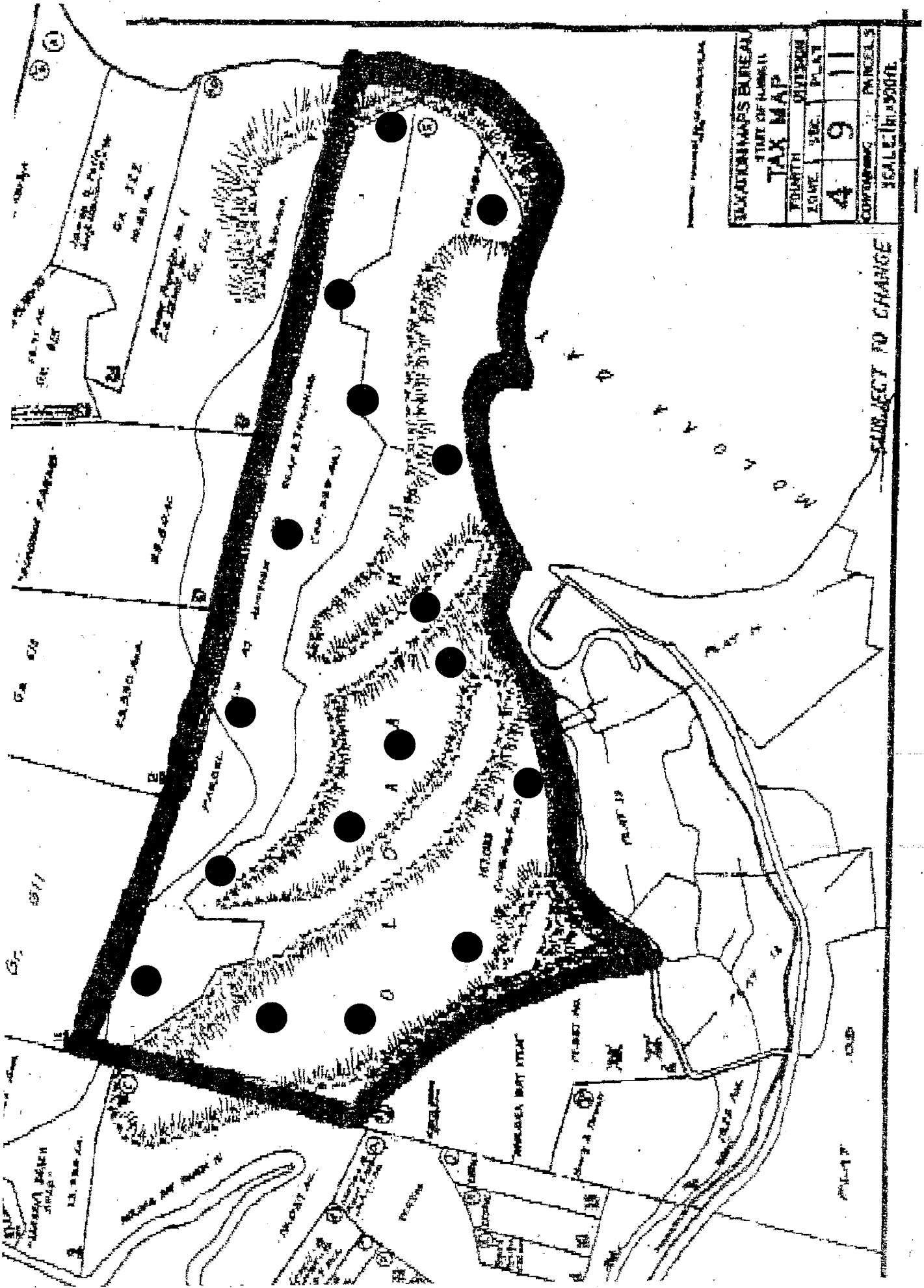


Fig. 1. Location of faunal survey. Solid circles indicate the approximate sites of the ten minute point counts.

TABLE ONE

Introduced birds recorded on Moloaa Bay Ranch on 17, 18 December 2002. Relative abundance estimates are based on the following criteria:

A = abundant (10+ per point count station in appropriate habitat)

C = common (5-9 per point count)

U = uncommon (1-4 per point count)

R = recorded (total number found on entire survey, may or may not have been recorded on a point count station).

Common Name	Scientific Name	Relative Abundance
Cattle Egret	<i>Bubulcus ibis</i>	C
Black Francolin	<i>Francolinus francolinus</i>	R = 2
Red Junglefowl	<i>Gallus gallus</i>	C
Ring-necked Pheasant	<i>Phasianus colchicus</i>	R = 4
Spotted Dove	<i>Streptopelia chinensis</i>	A
Zebra Dove	<i>Geopelia striata</i>	C
Parrot spp.?	<i>Amazona spp.?</i>	R = 2
Sky Lark	<i>Alauda arvensis</i>	R = 6
White-rumped Shama	<i>Copsychus malabaricus</i>	U
Hwamei	<i>Garrulax canorus</i>	U
Japanese White-eye	<i>Zosterops japonicus</i>	A
Northern Mockingbird	<i>Mimus polyglottos</i>	R = 2
Common Myna	<i>Acridotheres tristis</i>	A
Red-crested Cardinal	<i>Paroaria coronata</i>	U
Northern Cardinal	<i>Cardinalis cardinalis</i>	U
Western Meadowlark	<i>Sturnella neglecta</i>	C
House Finch	<i>Carpodacus mexicanus</i>	A
House Sparrow	<i>Passer domesticus</i>	U
Nutmeg Mannikin	<i>Lonchura punctulata</i>	U
Chestnut Munia*	<i>Lonchura atricapilla</i>	A
Java Sparrow	<i>Padda oryzivora</i>	U

Note :* The Chestnut Munia (*Lonchura atricapilla*) was formerly known as Chestnut Mannikin (*Lonchura Malacca*) (AOU 2000).

SOURCES CITED

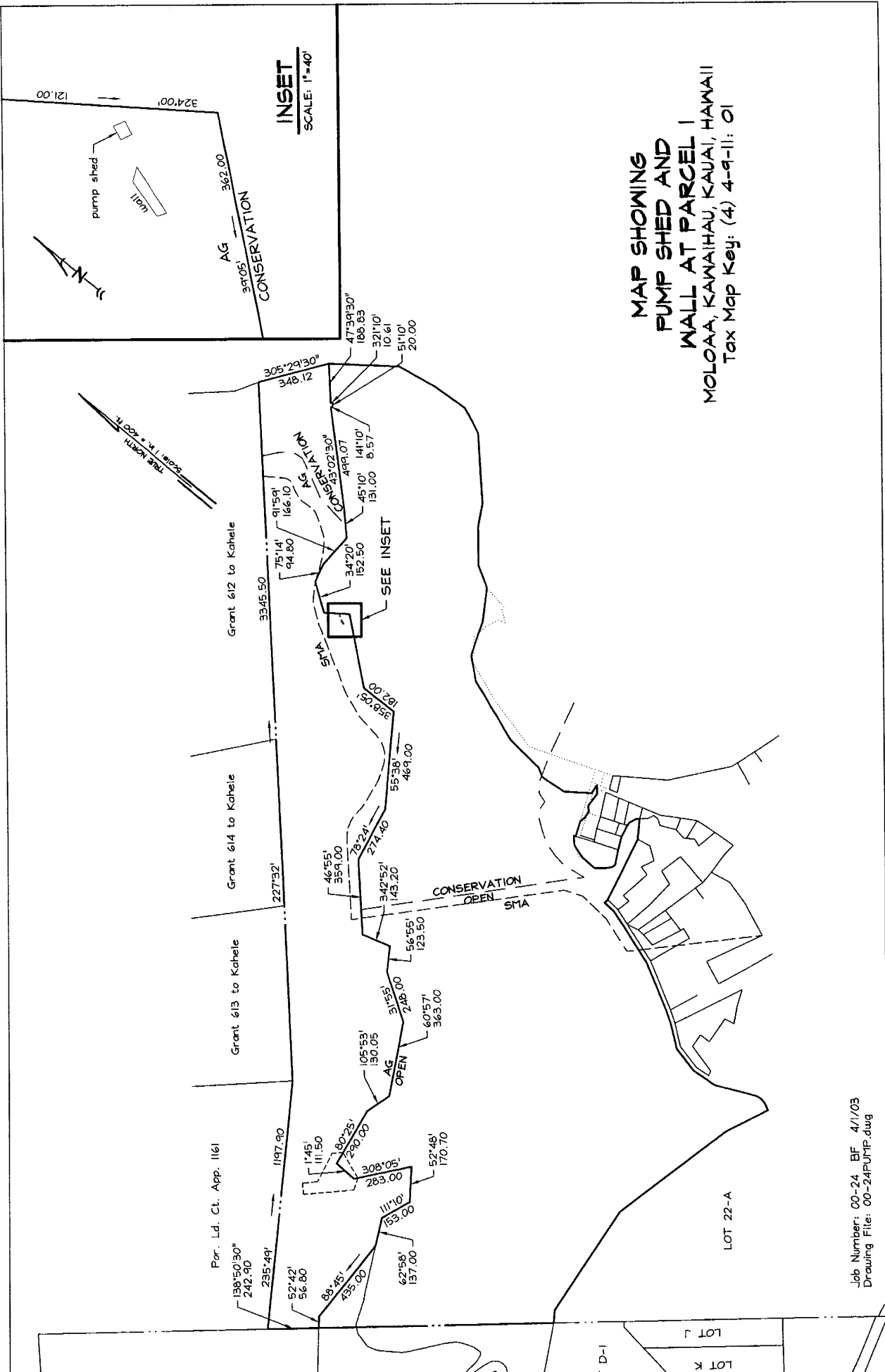
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APPENDIX V

PLANS

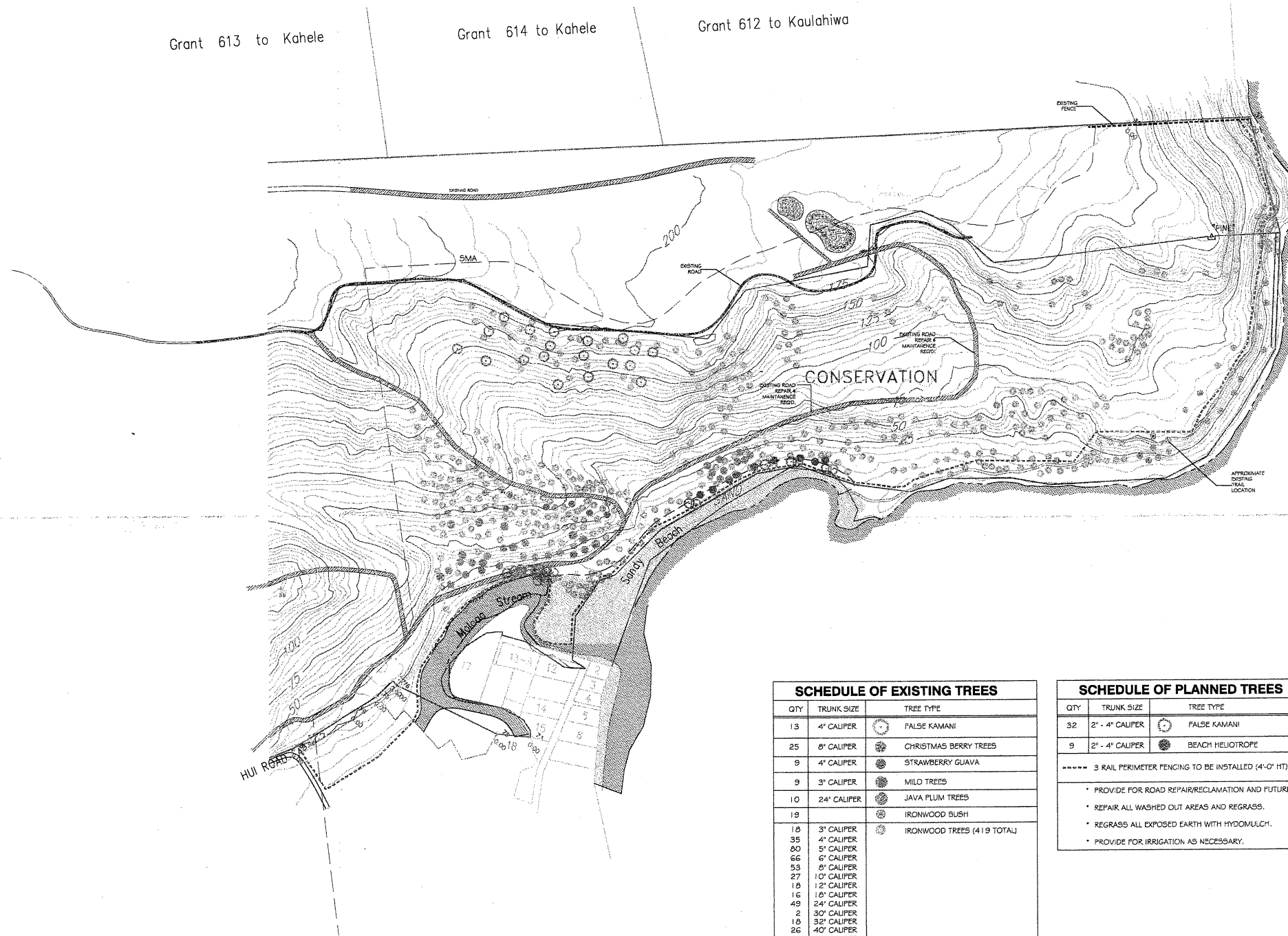
**MAP SHOWING
PUMP SHED AND
WALL AT PARCEL I
MOLOAA, KAWAIIHAU, KAUIAI, HAWAII**
Tax Map Key: (4) 4-9-11: 01



Grant 613 to Kahele

Grant 614 to Kahele

Grant 612 to Kaulahiwa



SCHEDULE OF EXISTING TREES		
QTY	TRUNK SIZE	TREE TYPE
13	4" CALIPER	FALSE KAMANI
25	8" CALIPER	CHRISTMAS BERRY TREES
9	4" CALIPER	STRAWBERRY GUAVA
9	3" CALIPER	MILK TREES
10	24" CALIPER	JAVA PLUM TREES
19		IRONWOOD BUSH
18	3" CALIPER	IRONWOOD TREES (419 TOTAL)
35	4" CALIPER	
60	5" CALIPER	
66	6" CALIPER	
53	8" CALIPER	
27	10" CALIPER	
18	12" CALIPER	
16	18" CALIPER	
49	24" CALIPER	
2	30" CALIPER	
18	32" CALIPER	
26	40" CALIPER	
7	42" CALIPER	
4	48" CALIPER	
504	TOTAL EXISTING TREES	

SCHEDULE OF PLANNED TREES		
QTY	TRUNK SIZE	TREE TYPE
32	2" - 4" CALIPER	FALSE KAMANI
9	2" - 4" CALIPER	BEACH HELIOTROPE
----- 3 RAIL PERIMETER FENCING TO BE INSTALLED (4'-0" HT)		
* PROVIDE FOR ROAD REPAIR/RECLAMATION AND FUTURE MAINTENANCE AS REQUIRED.		
* REPAIR ALL WASHED OUT AREAS AND REGRASS.		
* REGRASS ALL EXPOSED EARTH WITH HYDROMULCH.		
* PROVIDE FOR IRRIGATION AS NECESSARY.		

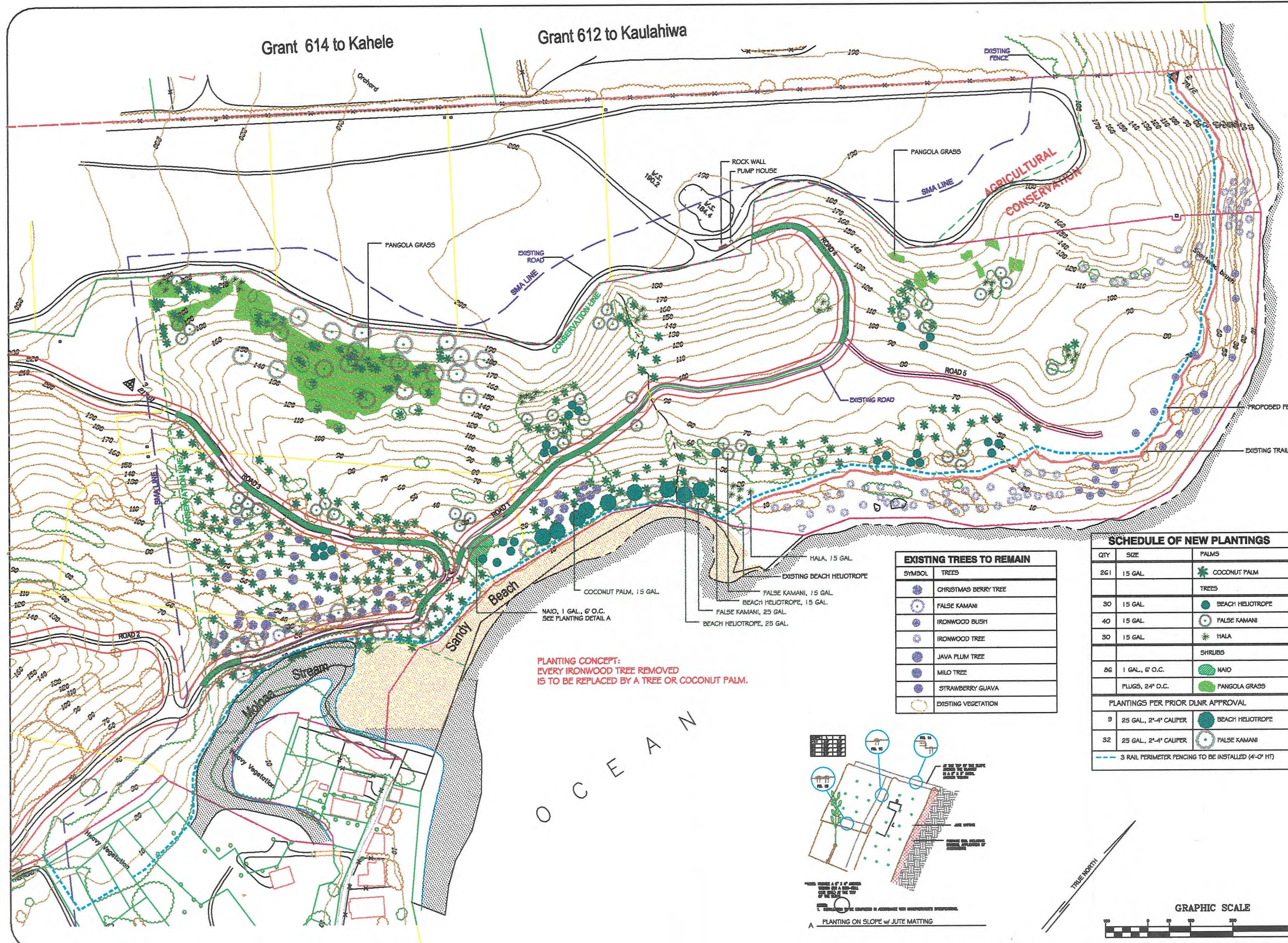
GREGORY A. BOYER
 LICENSED PROFESSIONAL LANDSCAPE ARCHITECT
 NO. 8778
 HAWAII, U.S.A.
This work was prepared by me or under my direct supervision. I am a duly licensed professional landscape architect in the State of Hawaii. I am not responsible for any errors or omissions in this drawing or for any consequences arising therefrom. I am not responsible for any construction of any project by others without the written consent of G.A.B. BOYER LANDSCAPE ARCHITECT, INC.

REVISIONS:
 OCTOBER 1, 2001
 FEBRUARY 28, 2002
 OCTOBER 22, 2002

REFORESTATION MASTER PLAN
MOLOAA BAY RANCH
 MOLOAA, KOOLAU, KAUAI, HAWAII
 TMK: (4) 4-9-11: 01, 09, 33 and 34

Greg Boyer
 Boyer Landscape, Inc.
 LANDSCAPE ARCHITECTURE
 CONTRACTING + NURSERY
 47-410 PULAMA ROAD
 KANEHE, HI 96744
 PHONE: 808-239-8364
 FAX: 808-239-7749
 boyerdesign@hawaii.net

PLANTING PLAN
 DATE: SEPTEMBER 23, 2003
 DESIGN BY: GREGORY A. BOYER
 CAD DRAWING BY: ANNA YORBA
 SCALE: 1" = 200'
 SHEET: L-5



BOYER & BOYER
 REGISTERED PROFESSIONAL LANDSCAPE ARCHITECT
 No. 5178
 HAWAII, U.S.A.
 This work was prepared by me or under my supervision.
 Drawing shall remain the property of GREGORY A. BOYER LANDSCAPE ARCHITECTURE, INC. and shall not be used for other projects, for addition to this project or for completion of this project by others without the knowledge and written consent of GREGORY A. BOYER LANDSCAPE ARCHITECTURE, INC.
 Gregory A. Boyer
 NOTES: All dimensions shall be in feet and inches and rounded to the nearest inch.

REVISIONS:
 OCTOBER 1, 2001
 FEBRUARY 28, 2002
 OCTOBER 22, 2002
 AUGUST 27, 2003
 JANUARY 5, 2004
 FEBRUARY 19, 2004

PLANNED PLANTINGS
MOLOAA BAY RANCH
 MOLOAA, KOOLAU, KAUAI, HAWAII
 TMK: (4) 4-9-11: 01, 09, 33 and 34

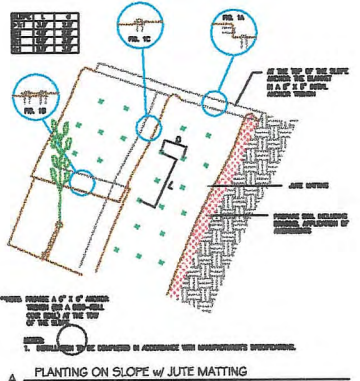
EXISTING TREES TO REMAIN

SYMBOL	TREES
(Symbol)	CHRISTMAS BERRY TREE
(Symbol)	FALSE KAMANI
(Symbol)	IRONWOOD BUSH
(Symbol)	IRONWOOD TREE
(Symbol)	JAVA PLUM TREE
(Symbol)	MILO TREE
(Symbol)	STRAWBERRY GUAVA
(Symbol)	EXISTING VEGETATION

SCHEDULE OF NEW PLANTINGS

QTY	SIZE	PALMS
261	15 GAL	COCONUT PALM
		TREES
30	15 GAL	BEACH HELIOTROPE
40	15 GAL	FALSE KAMANI
30	15 GAL	HALA
		SHRUBS
86	1 GAL., 6" O.C.	NAIO
	PLUGS, 24" O.C.	PANGOLA GRASS
PLANTINGS PER PRIOR DLNR APPROVAL		
9	25 GAL., 2"-4" CALIPER	BEACH HELIOTROPE
32	25 GAL., 2"-4" CALIPER	FALSE KAMANI
3 RAIL PERIMETER FENCING TO BE INSTALLED (4'-0" HT)		

PLANTING CONCEPT:
 EVERY IRONWOOD TREE REMOVED
 IS TO BE REPLACED BY A TREE OR COCONUT PALM.



Gregory A. Boyer
 Boyer & Boyer
 LANDSCAPE ARCHITECTURE
 CONTRACTING & NURSERY
 47-110 PULAMA ROAD
 KANEIHE, HI 96744
 PHONE: 808-239-8264
 FAX: 808-239-7749
 boyerdesign@hawaii.rr.com

PLANNED PLANTING
 DATE: MARCH 8, 2004
 DESIGN BY: GREGORY A. BOYER
 CAD DRAWING BY: ANNA YORBA
 SCALE: 1" = 100'
 SHEET: L-5

DRIVEWAY AND GRADING PLAN FOR MOLOA`A BAY RANCH

Moloa`a, Kawaihau, Kaua`i, Hawai`i

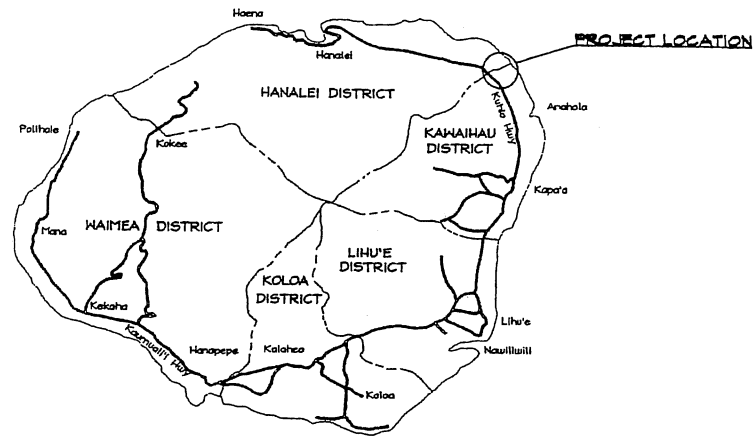
TAX MAP KEY: (4) 4-9-11: 1

Owner: MOLOAA BAY RANCH, LLC

PREPARED BY:

ESAKI SURVEYING AND MAPPING, INC.

LIHU`E, KAUA`I, HAWAI`I 96766



ISLAND OF KAUA`I

INDEX TO DRAWINGS

<u>DESCRIPTION</u>	<u>SHEET NUMBER</u>
TITLE SHEET	1
CONSTRUCTION NOTES	2
GENERAL PLAN	3
GRADING PLAN	4
SITE PLAN	5
DETAILS	6

APPROVED:

DIRECTOR, PLANNING DEPARTMENT
COUNTY OF KAUA`I DATE

COUNTY ENGINEER, DEPT. OF PUBLIC WORKS
COUNTY OF KAUA`I DATE

CHIEF, ENVIRONMENTAL MANAGEMENT DIVISION, DEPARTMENT OF HEALTH
STATE OF HAWAI`I DATE



LOCATION MAP

N.T.S.

GENERAL CONSTRUCTION NOTES

- All construction work is to be constructed in accordance with the publications "Hawaii Standard Specifications for Road, Bridge, and Public Works Construction, 1994" and "Standard Details for Public Works Construction, September 1984". Standard Details are available at the Kauai Clerks Office. Standard Specifications are available at the State Department of Transportation.
- No grading between 7 PM to 7 AM on any given day or on Saturdays, Sundays and holidays without permission from the County Engineer and the State Department of Health.
- Contractor to notify Public Works Department five (5) working days prior to commencing any grading work. When completed and ready for final inspection, notify Public Works Department inspection section.
- Construction plans are valid for a period of one year from the date of approval. If construction does not commence within this one year time frame, then the construction plans will have to be resubmitted to the County agencies for review and approval.
- All grading, grubbing and stockpiling work shall be performed in accordance with County of Kauai ordinance no. 808. The contractor shall inform the County Engineer of the location of the disposal site. The disposal site must also fulfill the requirements of the grading ordinance.
- The Contractor shall remove all silt and debris resulting from his work and deposited in drainage facilities, roadways and other areas. The cost incurred for any necessary remedial action by the Chief Engineer shall be payable by the Contractor.
- All slopes and exposed areas shall be sodded or planted immediately after the grading work has been completed.
- Contractor must obtain all necessary permits before construction commences. Permits to include, but not be limited to grubbing, grading, etc.
- During cleaning operations, the Contractor shall supply a water truck for dust control purposes until vegetation has re-established itself. Excess water, including silt and dirt, shall not be allowed to run-off the property.
- All existing flow conditions shall be maintained.
- The Contractor shall retain services of a licensed civil engineer whose specialty is in geotechnical engineering for construction quality control. The "geotechnical" engineer shall submit certification that work complies to project and standard specifications. Tests made by the geotechnical engineer for quality control shall be submitted to the County Engineer.

NOTES FOR ENVIRONMENTAL PROTECTION

- In accordance with Chapter 11-60.1, Air Pollution Control, Title 11, State Administrative Rules, the property Owner/Developer shall be responsible for ensuring that effective control measures are provided to minimize or prevent any visible dust emission caused by the construction work from impacting the surrounding areas including the off-site roadways used to enter/exit the project. These measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
 - In accordance with Chapter 11-55, Water Pollution Control and Chapter 11-54, Water Quality Standards, Title 11, State Administrative Rules, the property Owner/Developer shall be responsible for ensuring that the Best Management Practice (BMP) to minimize or prevent the discharge of sediments, debris, and other water pollutant into State waters is provided.
 - In accordance with Chapter 11-58.1, Solid Waste Management Control, Title 11, State Administrative Rules, the property Owner/Developer shall be responsible for ensuring that debris material, demolition waste and construction waste generated by the project are disposed of in a manner or at a site approved by the State Department of Health. Disposal of any of these wastes by burning is prohibited.
 - The property Owner/Developer shall be responsible for obtaining all applicable permits from the Department of Health including but not limited to National Pollution Discharge Elimination System (NPDES) permits for storm water, hydrostatic test and dewatering discharges prior to commencing construction.
 - The Contractor shall retain services of a licensed civil engineer whose specialty is in geotechnical engineering for construction quality control. The "geotechnical" engineer shall submit certification that work complies to project and standard specification. Tests made by the geotechnical engineer for quality control shall be submitted to the County Engineer.
-
- The graded or project site that is cleared of vegetation shall be kept damp for seven (7) days a week. At the end of each day, the site shall be sufficiently dampened so that the site will remain moistened during the night.
 - The Contractor shall conduct his operations so that excavation, embankment, and imported material shall be dampened to prevent dust problems.
 - In applying for a grading permit, the Contractor shall submit plans, construction schedules and/or written measures which provide for dust control. The dust control measures shall contain positive statements which require actions or work that prevent dust problems. No permits will be issued unless the County is assured that the dust problems will be minimized.
-
- Temporary vegetative cover shall be planted immediately after grading is completed, 40 lbs. common rye grass seed per acre, 400 lbs. per acre 10-10-10 or equivalent fertilizer worked into seed bed before planting. Temporary sprinkler system is to be installed concurrently with all plantings. Planting and maintenance of grass shall conform to the "Hawaii Standard Specifications for Road, Bridge, and Public Works Construction, 1994".
 - Temporary vegetative cover shall be planted within a period of 30 calendar days after the site has been graded or bored of vegetation or if final grading of the site will be suspended for more than 30 calendar days.
 - The contractor shall maintain a water truck with jet and dampen the graded or grubbed site with water at all times.
 - The project site shall be kept damp with water for seven (7) days a week. At the end of each day, the site shall be sufficiently dampened so that the site will remain moistened during the night.
 - The Contractor shall conduct his operations so that excavation, embankment and imported material shall be dampened with water during the grading operation.
 - The graded or project site that is cleared of vegetation shall be kept damp.
 - In applying for a grading permit, the Contractor shall submit plans, construction schedules and/or written measures which provide for dust control. The dust control measures shall contain positive statements which require actions or work that prevent dust problems. No permits will be issued unless the County is assured that the dust problems will be minimized.
-
- The Contractor shall grass the entire project site, except paved areas, with bermuda grass sprigs. The grass shall be planted, fertilized, and maintained in accordance with the "Hawaii Standard Specifications for road, bridge, and Public Works Construction, 1994".
 - The Contractor shall grass all exposed areas that have been constructed to final grades within a period of 30 calendar days.

ESAKI SURVEYING AND MAPPING, INC.

1610 Haleukana Street
Lihue, Kauai, Hawaii 96786
Ph. (808) 246-0625 Fax (808) 246-0229

• CIVIL ENGINEERS • SURVEYORS • PLANNERS

REVISION	DATE	DESCRIPTION

REVISIONS



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

Wayne T. Wade

PROJECT:
DRIVEWAY AND GRADING PLAN FOR MOLOA'A BAY RANCH
Tax Map Key: (4) 4-9-11: 1
Moloo'a, Kawaihau, Kauai, Hawaii

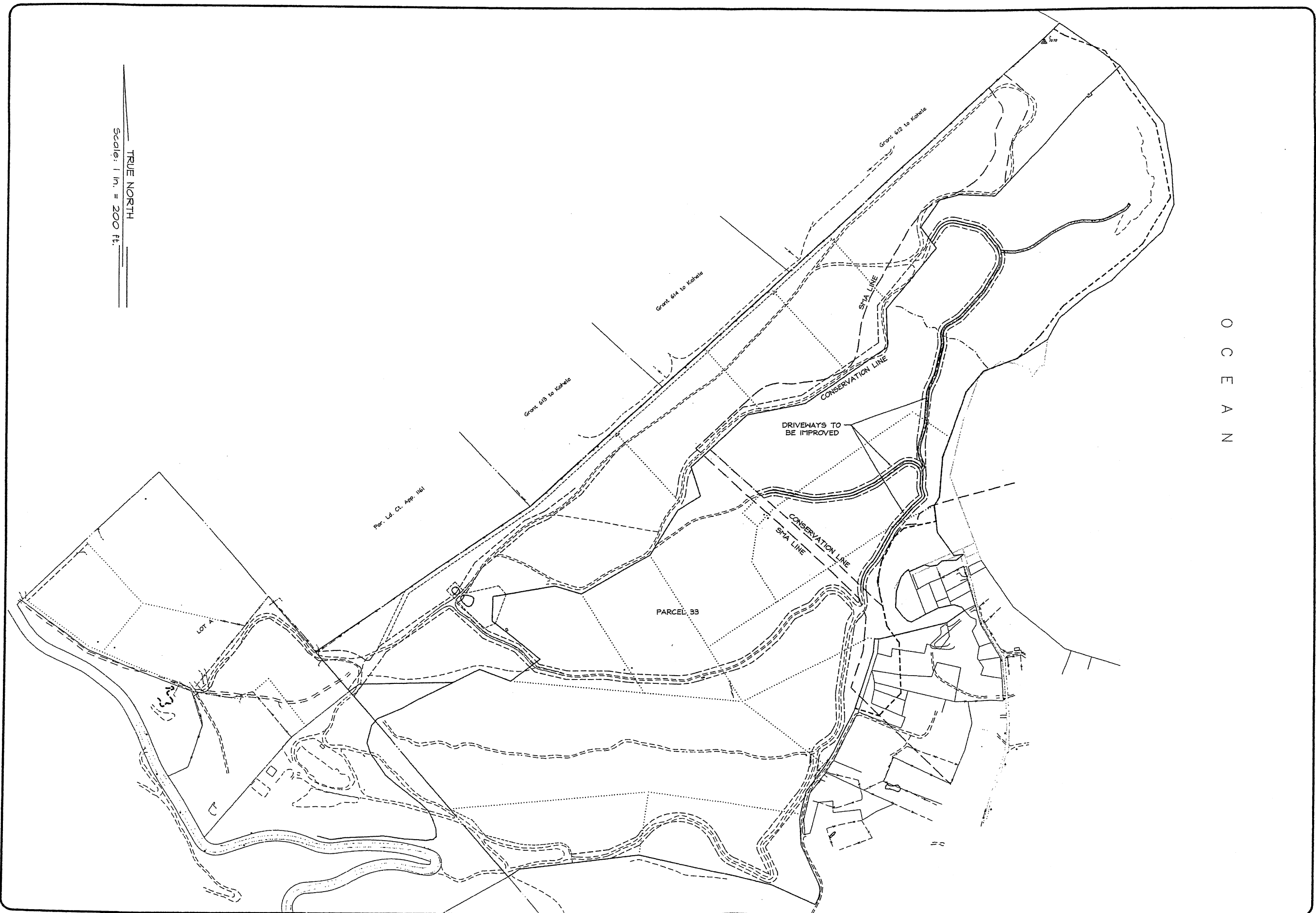
CONSTRUCTION NOTES

APPROVED
N.A.
COUNTY ENGINEER, DEPT. OF PUBLIC WORKS,
COUNTY OF KAUAI (FOR WORK WITHIN COUNTY W/M)
DATE: _____

N.A.
MANAGER & CHIEF ENGINEER, DEPT. OF WATER,
COUNTY OF KAUAI
DATE: _____

DESIGNED BY: _____ SHEET
DRAWN BY: *BF* **C-1**
DATE: 4/10/04 2 OF 6 SHEETS

TRUE NORTH
Scale: 1 in. = 200 ft.



O C E A N

ESAKI
SURVEYING AND
MAPPING, INC.

1610 Halekuna Street
Lihue, Kauai, Hawaii 96766
Ph. (808) 246-0825 Fax (808) 246-0229

• CIVIL ENGINEERS • SURVEYORS • PLANNERS

REVISION	DATE	DESCRIPTION	BY	APPROVED

REVISIONS



THIS WORK WAS PREPARED
BY ME OR UNDER MY SUPERVISION

Wayne T. Wada

PROJECT:
**DRIVEWAY AND GRADING PLAN
FOR MOLOKA'I BAY RANCH**
Tax Map Key: (4) 4-9-11: 1
Moloka'i, Kawaihau, Kaula, Hawaii

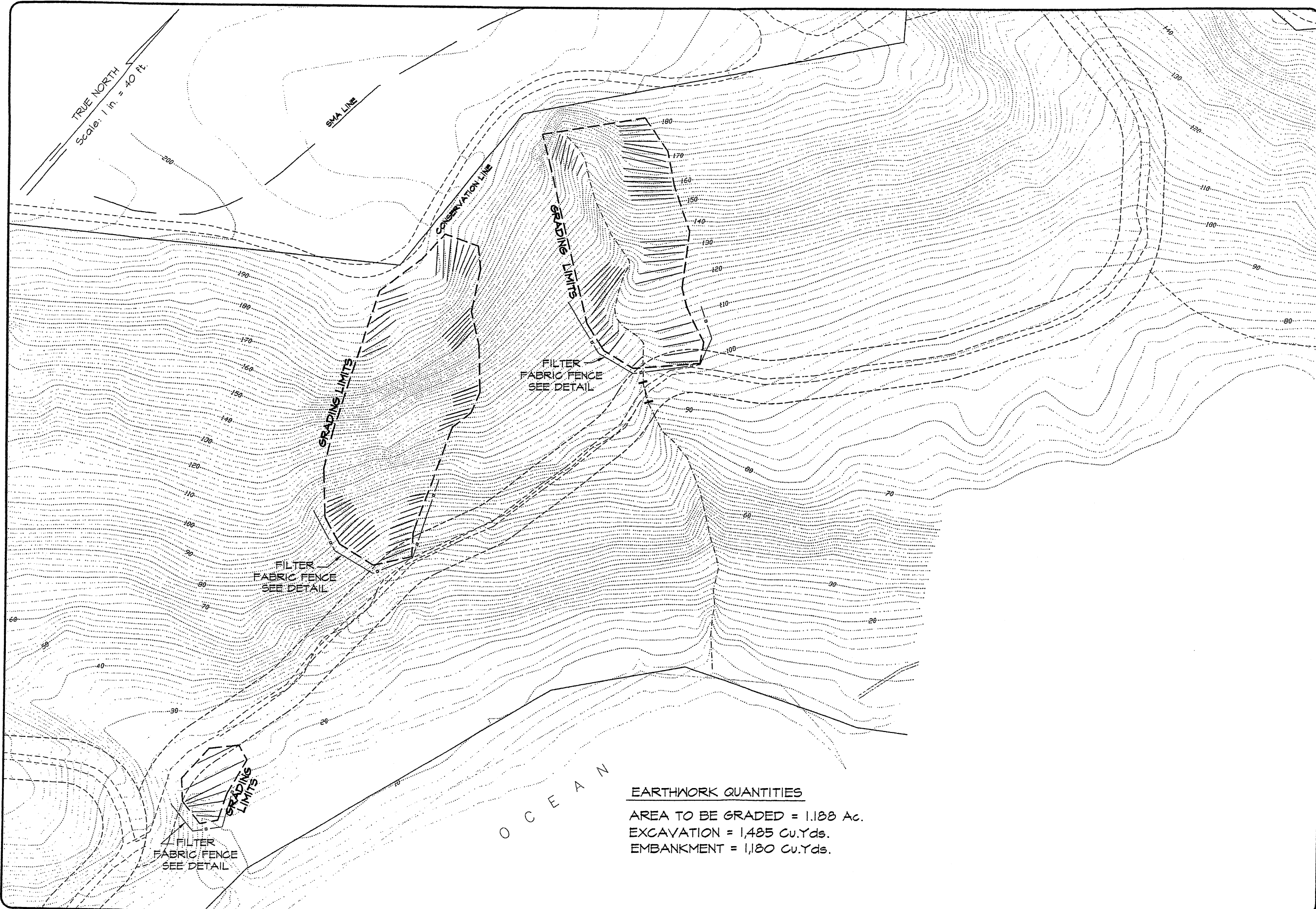
GENERAL PLAN

APPROVED
N.A.
COUNTY ENGINEER, DEPT. OF PUBLIC WORKS,
COUNTY OF KAUAI (FOR WORK WITHIN COUNTY #1/2) DATE
N.A.
MANAGER & CHIEF ENGINEER, DEPT. OF WATER,
COUNTY OF KAUAI DATE

DESIGNED BY:
DRAWN BY: *BF, BE*
DATE: 4/10/04

SHEET
C-2
3 OF 6 SHEETS

Project No.: 00-74
Drawing File: 00-74-01.dwg



EARTHWORK QUANTITIES

AREA TO BE GRADED = 1.188 Ac.
 EXCAVATION = 1,485 Cu.Yds.
 EMBANKMENT = 1,180 Cu.Yds.

TSUKI SURVEYING AND MAPPING, INC.

1610 Halekuna Street
 Lihue, Kauai, Hawaii 96766
 Ph. (808) 248-0625 Fax (808) 248-0229

• CIVIL ENGINEERS • SURVEYORS • PLANNERS

REVISION	DATE	DESCRIPTION	BY	APPROVED
REVISIONS				



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

Wayne T. Wada

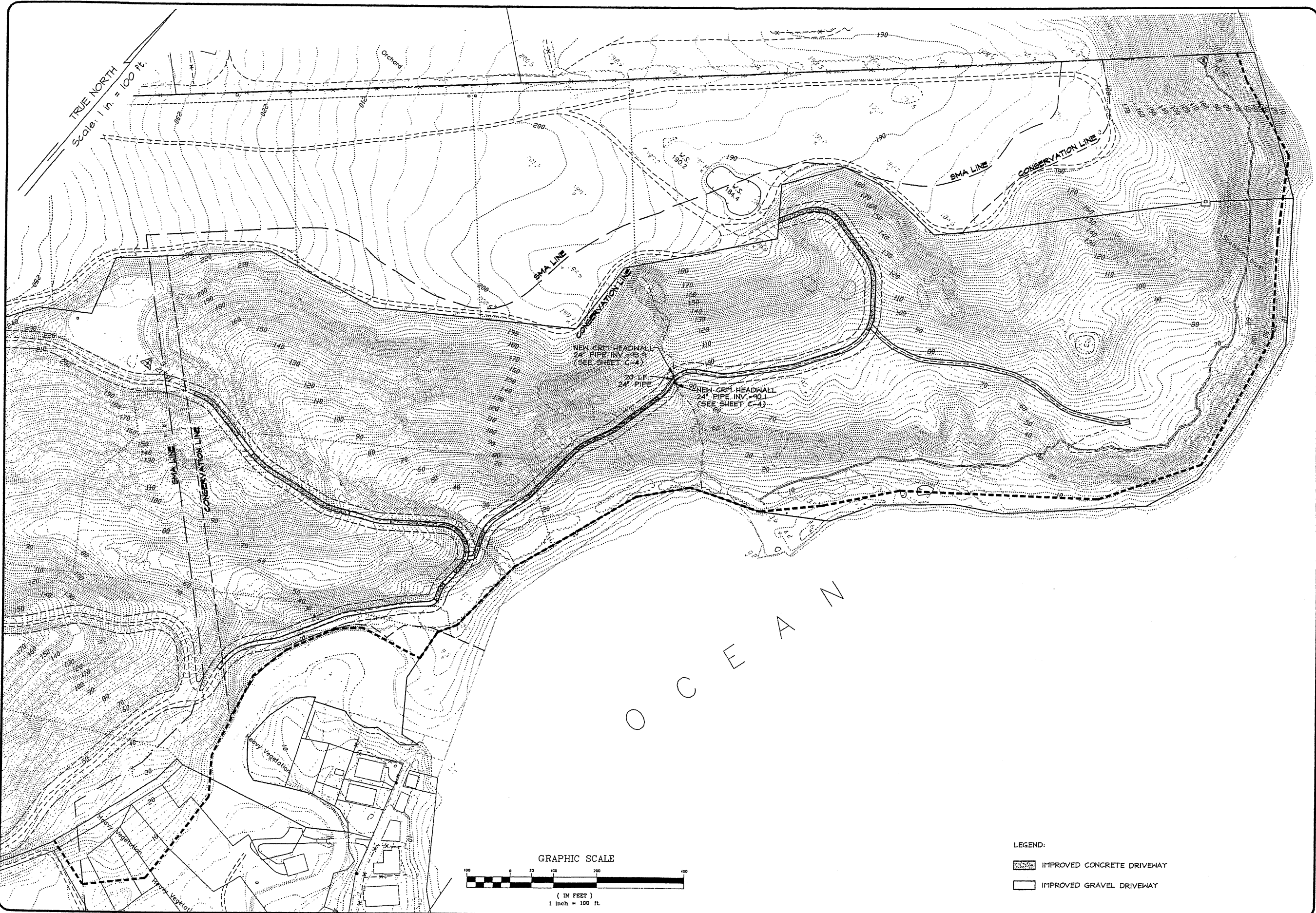
PROJECT:
DRIVEWAY AND GRADING PLAN FOR MOLOA'A BAY RANCH
 Tax Map Key: (4) 4-9-11: 1
 Moloa'a, Kawaihou, Kauai, Hawaii

GRADING PLAN

APPROVED: *NA*
 COUNTY ENGINEER, DEPT. OF PUBLIC WORKS, COUNTY OF KAUAI (15th Fl., ARDEN COURT B/W)
 DATE: _____
 MANAGER & CHIEF ENGINEER, DEPT. OF WATER, COUNTY OF KAUAI
 DATE: _____

DESIGNED BY: _____ SHEET: _____
 DRAWN BY: *SE. GF*
 DATE: 4/10/04 4 OF 8 SHEETS

Grading Plan: 00-242.dwg



ESAKI
SURVEYING AND
MAPPING, INC.

1610 Halekuna Street
Lihue, Kauai, Hawaii 96766
Ph. (808) 246-0825 Fax (808) 246-0229

• CIVIL ENGINEERS • SURVEYORS • PLANNERS

REVISION	DATE	DESCRIPTION	BY	APPROVED
REVISIONS				



THIS WORK WAS PREPARED
BY ME OR UNDER MY SUPERVISION

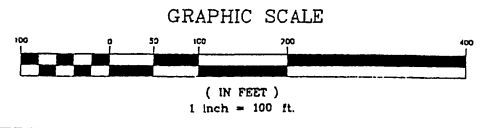
Wayne T. Wada

PROJECT:
DRIVEWAY AND GRADING PLAN
FOR MOLOKAI BAY RANCH
Tax Map Key: (4) 4-9-11: 1
Molokai, Kaula, Kauai, Hawaii

SITE PLAN

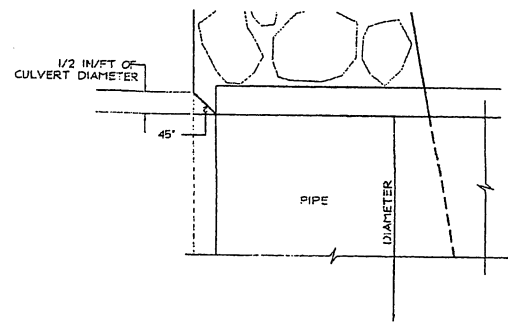
APPROVED
N.A.
COUNTY ENGINEER, DEPT. OF PUBLIC WORKS, COUNTY OF KAUAI (FOR WORK WITHIN COUNTY R/W) DATE
N.A.
MANAGER & CHIEF ENGINEER, DEPT. OF WATER, COUNTY OF KAUAI DATE

DESIGNED BY: SHEET
DRAWN BY: *BA, BC, BF* **C-4**
DATE: 4/10/04 5 OF 6 SHEETS

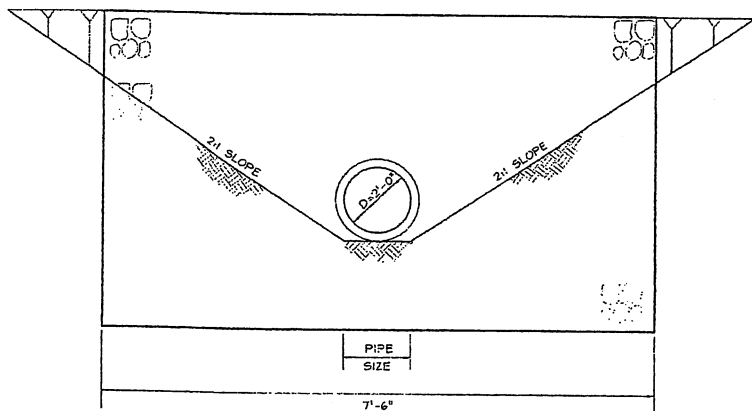


- LEGEND:
- IMPROVED CONCRETE DRIVEWAY
 - IMPROVED GRAVEL DRIVEWAY

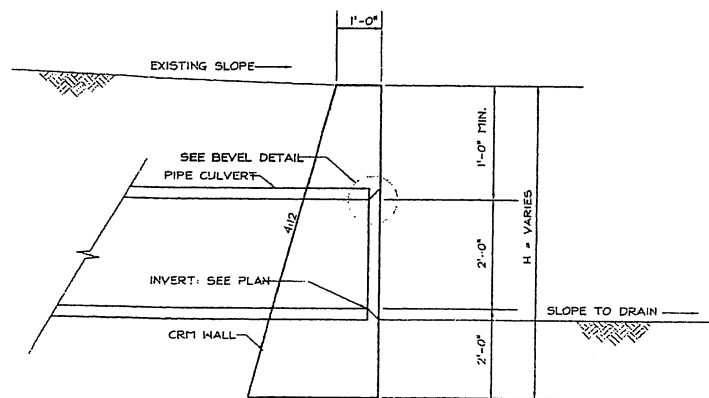
Project No: 00-24
Drawing File: 00-24day.dwg



BEVEL DETAIL
NTS

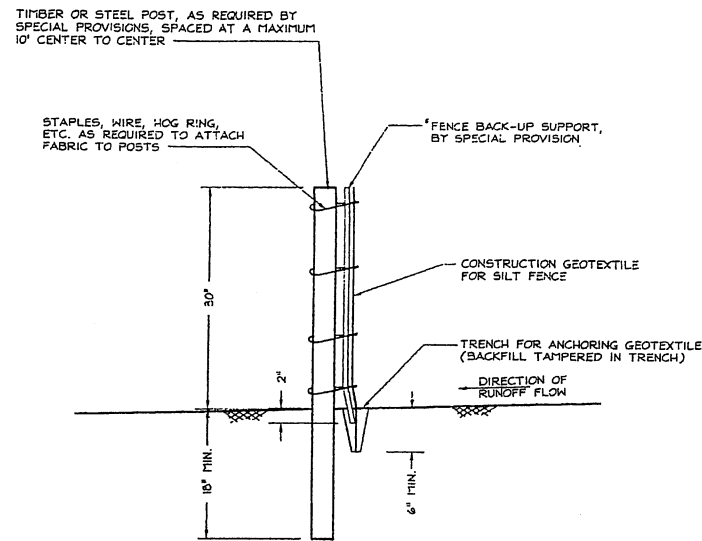


ELEVATION



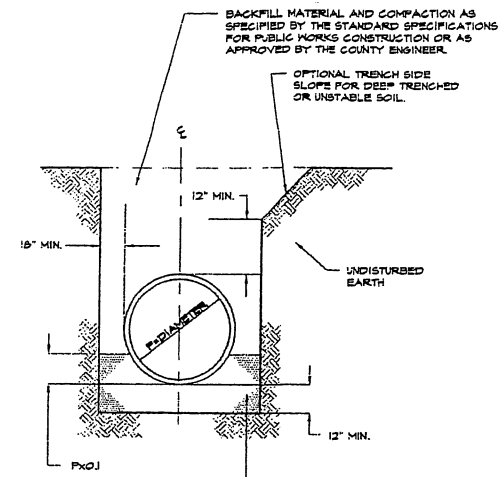
SECTION

CRM HEADWALL INLET/OUTLET
NOT TO SCALE



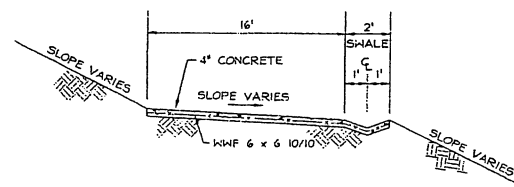
* FENCE BACK-UP SUPPORT IS OPTIONAL, DEPENDING ON THE PROPERTIES OF THE SELECTED GEOTEXTILE.

FILTER FABRIC FENCE
NTS

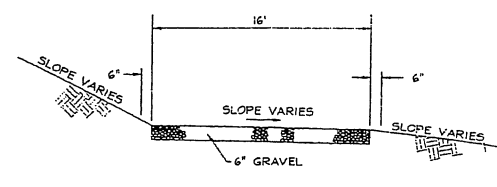


NOTE:
ALUMINUM SPIRAL RIB PIPE SHALL BE MADE WITH CORRUGATED ENDS AT PIPE JOINTS AND JOINED TOGETHER WITH CORRUGATED COUPLERS.

A.S.R.P. TRENCH & BEDDING TYPICAL DETAIL
NOT TO SCALE



CONCRETE AS ROAD
Not to Scale



GRAVEL AS ROAD
Not to Scale

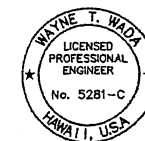
12' WIDE DRIVEWAY DETAILS
NOT TO SCALE

SAKI SURVEYING AND MAPPING, INC.

1610 Halekuna Street
Lihue, Kauai, Hawaii 96786
Ph. (808) 246-0625 Fax (808) 246-0229

• CIVIL ENGINEERS • SURVEYORS • PLANNERS

REVISION DATE DESCRIPTION
REVISIONS



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

Wayne T. Wede

PROJECT:
DRIVEWAY AND GRADING PLAN FOR MOLOA'A BAY RANCH
Tax Map Key: (4) 4-9-11: 1
Moloo'a, Kawaihau, Kaula'i, Hawaii

DETAILS

APPROVED
N.A.
COUNTY ENGINEER, DEPT. OF PUBLIC WORKS, COUNTY OF KAUAI (FOR WORK WITHIN COUNTY R/W) DATE
N.A.
MANAGER & CHIEF ENGINEER, DEPT. OF WATER, COUNTY OF KAUAI DATE

DESIGNED BY: SHEET
DRAWN BY: *BA, BE, BF* **C-5**
DATE: 4/10/04 6 OF 6 SHEETS



TM 141 4-9-11-9-3
4278 ACRES
MOLOKAI BAY RANCH, LLC

TM 141 4-9-11-11-4
4300 ACRES
MOLOKAI BAY RANCH, III, LLC

TM 141 4-9-11-11-6
4300 ACRES
MOLOKAI BAY RANCH, III, LLC

TM 141 4-9-11-11-7
4300 ACRES
MOLOKAI BAY RANCH, III, LLC

TM 141 4-9-11-11-8
4300 ACRES
MOLOKAI BAY RANCH, III, LLC

THRONAS PARCEL
TM 141 4-9-11-11-1 (part)
4278 ACRES
MOLOKAI BAY RANCH, LLC

ALLOTMENT 11A
TM 141 4-9-11-11-1 (part)
105,710 ACRES
MOLOKAI BAY RANCH, LLC

MOLOKAI, HAWAII
Date of Photography: 4-10-02

Prepared by
Aerial Services
MOLOKAI, HAWAII

APPENDIX VI

**LAND USE COMMISSION
BOUNDARY INTERPRETATION**



STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION

P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827
April 22, 2003

Mr. Keith Kurahashi
Kusao & Kurahashi, Inc.
2752 Woodlawn Drive, Suite 5-202
Honolulu, Hawaii 96822

Dear Mr. Kurahashi:

Subject: BOUNDARY INTERPRETATION No: 03-13 for Tax Map Key No: 4-9-11:
1, Moloaa Bay Ranch, Kawaihau, Kauai

We are in receipt of your letter dated March 21, 2003, requesting a boundary interpretation relative to a pump shed and rock wall on the subject parcel.

Upon review of the Commission's records and official maps currently on file at our office and your map entitled "Map Showing Pump Shed and Wall At Parcel 1," we have determined that the pump shed and wall, as generally represented on said map, are located within the State Land Use Agricultural District.

For your information, our office previously prepared Boundary Interpretation No. 98-44 dated November 24, 1998, for the adjacent area that certified an approximate location of the Agricultural/ Conservation District boundary in the vicinity of the pump shed and wall.

We have enclosed a copy of this boundary interpretation and your map with the pump shed and wall highlighted in yellow for your reference.

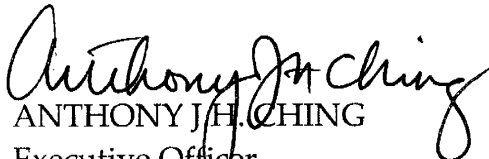
Mr. Keith Kurahashi

April 22, 2003

Page 2

Should you require clarification or further assistance, please feel free to call Fred Talon or Bert Saruwatari of my staff at 587-3822.

Sincerely,

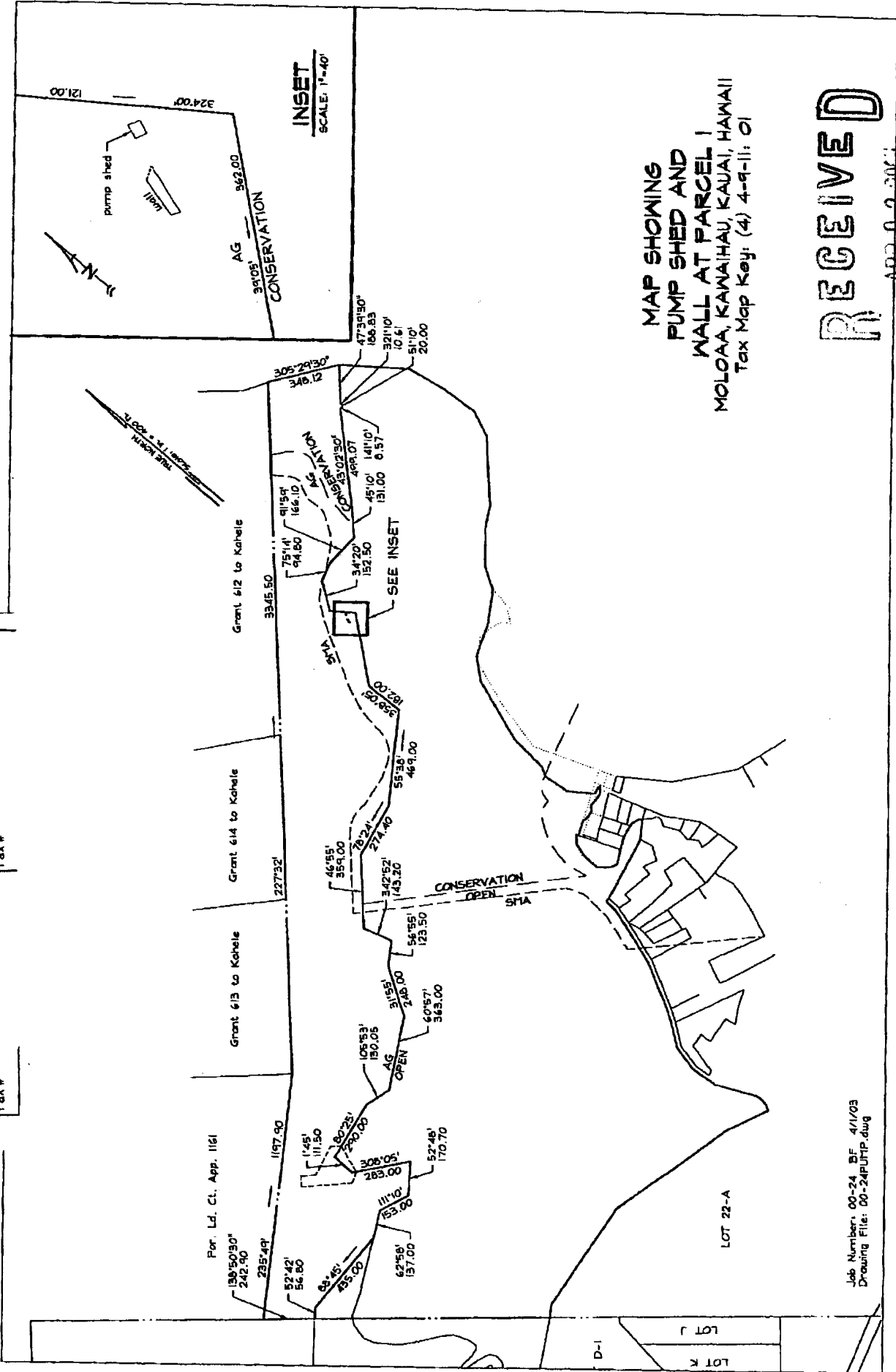

ANTHONY J.H. CHING
Executive Officer

AC:ft

Enclosures: Boundary Interpretation No. 98-44 and "Map Showing Pump Shed And Wall At Parcel 1"

c: Peter Young, BLNR Chairperson (w/enclosures)
Attn: Dierdre S. Mamiya, Land Division
Ian Costa, Kauai County Planning Director (w/enclosures)
Domie Bucasas, Supervisor, Real Property Assessment Division (w/enclosures),
County of Kauai, Finance Department

Post-it [®] Fax Note	7671	Date	4/2	# of pages	1
To	FRED TALON	From	KEITH KURAHASHI		
Co./Dept.		Co.	KUSAO & KURAHASHI		
Phone #		Phone #			
Fax #		Fax #			



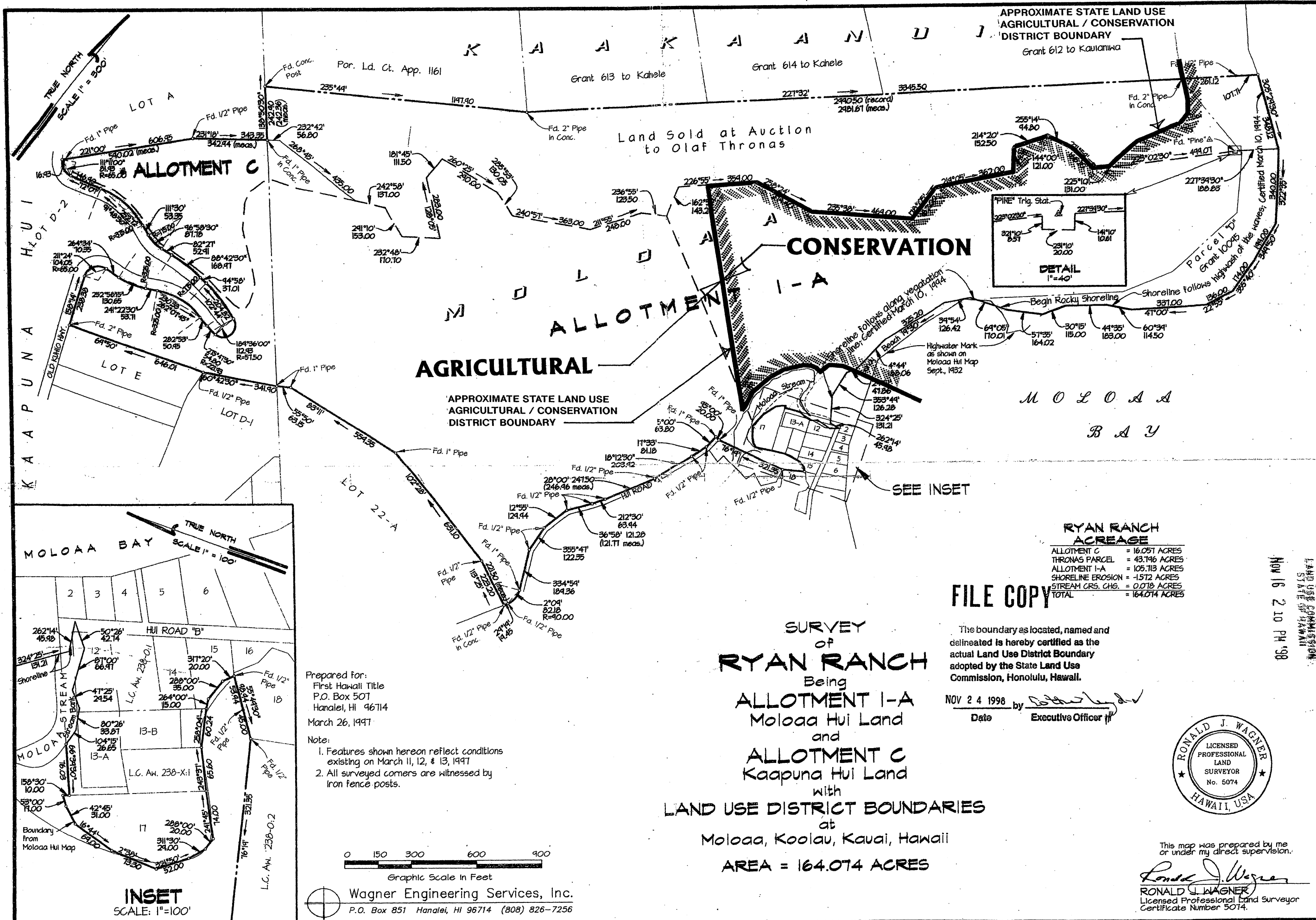
MAP SHOWING
PUMP SHED AND
WALL AT PARCEL 1
MO'OREA, KAWAIHAU, KAUI, HAWAII
Tax Map Key: (4) 4-9-11: 01

RECEIVED

APR 02 2003

State of Hawaii
LAND USE COMMISSION

Job Number: 00-24 BF 4/1/03
Drawing File: 00-24PUMP.dwg



APPROXIMATE STATE LAND USE
AGRICULTURAL / CONSERVATION
DISTRICT BOUNDARY
Grant 612 to Kaulaniwa

Grant 613 to Kahele
Grant 614 to Kahele

Land Sold at Auction
to Olaf Thronas

CONSERVATION
AGRICULTURAL

APPROXIMATE STATE LAND USE
AGRICULTURAL / CONSERVATION
DISTRICT BOUNDARY

MOLOAA
BAY

**RYAN RANCH
ACREAGE**

ALLOTMENT C	= 16.051 ACRES
THONAS PARCEL	= 43.146 ACRES
ALLOTMENT I-A	= 105.713 ACRES
SHORELINE EROSION	= -1.572 ACRES
STREAM CRS. CHG.	= 0.078 ACRES
TOTAL	= 164.074 ACRES

FILE COPY

The boundary as located, named and delineated is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

NOV 24 1998 by *[Signature]*
Date Executive Officer

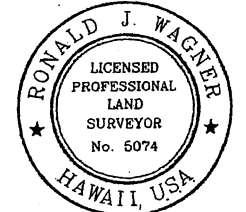
SURVEY
of
RYAN RANCH
Being
ALLOTMENT I-A
Moloaa Hui Land
and
ALLOTMENT C
Kaapuna Hui Land
with
LAND USE DISTRICT BOUNDARIES
at
Moloaa, Koolau, Kauai, Hawaii
AREA = 164.074 ACRES

Prepared for:
First Hawaii Title
P.O. Box 507
Hanalei, HI 96714
March 26, 1997

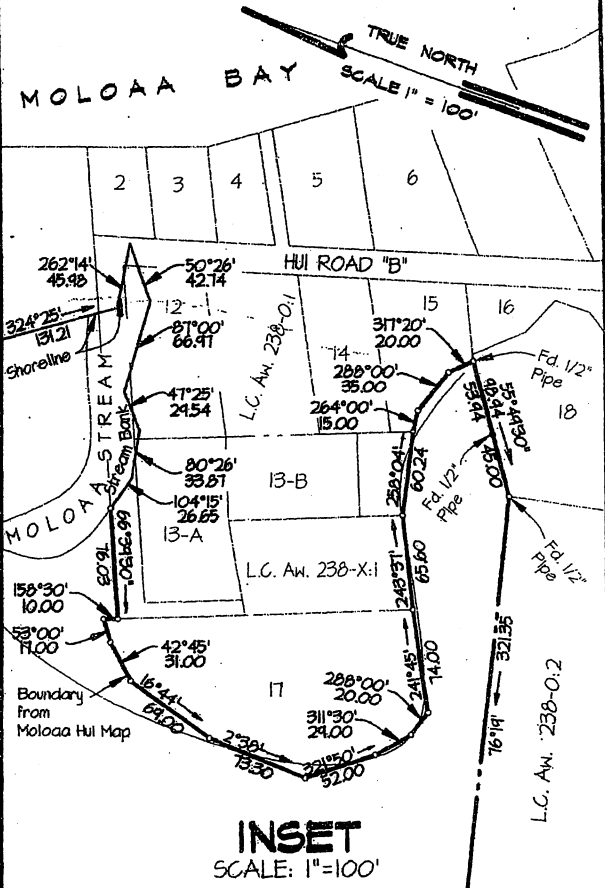
- Note:
1. Features shown hereon reflect conditions existing on March 11, 12, & 13, 1997
 2. All surveyed corners are witnessed by iron fence posts.



Wagner Engineering Services, Inc.
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



This map was prepared by me or under my direct supervision.
Ronald J. Wagner
RONALD J. WAGNER
Licensed Professional Land Surveyor
Certificate Number 5074



NOV 16 2 10 PM '98
LAND USE COMMISSION
STATE OF HAWAII

Boundary Interpretation No. 98-44

APPENDIX VII
ABUTTING PROPERTY OWNERS

Moloaa Bay Ranch Abutting Properties	
TMK	OWNER/ADDRESS
(4) 4-9-11-002 CPR 1 Apt. A	Tucker, Scott B. Dec 5050 Numaga Pass Carson City, NV 89703
(4) 4-9-11-002 CPR 1 Apt. B	Tucker, Scott B. Dec 5050 Numaga Pass Carson City, NV 89703
(4) 4-9-11-005	Moloaa Valley One LLC, et al. P.O. Box 672 Kilauea, Hawaii 96754
(4) 4-9-11-008	Levy, Annie Estate/et al. P.O. Box 155 Anahola, Hawaii 96703
(4) 4-9-11-013	Wright, Carl L. & Sandra E. et al. P.O. Box 788 Kilauea, Hawaii 96754
(4) 4-9-11-009	Larsen's Beach Road P.O. Box 672 Kilauea, Hawaii 96754
(4) 4-9-11-009 CPR 1 Apt. A	Goldberg, Steven M. et al. P.O. Box 535 Kilauea, Hawaii 96754
(4) 4-9-11-009 CPR 2 Apt. B	Hayes, Daren L & Cathleen J P.O. Box 1326 Kilauea, Hawaii 96754
(4) 4-9-11-009 CPR 3 Apt. C	Delorme, Edward & Usha 1934 Port Carney Place Newport Beach, CA 92660
(4) 4-9-11-009 CPR 4 Apt. D	Russell, Richard T. & Linda B. P.O. Box 70 Kilauea, Hawaii 96754
(4) 4-9-11-009 CPR 5 Apt. E	Moloaa Bay Ranch LLC 132 West Main St. Aspen, CO 81611

(4) 4-9-11-011	Waioli Corp., et al. P.O. Box 1631 Lihue, Hawaii 96766
(4) 4-9-11-012	Hanwright, Joseph C. et al. P.O. Box 759 Anahola, Hawaii 96703
(4) 4-9-11-021 CPR 1 Apt. 1	Frailey, Steven H. et al. P.O. Box 267 Anahola, Hawaii 96703
(4) 4-9-11-021 CPR 2 Apt. 2	Masters, Kathryn M. 951 Smith Road Mill Valley, CA 94941
(4) 4-9-11-021 CPR 3 Apt. 3	Brown, Michael & Midence, Camila P.O. Box 579 Anahola, Hawaii 96703
(4) 4-9-11-023	Hanwright, Joseph & Patricia et al. P.O. Box 759 Anahola, Hawaii 96703
(4) 4-9-12-005	Collen, Evelyn P. P.O. Box 705 Anahola, Hawaii 96703
(4) 4-9-12-006	Lucas, Mary N .Trust Est. et al. 1132 Bishop Street, Ste. 1511 Honolulu, Hawaii 96813
(4) 4-9-13-011	Johnson, Robert H. K. & Penny P. P.O. Box 1213 Kapaa, Hawaii 96746
(4) 4-9-13-014	Dileonardo, Salvatore F. et al. 5318 Makaloa Street Kapaa, Hawaii 96746
(4) 4-9-13-015	Dunn, Patricia K. Trustee et al. 435 Mamaki Street Honolulu, Hawaii 96821

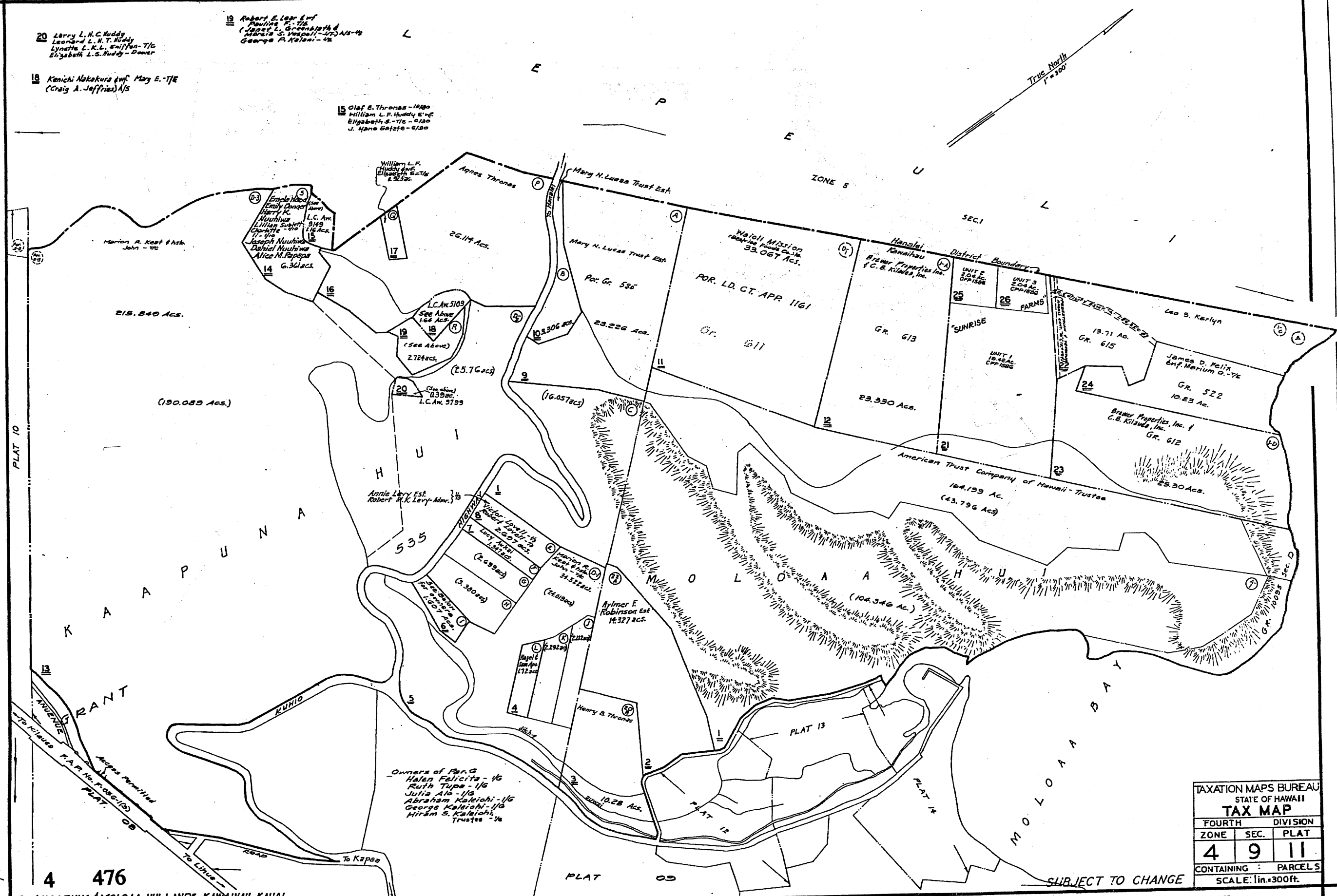
(4) 4-9-13-016	Dunn, Patricia K. Trustee et al. 435 Mamaki Street Honolulu, Hawaii 96821
(4) 4-9-13-021	Moloaa Bay Ranch II LLC 132 West Main St. Aspen, CO 81611
(4) 4-9-14-20	Moloaa Bay Ranch II LLC 132 West Main St. Aspen, CO 81611
(4) 4-9-14-022	Moloaa Bay Ranch LLC 132 West Main St. Aspen, CO 81611
(4) 4-9-14-019	Thornas, Olaf E. Revocable Living Trust P.O. Box 269 Lawai, Hawaii 96765
(4) 4-9-014-029	Gomez, Blance, et al. c/o Thornas, Olaf E. P.O. Box 269 Lawai, Hawaii 96765
(4) 4-9-14-030	Dias, Elizabeth H. et al. 1036 Maunawili Road Kailua, Hawaii 96734
(4) 4-9-14-032	Huddy, David et al. P.O. Box 30912 Honolulu, Hawaii 96820

20 Larry L. H.C. Huddy
Leonard L. H.T. Huddy
Lynette L.K.L. Swiffen-7/6
Elizabeth L.S. Huddy-Denver

18 Kanichi Nakakura (w/ Mary E.-7/6
(Craig A. Jeffries) A/S

19 Robert E. Lear & of
Pauline F.-7/6
(James L. Greenblatt &
Marion S. Vespaal-7/6) A/S-1/6
George P. Keleni-7/6

15 Olaf E. Thronas-19/90
William L.F. Huddy 5-1/6
Elizabeth S.-7/6-5/20
U. Hane Gaiete-6/30



Comp. No: 3053
Drawn by: Tax. Maps Bureau & Survey by Towill.
Source: F.W.B. - Oct., 1936.

4 476

Part of KAAPUNA & MOLOAA HUI LANDS, KAWAII, HAWAII.

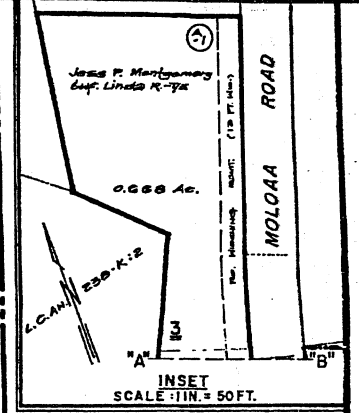
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
FOURTH DIVISION		
ZONE	SEC.	PLAT
4	9	11
CONTAINING		PARCELS
SCALE: 1 in. = 300 ft.		

SUBJECT TO CHANGE

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- 7 Rose T. Miranda - 1/8, etal - 7/6 - 136/756
- 8 Rose T. Miranda - 136/756
- 9 Nancy T. Neukens - 42/756
- 10 George H. Miranda - 34/756
- 11 Elizabeth H. Dias - 34/756
- 12 David A. Huddy - 34/756
- 13 James Huddy Jr. - 34/756
- 14 Hazel Cross - 51/756
- 15 Samuel Apo Jr. - 51/756
- 16 Mary Neves - 162/756



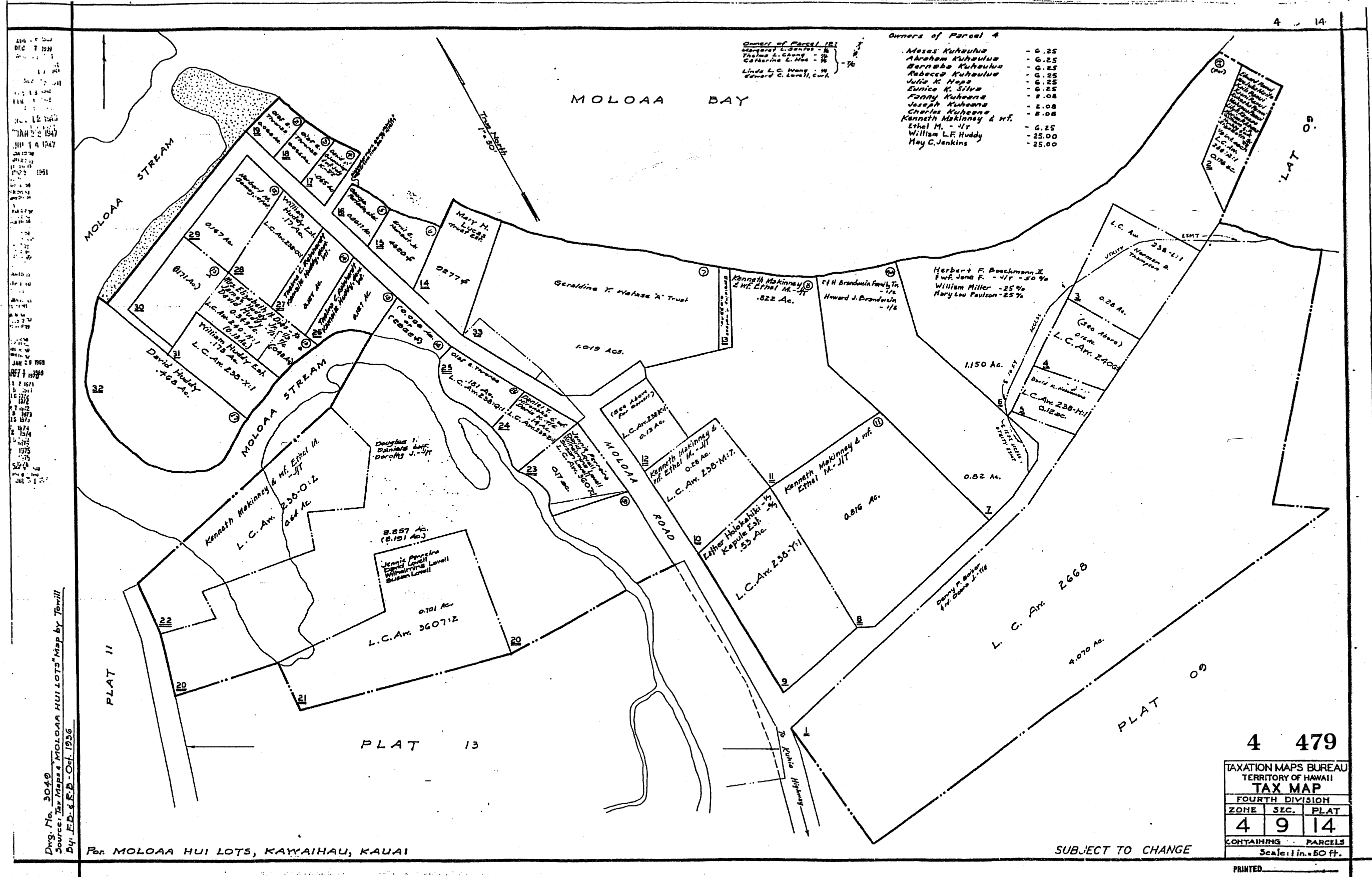
Dwg. No. 3043
 Source Taxation Maps Bureau
 By F.W.A. & M.N. Oct. 1936

POR. MOLOAA HUI LANDS, KAWAIHAU, KAUAI

SUBJECT TO CHANGE

DROPPED PARCELS:
 12
4 477
 TAXATION MAPS BUREAU
 TERRITORY OF HAWAII
TAX MAP
 FOURTH DIVISION
 ZONE SEC. PLAT
4 9 12
 CONTAINING 3 PARCELS
 SCALE: 1 in. = 50 FT.

PRINTED



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Div. No. 3049
 Source: Tax Maps & Moloaa Hui Lots Map by Towill
 By: F.D. & E.B. - Oct. 1936

For MOLOAA HUI LOTS, KAWAIHAU, KAUAI

4 479

TAXATION MAPS BUREAU
 TERRITORY OF HAWAII
TAX MAP
 FOURTH DIVISION
 ZONE SEC. PLAT
 4 9 14
 CONTAINING PARCELS
 Scale: 1 in. = 50 ft.
 PRINTED

SUBJECT TO CHANGE

APPENDIX VIII

**REFORESTATION PLAN APPROVED BY
OFFICE OF CONSERVATION AND COASTAL LANDS**

LINDA LINGLE
GOVERNOR OF HAWAII

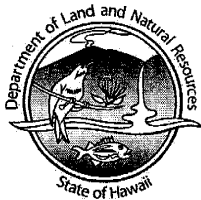


PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
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



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Ref.:PB:SL

OCT - 7 2003

File No.: Violation KA-03-15

Keith Kurahashi
Kusao & Kurahashi, Inc.
Planning and Zoning Consultants
Manoa Market Place
2752 Woodlawn Place
Honolulu, HI 96822

Dear Mr. Kurahashi:

Subject: Reforestation Plan

We are in receipt of your client's Reforestation Plan for unauthorized tree removal at Moloaa Bay Ranch, LLC Moloaa, Kauai, Hawaii, TMK: (4) 4-9-11:01. Submission of this plan satisfies paragraph E of the Board's June 27, 2003 action.

It is our understanding that you will be submitting a Conservation District Use Application (CDUA) on behalf of the landowner for landscaping purposes, in the near future. We suggest that you include this reforestation plan in the environmental assessment and CDUA.

Should you have any questions, please contact Sam Lemmo of our Office of Conservation and Coastal Lands at 587-0381.

Sincerely,

Dierdre S. Mamiya,
Acting Administrator
Office of Conservation
And Coastal Lands

cc: Kauai Board Member
Kauai District Land Office
Chairperson
DOCARE (Kauai)
Randall K. Sakumoto, Esq.

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231
FAX. (808) 988-1140
E-Mail: kurahashi1@cs.com

September 25, 2003

Ms. Dierdre S. Mamiya
Administrator, Office of Conservation and Coastal Lands
Board of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96809

Attention: Mr. Samuel J. Lemmo
Conservation and Environmental

Re: Unauthorized Tree Removal Violation: KA-03-15
Moloaa Bay Ranch
TMK No. (4) 4-9-11: por. 1

Dear Ms. Mamiya:

In accordance with the requirements of your letter, dated July 8, 2003, we are providing the enclosed Reforestation Plan (Plan) for Moloaa Bay Ranch and the enclosed timetable for completion of the Plan.

Mr. Randall F. Sakumoto, of McCorriston Miller Mukai Mackinnon LLP, by letter dated July 1, 2003 submitted a check to cover the \$19,000 in fines imposed by the Board of Land and Natural Resources.

The applicant's Plan provides for replacement, on a one for one basis, of the 15 ironwood trees that were the subject of the unauthorized tree removal and provision of an additional 26 trees, for a total of 41 trees. The Plan calls for planting of 32 False Kamani trees and 9 Beach Heliotrope trees.

In addition to the proposed reforestation, the Plan calls for road repair/reclamation and future maintenance as required; repair (regrade) of all washed out (eroded) areas

Ms. Dierdre S. Mamiya

Page 2

and regrass; regrass of all exposed earth with hydromulch; and provision of irrigation, as needed to support the reforestation and grassing of the site.

We appreciate your time and consideration on this matter and look forward to working with you on a future Environmental Assessment and Conservation District Use Permit Application that will be required to implement this Plan.

Very truly yours,



Keith Kurahashi

Enclosures

cc w/ encl.:

Kauai County Planning Department
Kauai County Department of Public Works
Moloaa Bay Ranch, LLC

**TIMETABLE FOR COMPLETION OF THE
REFORESTATION PLAN FOR MOLOAA BAY RANCH**

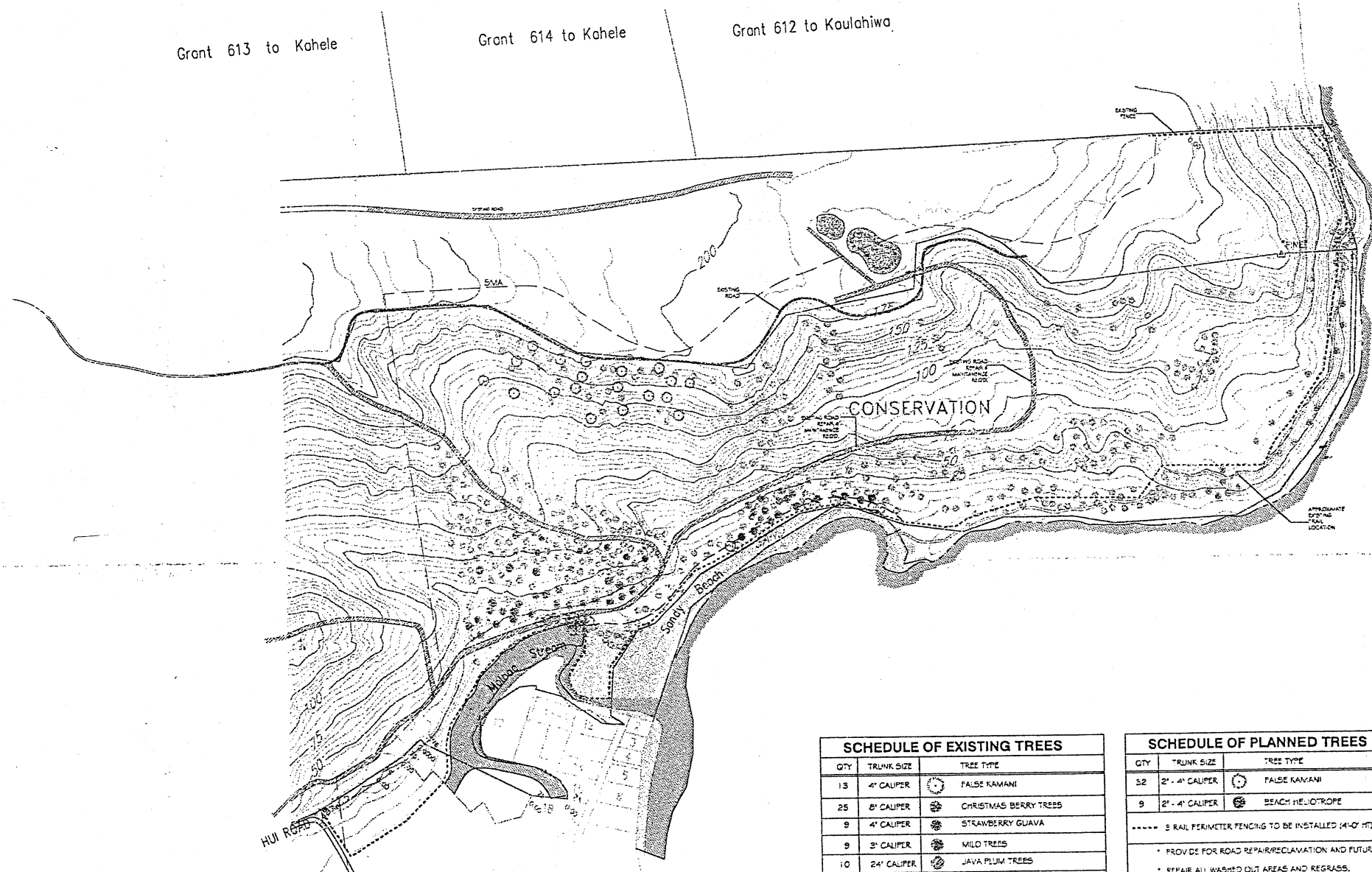
1. Review and approval of the Reforestation Plan by the Department of Land and Natural Resources, Office of Conservation and Coastal Lands 60 days
2. Processing of a Special Management Area Use Permit application with the Kauai Planning Department 180 days
3. Processing of an Environmental Assessment with the Department of Land and Natural Resources, Office of Conservation and Coastal Lands 120 days
4. Processing of a Conservation District Use Permit Application with the Department of Land and Natural Resources, Office of Conservation and Coastal Lands 180 days

Note: This timetable is based on typical processing time for these applications, the schedule could be shortened or extended dependent on the concerns or issues raised by agencies or the community in relation to the proposed Reforestation Plan and on the workload of the department's processing the applications.

Grant 613 to Kahele

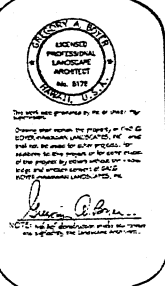
Grant 614 to Kahele

Grant 612 to Koulahiwa



SCHEDULE OF EXISTING TREES		
QTY	TRUNK SIZE	TREE TYPE
13	4" CALIPER	FALSE KAWANI
25	6" CALIPER	CHRISTMAS BERRY TREES
9	4" CALIPER	STRAWBERRY GUAVA
9	2" CALIPER	MILD TREES
10	24" CALIPER	JAVA PLUM TREES
19		IRONWOOD BUSH
18	3" CALIPER	IRONWOOD TREES (419 TOTAL)
55	4" CALIPER	
20	5" CALIPER	
66	6" CALIPER	
53	8" CALIPER	
27	10" CALIPER	
18	12" CALIPER	
16	16" CALIPER	
49	24" CALIPER	
2	30" CALIPER	
16	32" CALIPER	
26	40" CALIPER	
7	42" CALIPER	
4	48" CALIPER	
504	TOTAL EXISTING TREES	

SCHEDULE OF PLANNED TREES		
QTY	TRUNK SIZE	TREE TYPE
52	2" - 4" CALIPER	FALSE KAWANI
9	2" - 4" CALIPER	BEACH HELIOTROPE
***** 5 RAIL PERIMETER FENCING TO BE INSTALLED (410' L) *****		
<ul style="list-style-type: none"> PROVIDE FOR ROAD REPAIR/RECLAMATION AND FUTURE MAINTENANCE AS REQUIRED. REPAIR ALL WASHED OUT AREAS AND REGRASS. REGRASS ALL EXPOSED EARTH WITH HYDROSEEDING. PROVIDE FOR IRRIGATION AS NECESSARY. 		



REVISIONS:
 OCTOBER 1, 2001
 FEBRUARY 28, 2002
 OCTOBER 22, 2002

REFORESTATION MASTER PLAN
MOLOAA BAY RANCH
 MOLOAA, KOOLAU, KAUAI, HAWAII
 TMK: (4) 4-9-11: 01, 09, 33 and 34



PLANTING PLAN
 DATE: SEPTEMBER 23, 2003
 DESIGN BY: GREGORY A. BOYER
 CAD DRAWING BY: ANNA YORBA
 SCALE: 1" = 200'
 SHEET: L-5

McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

RANDALL F. SAKUMOTO
ATTORNEY

DIRECT #S:
PHONE - (808) 529-7304
FAX - (808) 535-8025
E-MAIL - SAKUMOTO@M4LAW.COM

July 21, 2003

BY HAND DELIVERY

Ms. Dierdre S. Mamiya
Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

Re: Moloaa Bay Ranch, LLC

Dear Ms. Mamiya:

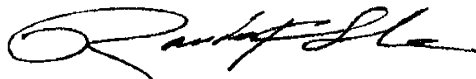
In accordance with your letter dated July 8, 2003 to Mr. Keith Kurahashi of Kusao & Kurahashi, Inc., we are delivering herewith a check in the amount of \$19,000.00 made payable to the "State of Hawaii, DLNR".

Also, please be advised that we have already met with Mr. Sam Lemmo of the DLNR to discuss the reforestation plan referred to in your letter. A proposed plan is now being prepared and will be submitted for the DLNR's review within the near future.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP



Randall F. Sakumoto

RFS: kry
Enclosure
cc w/o encl.: Moloaa Bay Ranch, LLC
Mr. Keith Kurahashi

MOLOAA BAY RANCH, LLC
OPERATING ACCOUNT
P.O. BOX 539
ANAHOLA, HI 96703

FIRST HAWAIIAN BANK
LHIJE, HI 96786
59-101/1213

0868

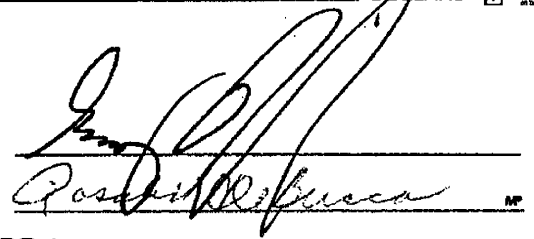
7/16/2003

PAY TO THE ORDER OF State of Hawaii, DLNR

\$ **19,000.00

Nineteen Thousand and 00/100***** DOLLARS

State of Hawaii, DLNR
P.O. Box 621
Honolulu, HI 96809



MEMO File No.: Violation KA-03-15, Molooa Bay Ranch

⑈000868⑈ ⑆121301015⑆ 30⑈077350⑈

© 1994 - 2000 INTUIT INC. # 226 1-800-433-8810

MOLOAA BAY RANCH, LLC / OPERATING ACCOUNT

0868

State of Hawaii, DLNR

7/16/2003

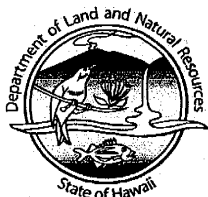
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
07/18/2003	Bill		19,000.00	19,000.00		19,000.00
				Check Amount		19,000.00

FHB Operating

File No.: Violation KA-03-15, Molooa Bay Ranch

19,000.00

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

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
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.:PB:MM

JUL - 8 2003

File No.: Violation KA-03-15

Keith Kurahashi
Kusao & Kurahashi, Inc.
Planning and Zoning Consultants
Manoa Market Place
2752 Woodlawn Place
Honolulu, HI 96822

Dear Mr. Kurahashi:

We wish to inform you that on June 27, 2003, the Board of Land and Natural Resources found your client in violation of Chapter 13-5, Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes, for failing to obtain the appropriate approvals for unauthorized tree removal at Moloaa Bay Ranch, LLC Moloaa, Loolau, Kauai, Hawaii, TMK: (4) 4-9-11:01, subject to the following:

- A. That the Board of Land and Natural Resources finds that the alleged violated the provisions of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes by failing to obtain authorization for clearing/tree cutting-in excess of what they represented in their December 8, 2000 letter;

Paragraph B was amended to read as follows:

- B. That the Board of Land and Natural Resources impose a fine of \$17,000 pursuant to Chapter 183C, HRS, \$15,000 for the unauthorized tree removal, and \$2,000 for unauthorized clearing. In addition, that the Board impose fines to cover all administrative costs totaling \$2,000 (\$1600.00 DOCARE and \$400.00 Planning Staff) for the violations; for a total of \$19,000 in fines for the violation and administrative costs. The fine shall be paid within 30 days of the Board's action;

Paragraph C was amended to read as follows:

- C. That in the event of failure to comply with items B and E, the Board of Land and Natural Resources impose a fine of \$2,000 per day; pursuant to Chapter 183C, HRS;

D. That in the event of failure of the alleged to comply with items B and C, the matter shall be turned over to the Attorney General for disposition, including all administrative costs; and

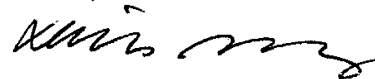
Paragraph E was amended to read as follows:

E. That the Board of Land and Natural Resources require a reforestation plan, including a timetable for completion, acceptable to the Department to be submitted within 90 days from the Board's action.

Please acknowledge receipt of this letter, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within (30) days.

Should you have any questions, please contact Matthew Myers of our Office of Conservation and Coastal Lands at 587-0382.

Aloha,

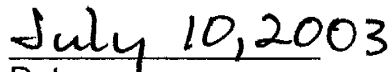


Dierdre S. Mamiya,
Acting Administrator
Office of Conservation
And Coastal Lands

Receipt acknowledged:



Signature



Date

cc: Kauai Board Member
Kauai District Land Office
Chairperson
DOCARE (Kauai)
Randall K. Sakumoto, Esq.

APPENDIX IX

KUSAO & KURAHASHI, INC. LETTER

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231
FAX. (808) 988-1140
E-Mail: kurahashi1@cs.com

February 20, 2003

Ms. Dierdre S. Mamiya
Department of Land and Natural Resources
Land Division
P. O. Box 621
Honolulu, Hawaii 96809

Re: Moloaa Bay Ranch
TMK No. (4) 4-9-11: por. 1

Dear Ms. Mamiya:

Thank you for your letter dated January 17, 2003. In response to your request, we are enclosing a map prepared by Moloaa Bay Ranch, LLC ("MBR") that shows the number and type of trees that were cut between February and May of 2001. Also enclosed is a chart that breaks down such trees by their approximate size, as well as whether they were dead or diseased at the time of the cutting.

Please note that MBR believed that the work it had done was allowed under the Conservation District rules, and MBR never intended to exceed what they understood to be the scope of work permitted by the Department's letter dated December 8, 2000.

As noted in your letter, MBR had been previously cited for a violation of the Conservation District rules. Consequently, prior to engaging in any subsequent work within the Conservation District, MBR was extra-sensitive to such rules long before the work started in February 2001. MBR had understood that certain maintenance activity within the Conservation District was allowed without the need to obtain a Conservation District permit. Under Hawaii Administrative Rules Section 13-5-22, no permit is required from either the Department or the Board of Land and Natural Resources for the removal of dead or diseased non-native trees. In this instance, all trees removed were dead or diseased non-native trees. Notwithstanding this, MBR still took the precautionary step of notifying the Department in writing of its intention to clear the dead or diseased trees on the portion of its property within the Conservation District.¹

In addition to notifying the DLNR in writing of the contemplated work, MBR also spoke with DLNR personnel on the island of Kauai during the month of November 2000. Based on those discussions, MBR had understood that DLNR personnel on Kauai wished to be notified when the actual work commenced so that they could make periodic site visits (roughly every two

¹ See letter dated November 15, 2000 from McCorrison Miller Mukai MacKinnon to the Department.

weeks) to monitor what was happening. When the work commenced in February 2001, notice was given but, for whatever reason, no site visits took place. We mention this only to point out that MBR had tried its best to proceed in a responsible manner and had no intention whatsoever of violating any of the Conservation District rules. The supervision of the actual work, including the determination of whether a particular tree was dead or diseased, was handled by one of MBR's managers, a long-time resident of Kauai, formerly with Lihue Plantation Company and with over 21 years of experience in agriculture.

MBR does acknowledge that a rock wall and pump house were constructed on the property without first obtaining a CDUA permit. However, if any error was made here, it was purely unintentional and based on a slight miscalculation of the location of the boundary between the Conservation District and Agricultural District. If you were to plot the State land use district boundary on the subject property, you would find that this boundary runs very close to if not directly over these improvements. For that matter, according to at least one map provided to MBR, half of the rock wall may actually be outside of the Conservation District.

In any event, since May 2001, MBR has ceased all tree removal and construction activities within the Conservation District and will not undertake such activities unless and until this matter has been properly resolved with the DLNR. Also, as you are aware, in November 2002, MBR filed an application with the Kauai County Planning Department for an after-the-fact SMA Use Permit to address many of the same issues and is now trying to coordinate the processing of that application with the resolution of this matter with the Department.

We have enclosed for your reference copies of photos of the subject property that were taken on November 19, 2000, less than three-months before the work started; the photos are numbered 1 through 11. As you will see from these photos, there are a substantial number of dead and diseased trees on the property, particularly on the sloped area commonly referred to as "Allotment 1-A"; as a general matter, these grey colored trees were leafless, dried, decaying and very brittle. The photos also show the existence of fallen needles from these trees that had created a thick and dense matting below and around the bases of these trees, killing off any vegetation and leaving only bare, unsupported soil beneath it (see photo # 9). These needles had accumulated over time from the diseased ironwood trees.

MBR's intention in doing the 2001 maintenance work was to remove the dead and diseased trees which littered the landscape of Allotment 1-A. Once this work was done, new ground cover could grow in its place and support the soil along the sloped portion of the property. The potential for soil erosion and run-off from Allotment 1-A into Moloaa Bay during heavy rains had already existed long before the maintenance work was started, and MBR was trying to be proactive in preventing future soil run-off from ever occurring.

We are enclosing copies of photos, numbered 12 and 13, taken by Mr. Les Milnes of the Kauai County Planning Department on May 23, 2001, shortly after the tree cutting had

Ms. Dierdre S. Mamiya

February 20, 2003

Page 3

stopped. These photos show the extent of erosion that was already occurring beneath the cover of the Ironwood trees and their needles, which appear to have washed away in certain areas, exposing the bare soil below. Please keep in mind that no grading or grubbing occurred in these areas, only the removal of dead and diseased trees.

We are also enclosing copies of photos of the subject property that were recently taken, numbered 14 and 15. As you will see from these photos, the removal of the dead and diseased trees has allowed grass to grow in and support most of those portions of Allotment 1-A that were previously subjected to the risk of run-off. You will notice however, that existing clumps of healthy Ironwood trees continue to drop needles, making it difficult to reestablish grass that has taken in other areas.

Finally, we are enclosing recently taken photos, numbered 16 through 23, that show the continuing erosion problem created where existing clumps of ironwood trees remain, dropping needles that mat the soil and through it's acidity and matting blocks growth of groundcover that could stem soil erosion.

We are also enclosing a copy of a letter from Mr. Stephen M. Nimz, ISA Certified Arborist #WC-0314, detailing the erosion problems and other problems with ironwood trees.

In short, MBR proceeded with the work in 2001 on the basis that the removal of dead or diseased non-native trees could be done without a Board or Departmental permit. To the extent that MBR might have exceeded the scope of work that was contemplated in the Department's December 8, 2000 letter, any such excess work or other alleged violation of the Conservation District rules was purely unintentional. Moreover, the work that was done has ultimately resulted in the property being more stable and environmentally sound.

If you have any questions or require any further information, please do not hesitate to contact me.

Very truly yours,



Keith Kurahashi

Enclosures

cc w/ encl.: Kauai County Planning Department
Kauai County Department of Public Works
Moloaa Bay Ranch, LLC
Randall F. Sakumoto, Esq.

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

RANDALL F. SAKUMOTO

DIRECT #S:
PHONE - (808) 529-7304
FAX - (808) 535-8025
E-MAIL - sakumoto@m4law.com

November 15, 2000

VIA HAND DELIVERY

Dean Y. Uchida, Administrator
Land Division
State of Hawaii
Department of Land and Natural Resources
1151 Punchbowl Street, Room 220
Honolulu, HI 96813

Re: Moloaa Bay, Kauai, TMK No. 4-9-11: 1

Dear Mr. Uchida:

This firm represents Moloaa Bay Ranch, LLC ("MBR"), the owner of the above-referenced property. Approximately 42 acres of that property are situated within the State's conservation district (collectively, the "Conservation Area").

Earlier this year MBR submitted to the State of Hawaii, Department of Land and Natural Resources (the "DLNR") a comprehensive Conservation District Use Application permit (the "CDUA") and a draft of the related environmental assessment (the "EA"). The CDUA and draft EA relate to certain landscaping and roadway improvements which MBR intends to conduct within the Conservation Area. These documents were returned to MBR under cover of the DLNR's letter dated October 26, 2000, which letter also sets forth the DLNR's comments as to how these documents should be revised. We are now in the process of reviewing such comments and evaluating how to proceed from here.

MBR has been delaying the maintenance of the Conservation Area pending the preparation, review and approval of the CDUA and draft EA. As a result of such delay, there is now a substantial amount of dead, diseased, distressed and dying vegetation in this area. Given this fact, MBR feels that it can no longer neglect to maintain the Conservation Area and intends to proceed with much needed maintenance activities which will involve the use of a John Deere 3155 4WD farm tractor pulling a 7 foot, three point hitch Schulte deck mower, a Peterson Pacific HC2410 grinder, and a John Deere Slash Buster. Handheld weedwackers and chainsaws might also be used if necessary. In accordance with Title 13, Chapter 5 of the Hawaii Administrative Rules, any tree removal in the Conservation Area would be limited to the (i) dead or diseased non-native trees, (ii) dead or diseased native trees less than six inches in diameter, and (iii) trees which pose a hazard to public safety.

Mr. Dean Y. Uchida
November 15, 2000
Page 2

In 1999 MBR planned to conduct similar type of maintenance activities within the Conservation Area. MBR met with Mr. Sam Lemmo of the DLNR in March 1999 and sent written notification of such activity to the DLNR by letter dated April 22, 1999. The DLNR, in a letter dated May 12, 1999, advised MBR that no DLNR permit or approval was required for the maintenance activities described therein. Given this fact and the fact that maintenance is once again necessary, this letter is intended solely to notify the DLNR of the maintenance activities which MBR intends to undertake within the Conservation Area.

If you have any questions or concerns regarding this matter, please contact the undersigned.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP



Randall F. Sakumoto

RFS:

cc: Mr. Eric Hill, DLNR
Moloaa Bay Ranch, LLC
Max Graham, Esq.



The Tree People

AGRICULTURE INTERNATIONAL INC.

COMPLETE TREE SERVICE CONSULTATIONS SURGERY

P.O. BOX 10026

HONOLULU, HAWAII 96816

737-1284

February 10, 2003

Mr. Randal Sakumoto
McCorriston, Miller, Mukai, MacKinnon LLP
P.O. Box 2800
Honolulu, Hawaii 96803

Re: Moloaa Bay Ranch, Erosion Control Program

Dear Mr. Sakumoto:

This correspondence is in regard to your concerns regarding erosion control methods and planting at Moloaa Bay Ranch, Tax Map Key No. (4) 4-9-11 portion 1/SMA Use Permit. The focus is existing plantings and previously removed plantings of Ironwood trees on slopes and hillside areas of the ranch toward Moloaa Bay.

From afar, looking at slopes with heavily planted Ironwood groves, the trees appear to create a green blanket over the hillsides(see photograph). Per closer on-site inspection and knowledge of the natural growth habit of Ironwood trees, improved understanding will show that better methods to control erosion are applicable to this property.

Ironwood trees (Australian Pine, *Casuarina equisetifolia* and related species) are native to Australia and several other Indo-Pacific areas. These trees were introduced to Hawaii in the late 1800's. They have been planted for windbreaks due to high tolerance for salt spray and wind, ability to grow in poor soil with minimal irrigation, quick growth regeneration, and tall, thick growth habit. In Hawaii, these trees have been successful in reducing wind damage in sugar cane fields and in coastal areas.

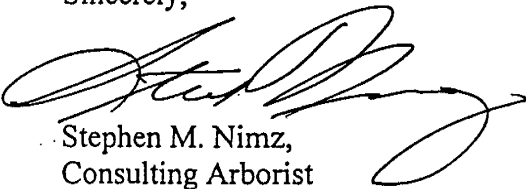
Ironwood trees have less desirable growth characteristics with regard to erosion control, fire control and accompanying plantings. In Hawaii, Ironwood trees have been observed to be allelopathic with respect to successful growth of other plantings under the canopy of the Ironwoods (see photograph). The seeds and needlelike leaves form a thick mat which decomposes slowly, making growth of other plants difficult yet allowing the

juvenile Ironwood trees to germinate and prosper (see photograph). The root structure is thick and spreads out close to the surface, usually within the top six to eighteen inches of the soil. (see photograph). The thick dry mat of leaves and seeds, along with accumulation of dead wood in the trees, creates a potential for fire (see photograph). Ironwood trees are not good at walling off decay (compartmentalization) (see photograph). This means that when major limbs are cut or broken off by wind, the new growth that generates from the sides of the wound has a weak structural connection, creating a greater potential for branch failure with subsequent high wind conditions (see photograph). The main trunks may also decay, hollowing out to create structural stability problems. The thick mat of leaves below and downwind of the trees appears to create a protective blanket against erosion. However, when heavy rain occurs, the water runs underneath the needlelike mat, causing erosion gullies and crevasses as nothing is holding the mat in place. The tree root structure becomes undermined, causing uprooting and toppling (see photograph).

Use of Ironwood trees in many areas of Hawaii has been an acceptable practice, however as we gain more knowledge about characteristics of these trees and other tree species, grasses and plants, better alternatives can be established. Ironwood trees are now on the Hawaii invasive species list which identifies plants that interfere with native habitats as well as desirable urban landscapes and agricultural crops. In other areas of the United States, particularly Florida, planting of Ironwood trees is no longer acceptable in landscapes, parks and reforestation.

Per visual on-site inspection of the Moloaa property in December 2002, and discussion with the on-site manager, the existing planting program appears to be well thought-out with respect to improving the landscape and reducing the potential for erosion into Moloaa Bay. The planting of grasses, terracing, irrigation and tree planting program to include native species appears to be successful as the designated stages of the program are implemented. I would recommend continued implementation of this on-going program.

Sincerely,



Stephen M. Nimz,
Consulting Arborist

ISA Certified Arborist # WC-0314

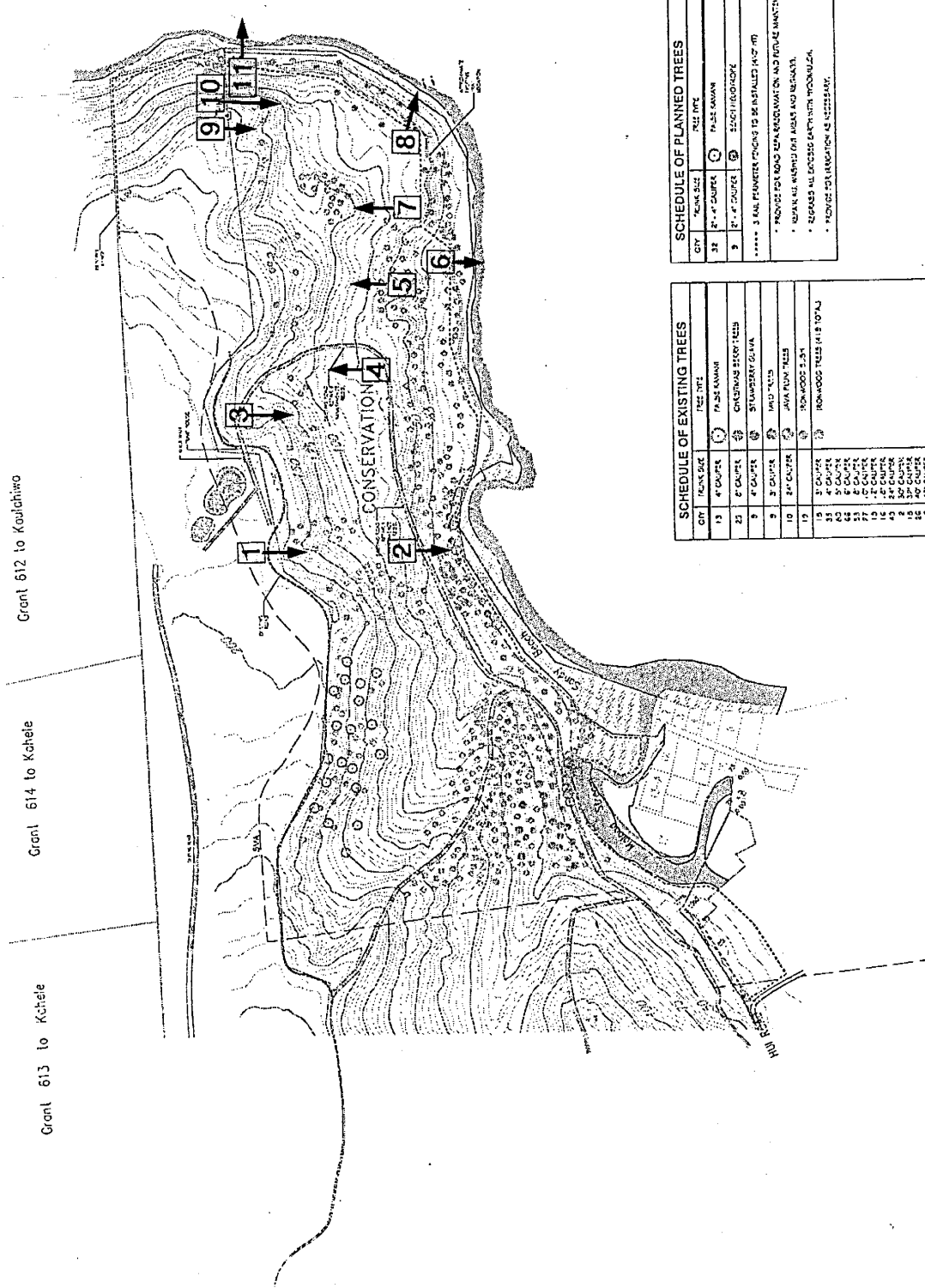


REVISIONS:
 OCTOBER 1, 2001
 FEBRUARY 28, 2002
 OCTOBER 22, 2002

MOLOAA BAY RANCH
 MOLOAA, KOOLAU, KAUAI, HAWAII
 TMK: (4) 4-9-11: 01, 09, 33 and 34



PLANTING PLAN
 DATE: NOVEMBER 13, 2002
 DESIGNED BY: GREGORY A. BOYER
 CO-DRAWN BY: ANNA YORBA
 SCALE: 1" = 200'
 SHEET: L-5



Grant 612 to Kaulaikiwa

Grant 614 to Kchele

Grant 613 to Kchele

SCHEDULE OF PLANNED TREES

QTY	TRUNK SIZE	TREE SPECIES
32	2" - 4" DIA	PALE KAWAII
9	2" - 4" DIA	SEACOTE (CO. MOYE)

***** 3 FULL PERIMETER FENCINGS TO BE INSTALLED (4' X 7' FT)
 * REMOVE ALL EXISTING EXTERIOR LIGHT FIXTURES
 * REMOVE ALL EXCESSIVE EXTERIOR LIGHT FIXTURES
 * REMOVE ALL EXCESSIVE EXTERIOR LIGHT FIXTURES

SCHEDULE OF EXISTING TREES

QTY	TRUNK SIZE	TREE TYPE
13	4" DIA	PALE KAWAII
23	2" DIA	CHERRYBARK SLIM TREES
9	2" DIA	STAMBEAN OLEA
9	2" DIA	PALE KAWAII
10	2" DIA	JAVA KUMU TREES
10	2" DIA	SONA WOOD 2.5"
15	2" DIA	SONA WOOD TREES 1.5" TO 2"
35	4" DIA	PALE KAWAII
62	2" DIA	CHERRYBARK SLIM TREES
77	2" DIA	STAMBEAN OLEA
14	2" DIA	PALE KAWAII
9	2" DIA	JAVA KUMU TREES
18	2" DIA	SONA WOOD 2.5"
32	2" DIA	CHERRYBARK SLIM TREES
37	2" DIA	PALE KAWAII
4	4" DIA	PALE KAWAII
534	TOTAL EXISTING TREES	

PHOTO LEGEND

1



2



3



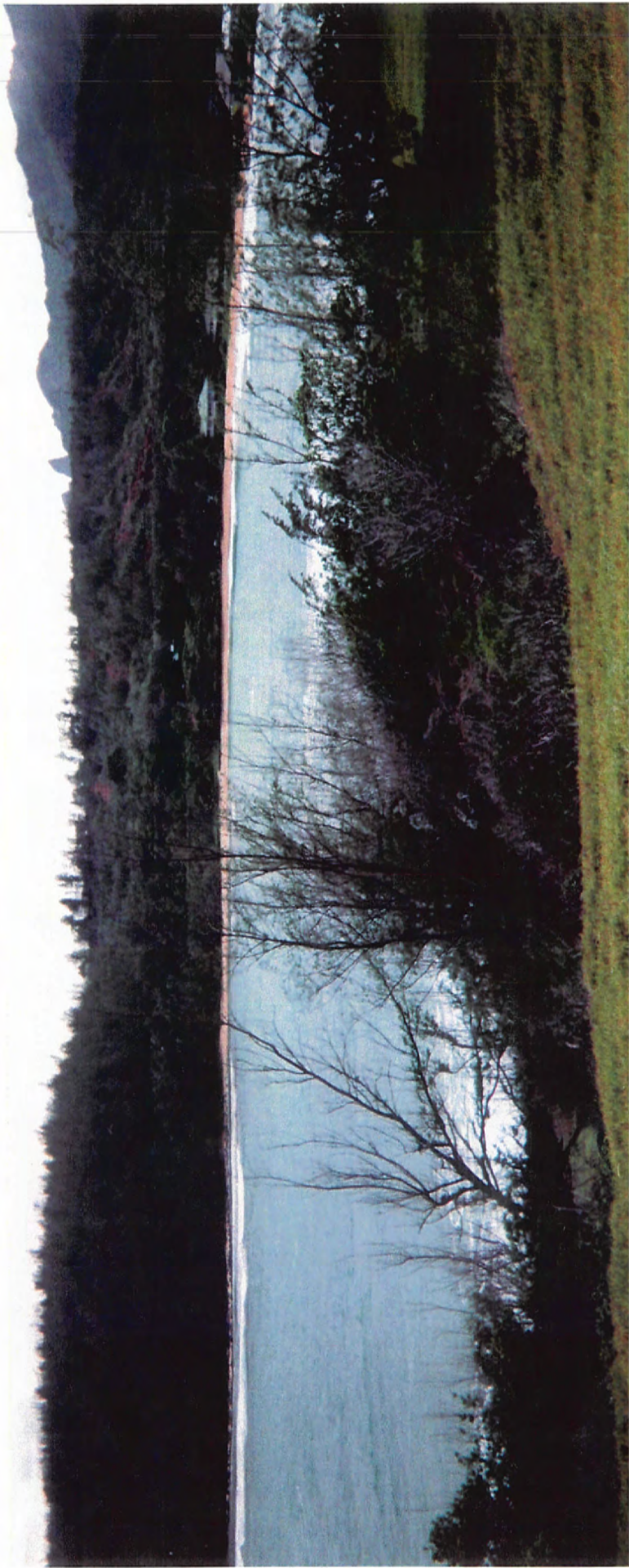
4



5



6



7



8



9



10



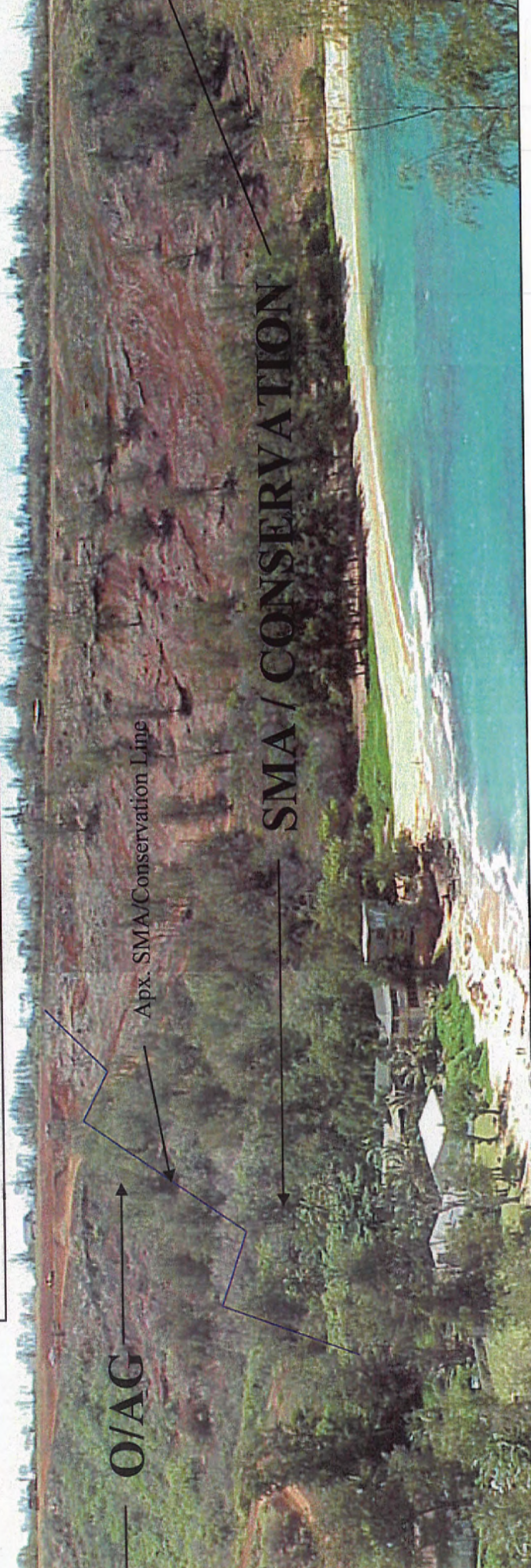




Area beyond scope of Permit SMA(M)-01-12

Area approved for clearing in SMA permit SMA(M)-01-12

Moloaa Bay Ranch TMK 4/ 4-9-011:001 5/23/01

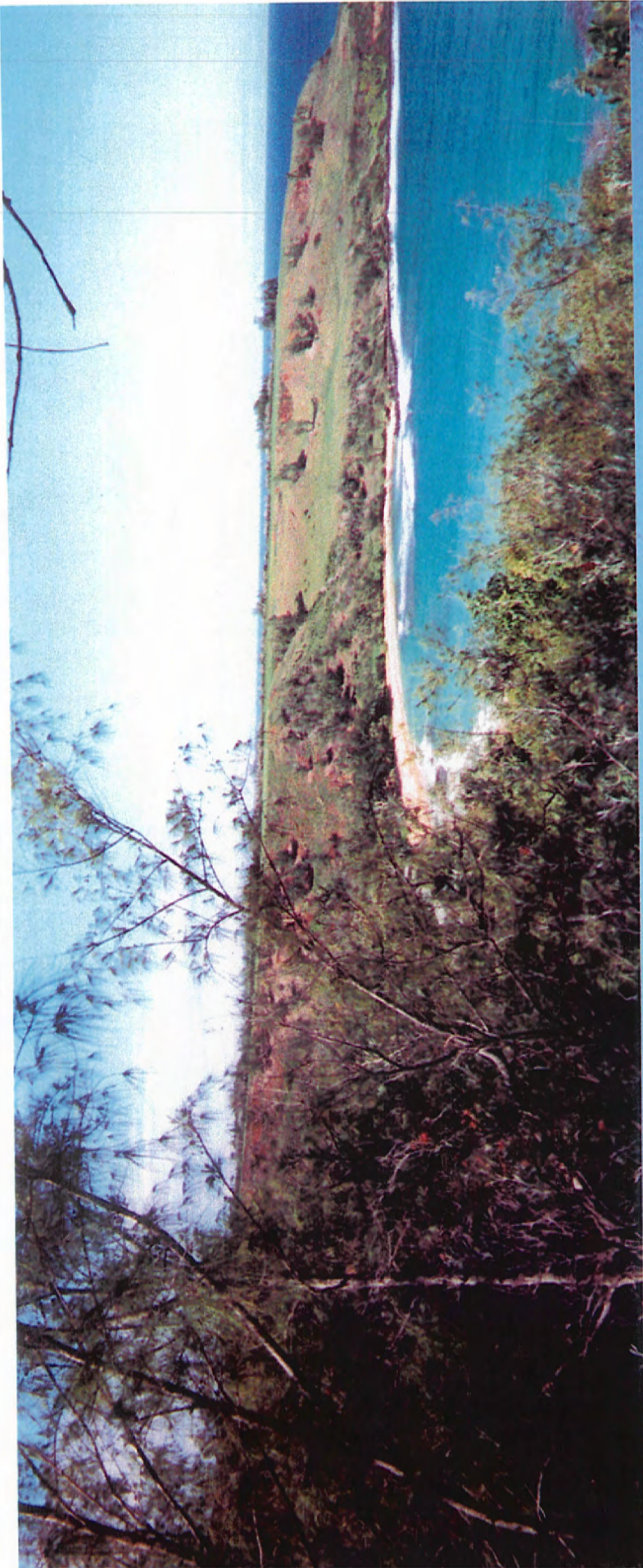


O/AG

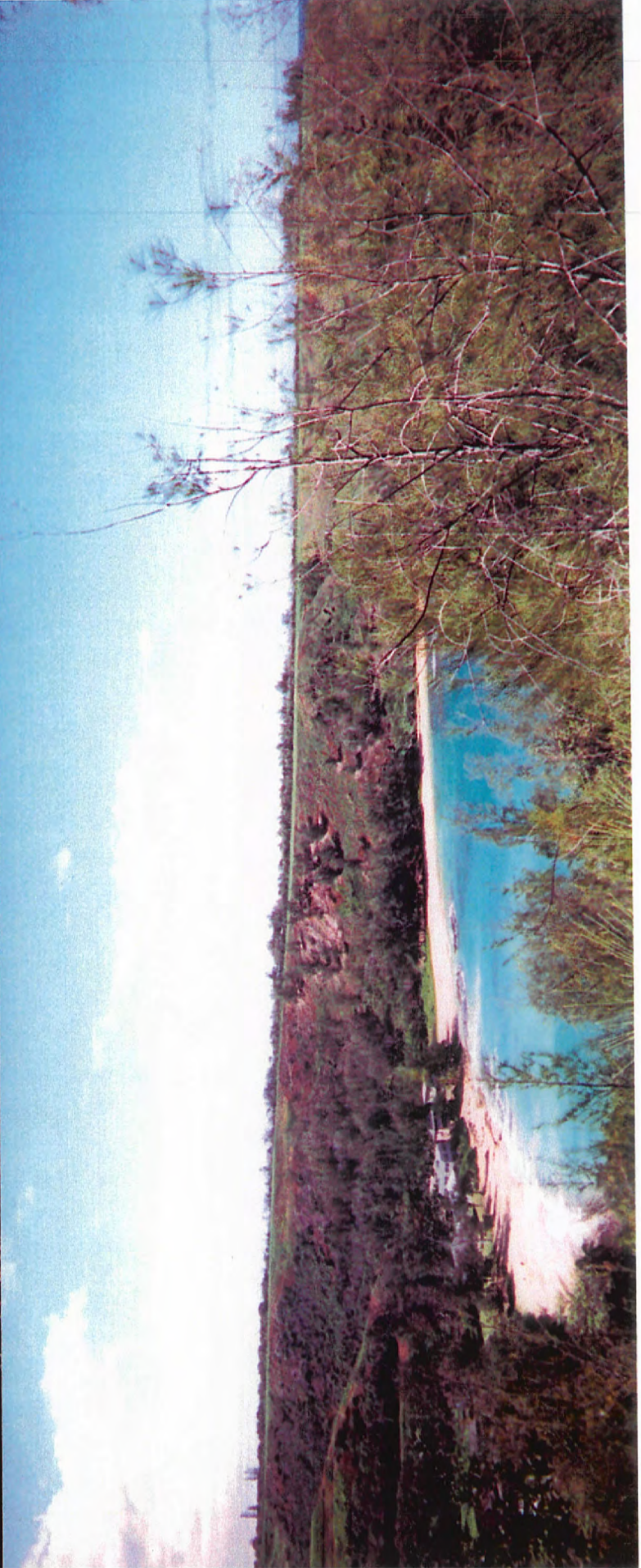
Apx. SMA/Conservation Line

SMA / CONSERVATION

14



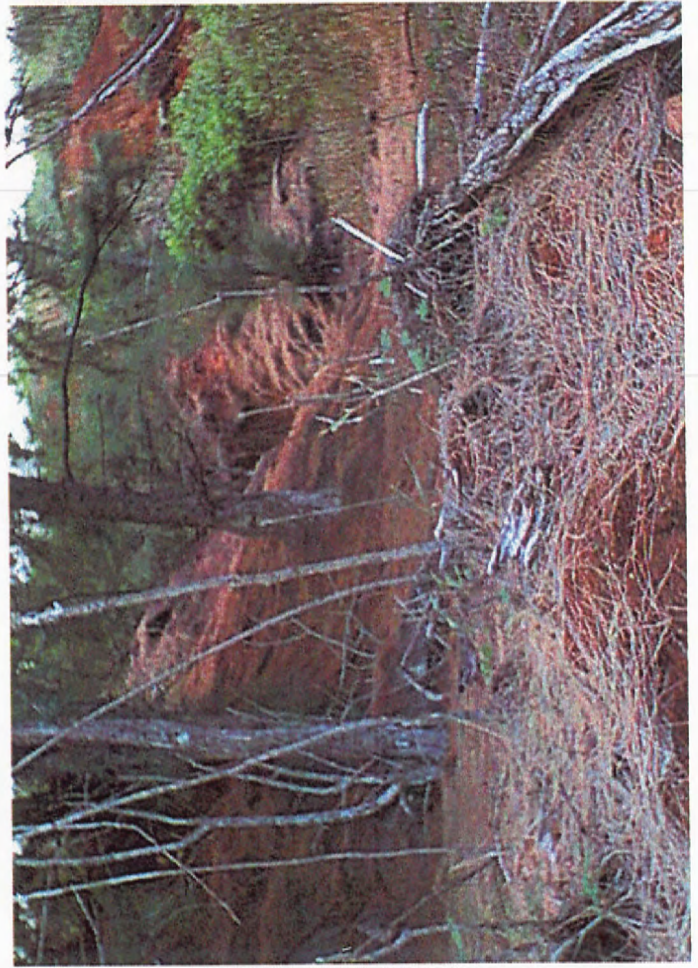
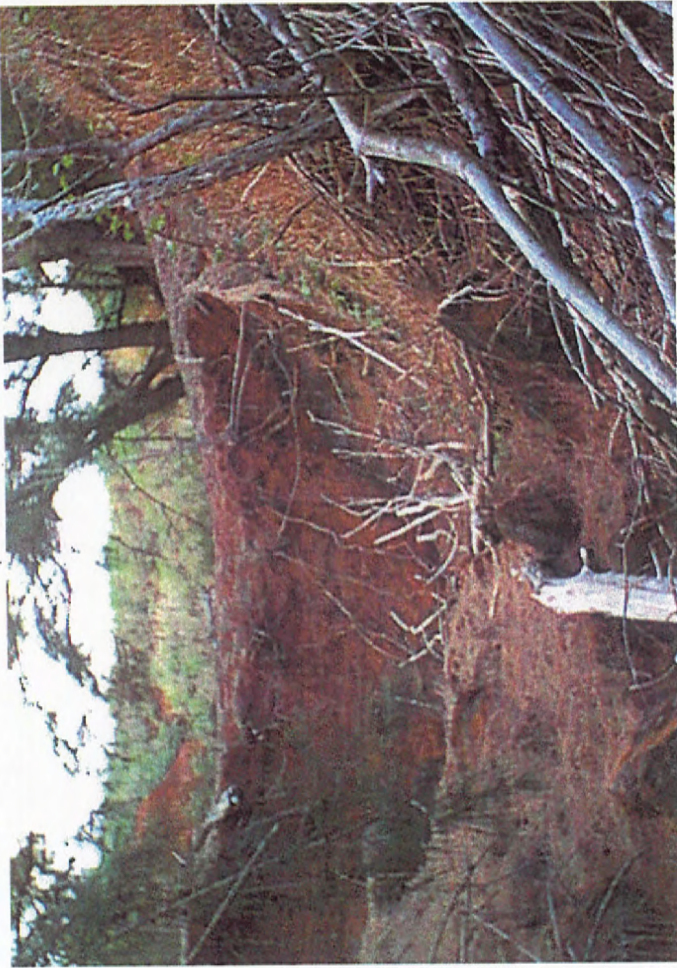
15



17



16



19

18

21



20



23



22



MOLOA'A BAY RANCH
TREE REMOVAL

Type Of Tree Cut	Size Small 0-2"	Size Medium 2-4"	Size Large 4-6"	Size Extra Large 6-10"	Dead	Diseased	Total
Strawberry Guava (#2)	5	5	15		10	15	25
Java Plum (#3)		17	20	10	10	37	47
Christmas Berry (#4)		13	15		8	20	28
Huale Koa (#5)	43	15			10	48	58
Iron Wood (#1)		29	75	22	17	109	126
Other							

Moloo'a List Per Jeff Rivera 1/15/03



The Tree People

AGRICULTURE INTERNATIONAL INC.

COMPLETE TREE SERVICE CONSULTATIONS LANDSCAPING

P.O. BOX 10026 HONOLULU, HAWAII 96816 737-1284

February 10, 2003

Mr. Randal Sakumoto
McCorriston, Miller, Mukai, MacKinnon LLP
P.O. Box 2800
Honolulu, Hawaii 96803

Re: Moloaa Bay Ranch, Erosion Control Program

Dear Mr. Sakumoto:

This correspondence is in regard to your concerns regarding erosion control methods and planting at Moloaa Bay Ranch, Tax Map Key No. (4) 4-9-11 portion 1/SMA Use Permit. The focus is existing plantings and previously removed plantings of Ironwood trees on slopes and hillside areas of the ranch toward Moloaa Bay.

From afar, looking at slopes with heavily planted Ironwood groves, the trees appear to create a green blanket over the hillsides (see photograph #1). Per closer on-site inspection and knowledge of the natural growth habit of Ironwood trees, improved understanding will show that better methods to control erosion are applicable to this property.

Ironwood trees (Australian Pine, *Casuarina equisetifolia* and related species) are native to Australia and several other Indo-Pacific areas. These trees were introduced to Hawaii in the late 1800's. They have been planted for windbreaks due to high tolerance for salt spray and wind, ability to grow in poor soil with minimal irrigation, quick growth regeneration, and tall, thick growth habit. In Hawaii, these trees have been successful in reducing wind damage in sugar cane fields and in coastal areas.

Ironwood trees have less desirable growth characteristics with regard to erosion control, fire control and accompanying plantings. In Hawaii, Ironwood trees have been observed to be allelopathic with respect to successful growth of other plantings under the canopy of the Ironwoods (see photograph #2). The seeds and needlelike leaves form a thick mat which decomposes slowly, making growth of other plants difficult yet allowing

the juvenile Ironwood trees to germinate and prosper (see photograph #3). The root structure is thick and spreads out close to the surface, usually within the top six to eighteen inches of the soil (see photograph #4). The thick dry mat of leaves and seeds, along with accumulation of dead wood in the trees, creates a potential for fire (see photographs #5 and #6). Ironwood trees are not good at walling off decay (compartmentalization). This means that when major limbs are cut or broken off by wind, the new growth that generates from the sides of the wound has a weak structural connection, creating a greater potential for branch failure with subsequent high wind conditions. The main trunks may also decay, hollowing out to create structural stability problems (see photographs #7 and #8). The thick mat of leaves below and downwind of the trees appears to create a protective blanket against erosion. However, when heavy rain occurs, the water runs underneath the needlelike mat, causing erosion gullies and crevasses as nothing is holding the mat in place. The tree root structure becomes undermined, causing uprooting and toppling (see photographs #9 to #12).

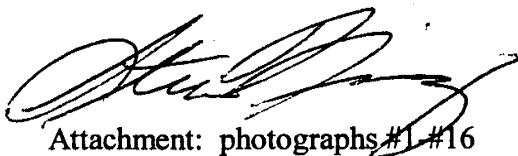
Use of Ironwood trees in many areas of Hawaii has been an acceptable practice, however as we gain more knowledge about characteristics of these trees and other tree species, grasses and plants, better alternatives can be established. Ironwood trees are now on the Hawaii invasive species list which identifies plants that interfere with native habitats as well as desirable urban landscapes and agricultural crops. In other areas of the United States, particularly Florida, planting of Ironwood trees is no longer acceptable in landscapes, parks and reforestation.

Per visual on-site inspection of the Moloaa property in December 2002, and discussion with the on-site manager, the existing planting program appears to be well thought-out with respect to improving the landscape and reducing the potential for erosion into Moloaa Bay. The planting of grasses, terracing, irrigation and tree planting program to include native species appears to be successful as the designated stages of the program are implemented (see photographs #13 to #16). I would recommend continued implementation of this on-going program.

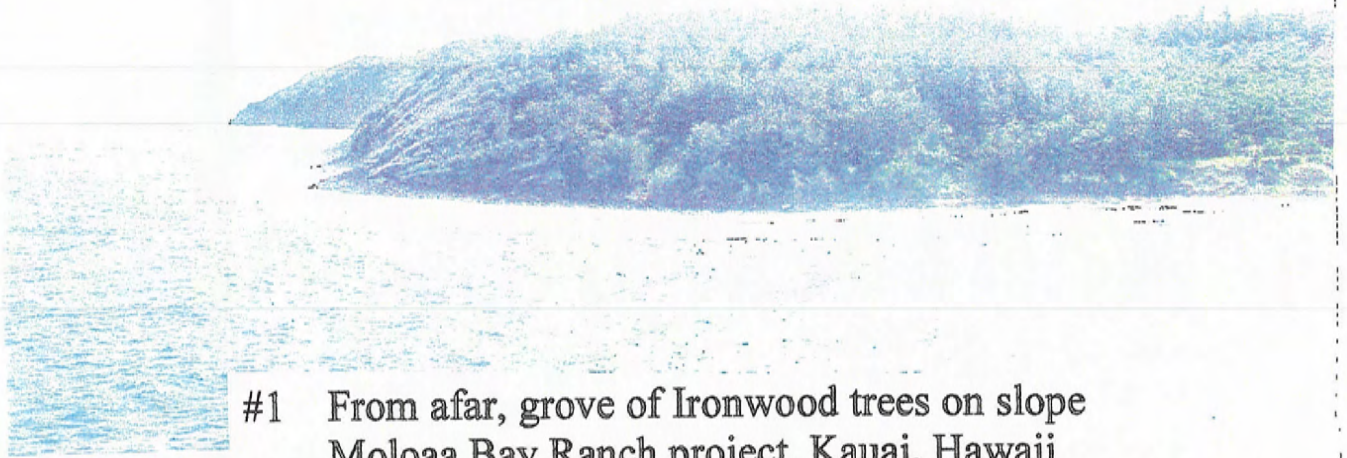
Sincerely,

Stephen M. Nimz,
Consulting Arborist

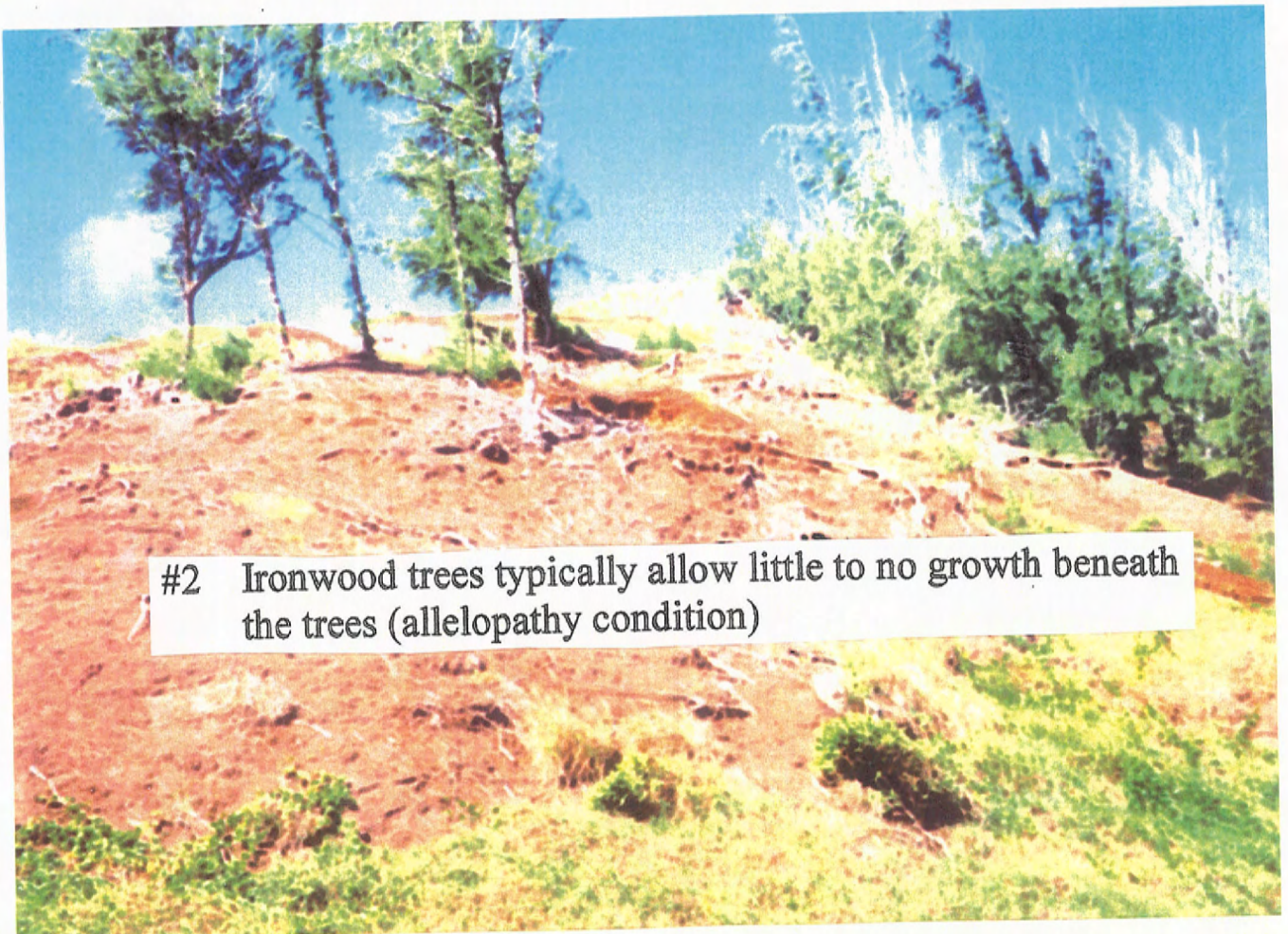
ISA Certified Arborist # WC-0314



Attachment: photographs #1-#16



#1 From afar, grove of Ironwood trees on slope
Moloaa Bay Ranch project, Kauai, Hawaii



#2 Ironwood trees typically allow little to no growth beneath
the trees (allelopathy condition)



#3 Typical regeneration of Ironwood, same species only



#4 Ironwood root structure stays close to surface



#5 and #6 Dead wood and dry leaves create fire potential





#7 and #8 Dead and dying Ironwood trees





#9 and #10 Erosion under Ironwood trees causes tree failures





#11 and #12 Erosion under Ironwood trees causes tree failures





#13 and #14 Proper grading, regrassing and irrigation



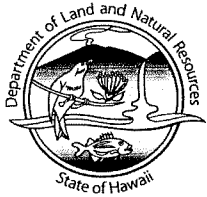


#15 and #16 Proper grading, regrassing and irrigation



APPENDIX X
AGENCY AND PUBLIC COMMENTS

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

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

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

REF.:OCCL:TM

CDUA: KA-3190

Acceptance Date: August 24, 2005
180-Day Exp. Date: February 20, 2006

Keith Kurahashi
Kusao & Kurahashi, Inc.
2754 Woodlawn Drive, Suite 5-202
Honolulu, Hawaii 96822

OCT 11 2005

Dear Mr. Kurahashi:

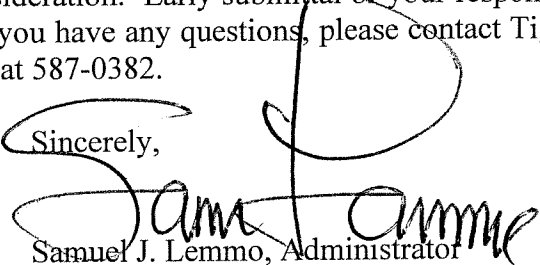
SUBJECT: Conservation District Use Application (CDUA) KA-3190 for Landscaping, Tree Removal and Other Improvements Located at Moloa'a Bay Ranch, Kawaihau, Kauai, TMK: (4) 4-9-011:001

This letter is regarding the processing of CDUA KA-3190. The public and agency comment period on your client's application has closed (October 8, 2005). Attached to this letter are copies of the comments received by the Office of Conservation and Coastal Lands (OCCL) regarding the CDUA. Please send copies of your responses to the questions raised in these letters directly to the authoring agency as well as to the OCCL.

The final copy of your Environmental Assessment (EA) needs to include your responses to the queries raised in these letters. These responses can be attached to the end of the Final EA document. Please send 6 (six) copies of the Final EA to the OCCL no later than November 8, 2005. Include a hard copy and a diskette of the submitted Office of Environmental Quality Control (OEQC) Publication Form for the Final EA, and if the project summary has changed, a new summary.

Should the OCCL determine a Finding of No Significant Impact (FONSI) for the final version of your Environmental Assessment then your CDUA shall be placed on the agenda of the Board of Land and Natural Resources for their consideration. Early submittal of your response to comments will expedite the review process. Should you have any questions, please contact Tiger Mills of our Office of Conservation and Coastal Lands at 587-0382.

Sincerely,


Samuel J. Lemmo, Administrator

Office of Conservation and Coastal Lands

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231

FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.rr.com

November 8, 2005

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

Attention: Ms. Tiger Mills
Office of Conservation and Coastal Lands

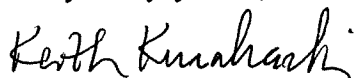
**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Mr. Lemmo:

Thank you for your letter, dated October 11, 2005 and subsequent faxes, providing copies of comments received on CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch for landscaping, tree removal and other improvements. I will provide, on behalf of the applicant (Moloaa Bay Ranch LLC), responses to the comments received and include them in the Final EA.

Your cover letter and this response will be included in the Final EA.

Very truly yours,

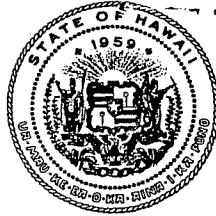


Keith Kurahashi

cc: Moloaa Bay Ranch LLC

#11466

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

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING 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:TM

CDUA: KA-3190
Acceptance Date: August 24, 2005
180-Day Exp. Date: February 20, 2006
SUSPENSE DATE: 21 Days from
stamped date **AUG 25 2005**

MEMORANDUM:

TO: The Department of Land and Natural Resources Divisions of: Aquatic Resources; Historic Preservation; Engineering; Kauai District Land Office; Forestry and Wildlife; Na Ala Hele and Conservation and Resource Enforcement

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

SUBJECT: REQUEST FOR COMMENTS
Conservation District Use Application (CDUA) KA-3190
BOARD PERMIT
After the Fact and Proposed Tree Removal, Landscaping and Other Improvements

APPLICANT: Keith Kurahashi for
Moloaa Bay Ranch

TMKS: (4) 4-9-011:001

LOCATION: See Acceptance Letter and attachments

PUBLIC HEARING: YES NO X

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 SEP - 2 P 3: 16
DEPARTMENT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Please contact Tiger Mills at 587-0382, should you have any questions on this matter.

If no response is received by the suspense date, we will assume there are no comments. The suspense date starts from the date stamp.

() Comments Attached

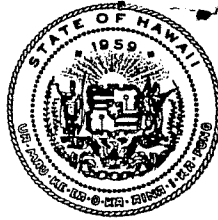
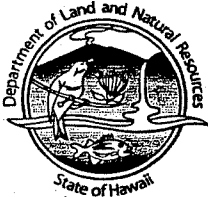
(X) No Comments

Attachment(s)

Signature
PAUL J. CONRY, ADMINISTRATOR
DIVISION OF FORESTRY AND WILDLIFE

SEP - 1 2005

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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AQUATIC RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF.:OCCL:TM

CDUA: KA-3190

Acceptance Date: August 24, 2005

180-Day Exp. Date: February 20, 2006

AUG 25 2005

Keith Kurahashi
Kusao & Kurahashi, Inc.
2754 Woodlawn Drive, Suite 5-202
Honolulu, Hawaii 96822

Dear Mr. Kurahashi:

**NOTICE OF ACCEPTANCE AND PRELIMINARY ENVIRONMENTAL
DETERMINATION**

Conservation District Use Application (CDUA) File No. KA-3190
(BOARD Permit)

This letter acknowledges the receipt and acceptance for processing of your client's After the Fact CDUA submitted by Moloaa Bay Ranch, LLC, for landscaping, tree removal and other improvements located at Moloaa, District of Kawaihau, on the island of Kauai, TMK: (4) 4-9-011: 001. The area of the proposed work is approximately 40 acres of the 147-acre parcel and lies within the Limited and General subzone of the Conservation District.

According to the information presented, Moloaa Bay Ranch proposes to implement a Reforestation Master Plan. This proposed action would include replacing previously removed trees, planting additional trees, and grassing all bare areas on the slopes of Moloaa Bay Ranch. In addition to the Reforestation Master Plan, the applicant also proposes to: remove ironwood trees and replace them on a one to one basis with coconut palms, false kamani and beach heliotrope trees; landscape and grade land to even out slopes to curb erosion; repair washed out areas of an existing roadway; install a four foot high three rail perimeter security fence to delineate the mauka boundary of an existing trail; and provide a temporary irrigation system for landscaping and replanting purposes.

The applicant notes the Hawaiian hoary bat, an endemic mammal, has been recorded in the area. The applicant notes three endemic fowls were reported in the region: the Hawaiian duck, the Hawaiian owl and the Nene goose. The applicant notes the threatened Newell shearwater are likely to fly over this area. The applicant notes there are no endangered or threatened plants in the area. The applicant notes the fringing reef on the northeastern side of the project area is known to be one of the few places remaining in the State where the rare variety of limu kohu can still be gathered. The applicant notes the proposed area contains two archaeological sites: a buried cultural layer and a trail segment.

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231

FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.nm.com

November 8, 2005

Mr. Paul J. Conry, Administrator
Division of Forestry and Wildlife
State, Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

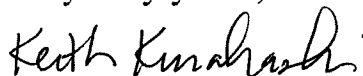
**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Mr. Conry:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and for noting that you do not have comments to offer, in your memorandum to the Office of Conservation and Coastal Lands.

Your memorandum and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

LINDA LINGLE
GOVERNOR OF HAWAII

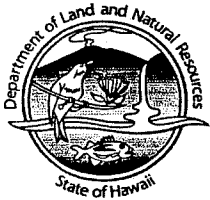


PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

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FORESTRY AND WILDLIFE
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



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

REF.:OCCL:TM

CDUA: KA-3190
Acceptance Date: August 24, 2005
180-Day Exp. Date: February 20, 2006
SUSPENSE DATE: 21 Days from
stamped date **AUG 25 2005**

MEMORANDUM:

TO: The Department of Land and Natural Resources Divisions of: Aquatic Resources; Historic Preservation; Engineering; Kauai District Land Office; Forestry and Wildlife; Na Ala Hele and Conservation and Resource Enforcement

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

SUBJECT: REQUEST FOR COMMENTS
Conservation District Use Application (CDUA) KA-3190
BOARD PERMIT
After the Fact and Proposed Tree Removal, Landscaping and Other Improvements

APPLICANT: Keith Kurahashi for
Moloaa Bay Ranch

TMKs: (4) 4-9-011:001

LOCATION: See Acceptance Letter and attachments

PUBLIC HEARING: YES NO X

Please contact Tiger Mills at 587-0382, should you have any questions on this matter.

If no response is received by the suspense date, we will assume there are no comments. The suspense date starts from the date stamp.

Comments Attached

No Comments

Attachment(s)

Signature

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 SEP -2 A 8:51
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

CDUA:KA-3190

Ref.: OCCL:TM
Kauai.40

COMMENTS

- (X) We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zones X and VE. The Flood Insurance Program does not have any regulations for development within Zone X, however, it does regulate development within Zone VE as indicated in bold letters below.
- () Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is also located in Zone ____.
- () Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is ____.
- (X) Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

- () Mr. Robert Sumimoto at (808) 523-4254 or Mr. Mario Siu Li at (808) 523-4247 of the City and County of Honolulu, Department of Planning and Permitting.
- () Mr. Kelly Gomes at (808) 961-8327 (Hilo) or Mr. Kiran Emler at (808) 327-3530 (Kona) of the County of Hawaii, Department of Public Works.
- () Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
- (X) Mr. Mario Antonio at (808) 241-6620 of the County of Kauai, Department of Public Works.

- () The applicant should include project water demands and infrastructure required to meet water demands. Please note that the implementation of any State-sponsored projects requiring water service from the Honolulu Board of Water Supply system must first obtain water allocation credits from the Engineering Division before it can receive a building permit and/or water meter.
- () The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update.

- () Additional Comments: _____

- () Other: _____

Should you have any questions, please call Mr. Andrew Monden of the Planning Branch at 587-0229.

Signed: 
ERIC T. HIRANO, CHIEF ENGINEER

Date: 9/16/05

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231
FAX. (808) 988-1140
E-Mail: kkurahashi@hawaii.rr.com

November 8, 2005

Mr. Eric T. Hirano, Chief Engineer
Engineering Division
State, Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Mr. Hirano:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your memorandum to the Office of Conservation and Coastal Lands.

The following responds to your comments:

The applicant appreciates your confirmation that the project site is located in Zones X and VE.

I contacted the County of Kauai Department of Public Works and understand that the County's Ordinance No. 831 (Flood Ordinance) was patterned after Title 44 of the Code of Federal Regulations (44CFR, minimum standards established by the National Flood Insurance Program, NFIP). I was also told, however, that the applicant will be responsible for meeting the requirements of the County's Ordinance No. 778 (dealing with storm water runoff). The applicant will meet requirements of Ordinance Nos. 831 and 778 and also 44CFR, as applicable.

Mr. Eric T. Hirano
Page 2

Your memorandum and this response will be included in the Final EA.

Very truly yours,

A handwritten signature in black ink that reads "Keith Kurahashi". The signature is written in a cursive style with a prominent loop at the end of the last name.

Keith Kurahashi

cc: Moloaa Bay Ranch LL

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231

FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.rr.com

November 8, 2005

Mr. Alton Miyasaki, Acting Program Manager
Division of Aquatic Resources
State, Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Attention: Richard Sixberry, Aquatic Biologist

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Mr. Miyasaki:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your memorandum to the Office of Conservation and Coastal Lands. The applicant appreciates your determination that significant impacts adverse to aquatic resources are not expected from the previous tree removal and proposed landscaping.

The applicant will follow your recommendation that clearing and planting activities be restricted to periods of minimal rainfall and areas denuded of vegetation which could be susceptible to wind or water erosion are appropriately stabilized through use of best management practices, including providing silt curtains, as needed, and hydromulching bare areas as soon as practicable to minimize soil erosion.

Best management practices as mentioned above will also be followed to prevent debris, eroded soil, petroleum products, landscaping chemicals (herbicides, pesticides, etc.) and other potential contaminants from flowing, blowing or leaching into Moloaa Stream, Moloaa Bay and Naupaka Beach. In addition, use of

Mr. Alton Miyasaki
Page 2

landscaping chemicals, if needed, will be limited to periods when there will not be significant wind drift and periods of minimal rainfall to minimize leaching.

Your memorandum and this response will be included in the Final EA.

Very truly yours,

A handwritten signature in black ink, appearing to read "Keith Kurahashi". The signature is written in a cursive style with a prominent loop at the end.

Keith Kurahashi

cc: Moloaa Bay Ranch LLC

LINDA LINGLE
GOVERNOR OF HAWAII

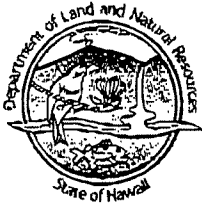


PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT MATSUDA
DEPUTY DIRECTOR - LAND

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



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

HAWAII HISTORIC PRESERVATION
DIVISION REVIEW

Log #: 2005.1951
Doc #: 0509NM07.doc

Applicant/Agency: Samuel J. Lemmo, Administrator/Office of Conservation and Coastal
Lands

FOR: Moloaa Bay Ranch

Address: DLNR, POB 621,
Honolulu, HI 96809

SUBJECT: Chapter 6E-42 Historic Preservation Review - CDUA KA-3190
After the Fact and Proposed Tree Removal, Landscaping and Other
Improvement

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 SEP -9 PM 3:41
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Ahupua'a: Moloaa
District, Island: Hanalei, Kauai
TMK: (4) 4-9-011: por. 01

- 1. We believe there are no historic properties present, because:
 - a) intensive cultivation has altered the land
 - b) residential development/urbanization has altered the land
 - c) previous grubbing/grading has altered the land
 - d) an acceptable archaeological assessment or inventory survey found no historic properties
 - e) other:

2. This project has already gone through the historic preservation review process, and mitigation has been completed .

Thus, we believe that "no historic properties will be affected" by this undertaking

Staff: Nancy McMahon *Nancy McMahon* Date: 9/3/05

Title: Archaeologist for Kaua'i

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231

FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.m.com

November 8, 2005

Ms. Nancy McMahan
Hawaii Historic Preservation Division
State, Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

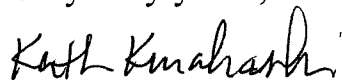
Dear Ms. McMahan:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your memorandum to the Office of Conservation and Coastal Lands.

The applicant appreciates your determination that the project has been through the historic preservation review process and that mitigation has been completed and that your office believes that "no historic properties will be affected" by this undertaking.

Your memorandum and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

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

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING 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:TM

CDUA: KA-3190

Acceptance Date: August 24, 2005
180-Day Exp. Date: February 20, 2006
SUSPENSE DATE: 21 Days from
stamped date AUG 25 2005

MEMORANDUM:

TO: The Department of Land and Natural Resources Divisions of: Aquatic Resources; Historic Preservation; Engineering; Kauai District Land Office; Forestry and Wildlife; Na Ala Hele and Conservation and Resource Enforcement

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

SUBJECT: REQUEST FOR COMMENTS
Conservation District Use Application (CDUA) KA-3190
BOARD PERMIT
After the Fact and Proposed Tree Removal, Landscaping and Other Improvements

APPLICANT: Keith Kurahashi for
Moloaa Bay Ranch

TMKs: (4) 4-9-011:001

LOCATION: See Acceptance Letter and attachments

PUBLIC HEARING: YES NO X

Please contact Tiger Mills at 587-0382, should you have any questions on this matter.

If no response is received by the suspense date, we will assume there are no comments. The suspense date starts from the date stamp.

() Comments Attached

(X) No Comments

Signature

Attachment(s)

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231

FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.nr.com

November 8, 2005

Mr. Tommy Oi
Kauai District Land Office
State, Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

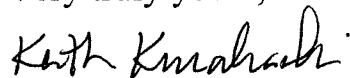
**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Mr. Oi:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and for noting that you do not have comments to offer, in your memorandum to the Office of Conservation and Coastal Lands.

Your memorandum and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

Koolau Cemetery Association

P.O. Box 202 Kilauea, Hawaii 96754

September 13, 2005

Planning Commission
County of Kauai
4444 Rice Street
Lihue, HI 96766

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 SEP 19 A 9:53
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Commissioners:

Koolau Cemetery Association is a federally recognized 501 C (13) non-profit dedicated to the preservation of Koolau Japanese Cemetery.

I am in receipt of the "Conservation District Use Permit Application and Draft Environmental Assessment, Moloaa Bay Ranch". A cover letter from BLNR Chair Peter Young indicates the SMA (U)-2006-2 is a pre-requisite.

This CDUP- SMA process has not addressed impacts to the Koolau Japanese Cemetery. In the past much damage was caused by MBR activities (see exhibits D & E).

Subsequently Kauai Planning Department has informed that MBR access is illegal for its proposed residential development through and along Koolau Japanese Cemetery (see exhibit A).

The CDUP p10 states "Access to the area is by way of an easement off Koolau Road..." And on p45 "The access road needed to maintain the existing and planned Landscaping will be improved." Which easement? Which access?

Thank you for your help.

Koolau Cemetery Association

cc: BLNR/DLNR/SHPD
County of Kauai, Department of Planning
OEQC

ISLAND OF KAUAI

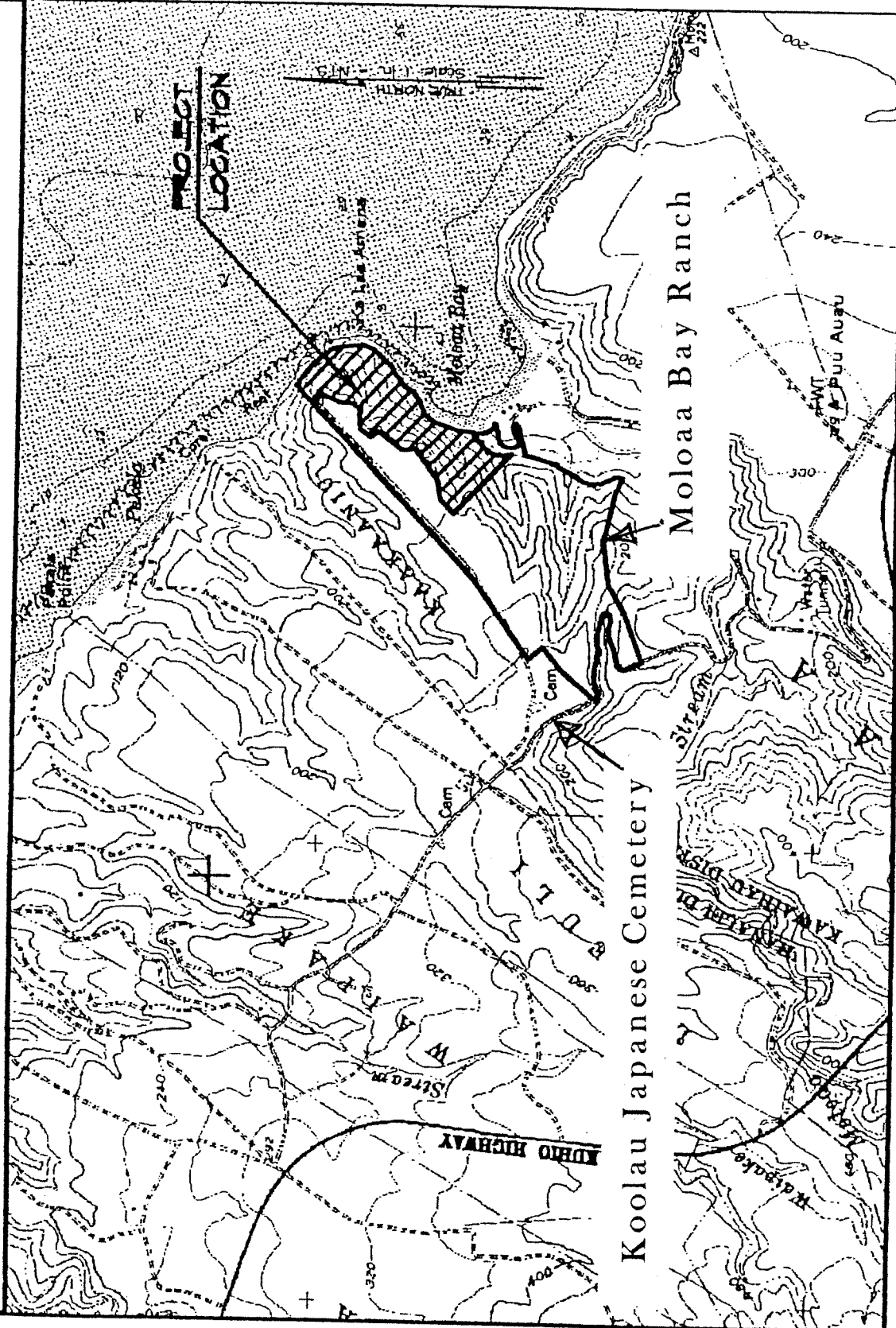


FIGURE 1 - LOCATION MAP



Families visiting Koolau Japanese Cemetery

Exhibit A

MARYANNE W. KUSAKA
MAYOR



DEE M. CROWELL
PLANNING DIRECTOR
SHEILAH N. MIYAKE
DEPUTY PLANNING DIRECTOR
TELEPHONE (808) 241-6677
FAX (808) 241-6699

PLANNING DEPARTMENT

June 13, 2002

Sergai Bliss
P.O. Box 202
Kilauea, Kauai HI 96754

SUBJECT: CPR Sheds on TMK: 4-9-11: 1 at Moloaa, Kauai

This letter is in response to your question whether Moloaa Bay Ranch can utilize a ten (10) foot wide easement as driveway access for 22 potential homes, and whether the subject property can qualify for residences due to its distance from a public thoroughfare.

According to Section 8-3.7 (a)(1) of the Comprehensive Zoning Ordinance (CZO), a residence cannot be constructed on a parcel that is in excess of 600 feet traveling distance from a public thoroughfare, or that is in excess of 300 feet traveling distance from vehicular access adequate for service type vehicles. Also, according to Section 8-3.7(a)(2) of the CZO, a common driveway cannot serve more than four dwellings or be in excess of 120 feet in length.

The easement can be utilized for access if it is legally prescribed for the properties. However, its ability to be used as access for the CPR project will depend on whether the applicant is able to meet these CZO requirements or not.

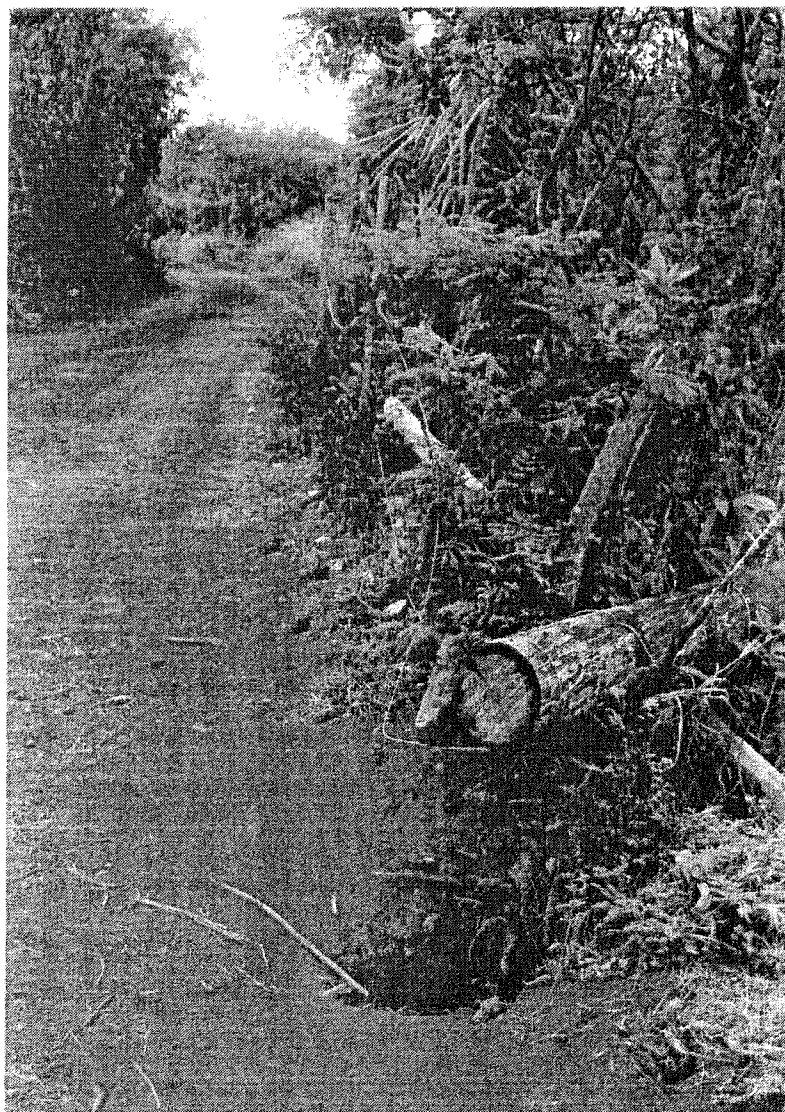
It should be noted that the minimum roadway width for an agricultural roadway is 44 feet, if its length is less than 2,000 feet. However, the minimum roadway width is 56 feet if it exceeds 2,000 feet in length.

Should you have any questions, please contact Keith Nitta of my staff at 241-6677.

A handwritten signature in black ink, appearing to read "Sheila N. Miyake".

SHEILAH N. MIYAKE
Deputy Planning Director

Exhibit E - continued: Moloaa Ranch truck - tight squeeze
by fenceline.



Later - fenceline down.

Exhibit D 11-13-98

Cemetery Gate hit.

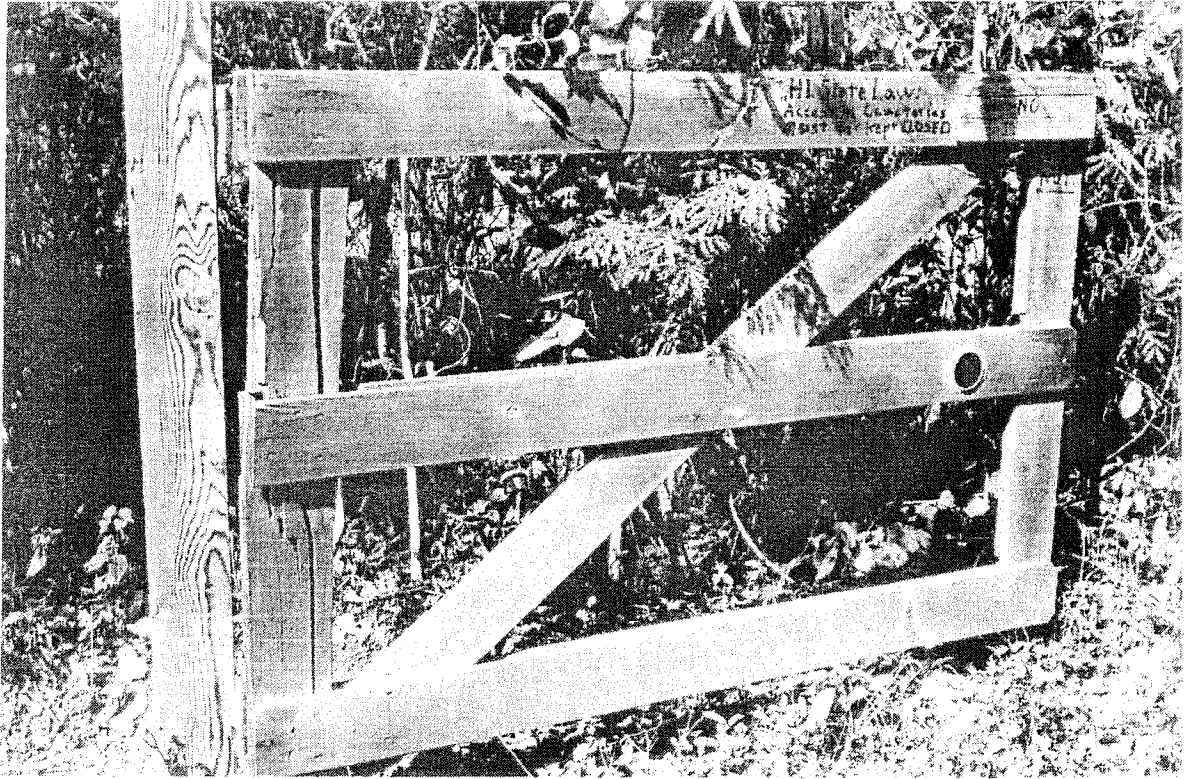
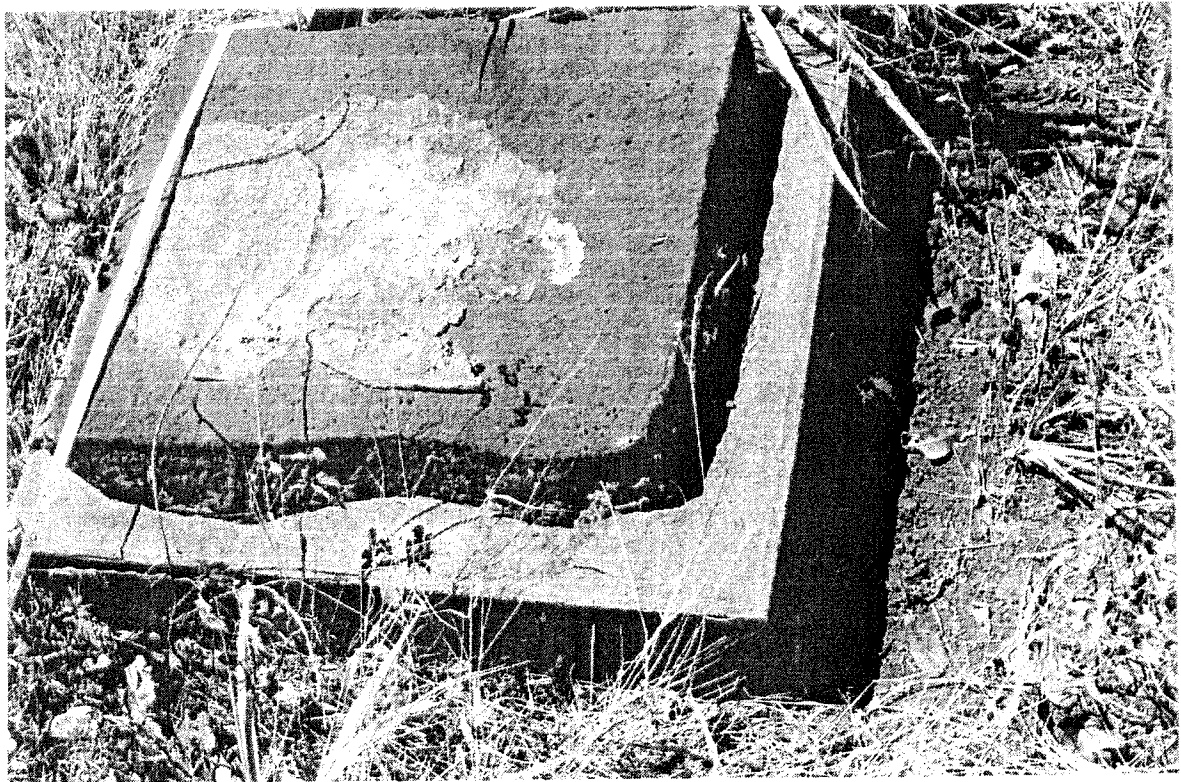
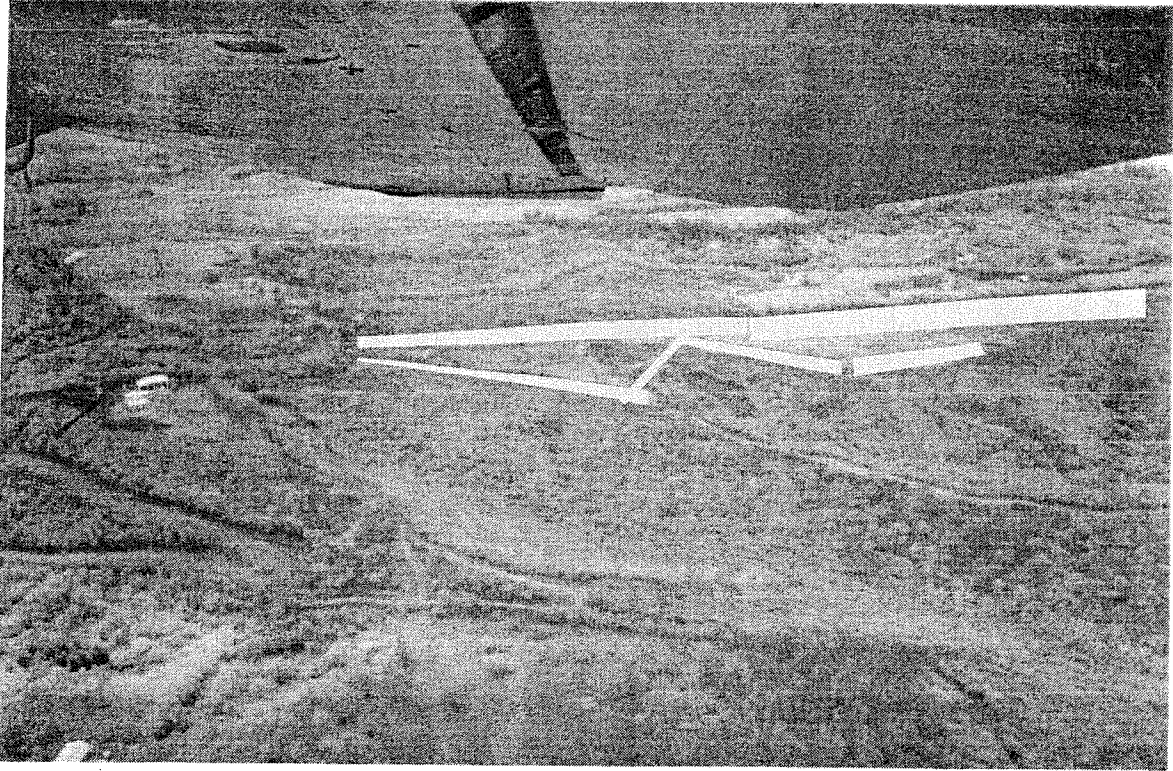


Exhibit D 11-10-98 - continued:

Cemetery headstone hit.





Court Specifies only this "land sold
Olaf Thronas" for "Easement 1" access

House and 4 bay shop/garage
constructed on Molooaa Ranch's
Allotment C using "Easement 1".

Photo taken August 6, 1999

Clearly visible in foreground is Molooaa Bay Ranch's
access directly off the paved hairpin of Koolau Road

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231

FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.nr.com

November 8, 2005

Ms. Marie Ito
Koolau Cemetery Association
P.O. Box 202
Kilauea, Hawaii 96754

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Association Members:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments, in your letter, dated September 13, 2005, to the County of Kauai Planning Commission that included DLNR as a "cc" recipient.

The following responds to your comments:

"The Kauai Planning Department has informed that MBR access is illegal for its proposed residential development through and along Koolau Japanese Cemetery (see Exhibit A)."

The Kauai Planning Department has determined that "The easement can be utilized for access if it is legally prescribed for the properties." (Exhibit A). The Planning Department went on to note "However, its ability to be used as access for the CPR project will depend on whether the applicant is able to meet these CZO requirements." The Planning Department has not made a determination that the access easement is illegal for an earlier proposed residential development.

The applicant does have legal access through this easement and continues to use this easement for access to its existing Moloaa Bay Ranch which includes the area that is the subject of the CDUA and SMA Use permits. A portion of the easement rests on property that has been acquired by the applicant. The remainder of the easement rests on a property (Tax Map Key

(4) 4-9-11: 10) whose owner recognized in February 1999 that “his Subject Property is subject to an easement for a right-of-way ten (10) foot wide in favor of land sold to Olaf Thronas as set forth in Partition in Equity no. 85 of the Fifth Circuit Court”.

- 1) *“Does MBR owner plan to create a CZO compliant entrance from the hairpin on Koolau Road?”*

We are not sure what is meant by a "CZO compliant" entrance, but the applicant's only plans for the entrance at the hairpin turn are (i) minor grading work, (ii) cement work, and (iii) installation of an entry gate system. The permit application for such work has been pending with the County Department of Public Works for roughly 6-months now.

- 2) *“If so, when?”*

The work described above will commence shortly after the above-described permit is issued by Public Works.

- 3) *“If not from the hairpin, from where?”*

See above.

- 4) *“Is there a problem using MBR’s existing road from the hairpin to access this CDUP/SMA project?”*

The problem with using the hairpin turn location as a primary entrance to the MBR property is the steep grade that must be climbed to enter the property. At the present time four-wheel drives and certain smaller vehicles may be able to enter the property safely from the hairpin turn, but larger vehicles would have trouble on the steep incline and hairpin turns on the property.

- 5) *“The CDUP on p45 states ‘The access road needed to maintain the existing and planned Landscaping will be improved.’ Are any improvements proposed on TMK (4) 4-9-11: 10?”*

Ms. Marie Ito
Page 3

No improvements are proposed on TMK (4) 4-9-11: 10 in this CDUP or SMA applications.

“This Draft Environmental Assessment (EA) has not addressed impacts to the Koolau Japanese Cemetery. In the past much damage was caused by MBR activities (See our letter dated 9-13-05). The Archeological and Cultural Assessments in the EA must be amended to include Koolau Japanese Cemetery.”

The proposed Special Management Area (SMA) Use permit application and the Conservation District Use Application (CDUA) and Draft Environmental Assessment (EA) are for improvements in the Special Management Area and Conservation District in areas that do not affect the Koolau Japanese Cemetery. In fact, the Cemetery is located about 2,500 feet away from the Conservation District and the Special Management Area that is the subject of the Draft EA and the two applications in process.

The applicant is not aware of any damage caused by the applicant or its employees and it has never been charged, nor does it believe that its employees have ever been charged with damaging any part of the Cemetery or the fence along the legal access easement.

In viewing Exhibit D, Exhibit D includes a gate that appears damaged and a fallen headstone that is set off to the side of the access easement. It is difficult to see under what situation a vehicle would drive outside of the easement area and knock down the headstone, unless it was done purposefully. The applicant does not believe that its employees or vendors would willfully drive outside of the easement area and risk damage to their vehicle to knock down a headstone. The applicant does not condone any malicious or mean spirited conduct by any of its employees against anyone, and particularly its neighbors.

Exhibit E shows a truck driving along the easement with adequate clearance to the nearby fence and a second photograph showing the fence-line down. Presumably the photographer taking this photo saw the truck as it hit the fence and reported this incident to the police. If this was done, the applicant would appreciate hearing of the outcome of any charges brought against the

Ms. Marie Ito

Page 4

driver and whether this driver so charged was an employee of Moloaa Bay Ranch or one of its vendors.

The Archaeological and Cultural Assessments were both done by Cultural Surveys Hawaii, a competent, professional and respected archaeological firm that focused on the affected project area and the cultural history of the area focusing on the host culture. With your letters and this response, the Koolau Japanese Cemetery will be noted in the Final EA as being located along the access easement to the project site.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

30 September 2005

Malama Moloa'a
POB 1349
Kilauea, HI 96754

County of Kauai, Planning Commission
4444 Rice St.,
Lihue, HI 96766

Dear Planning Commissioners:

Re: Special Management Area Use Permit (SMA(U)-2006-2)

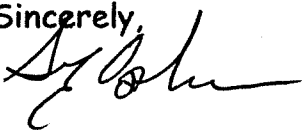
Enclosed is a "Moloa'a Bay Timeline" documenting years of illegal activity at Moloaa Bay Ranch.

The CDUP/SMA process must stop the illegal activity:

- 1) Claiming the public trail is private.
- 2) Claiming access through and along Koolau Japanese Cemetery.
- 3) Will Kauai County be liable if the illegally made reservoirs fail?
- 4) Will MBR block access from Hui Road A to the beach?

Mahalo for your help.

Sincerely,



Greg Osborn

Attachments

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OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 OCT 11 A 9:03
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Moloa'a Bay Ranch Timeline

March 22, 1993 Maximum house density for Ryan Ranch (TMK 4-9-11: 1) determined to be 18 houses by the Kauai County Planning Department. ¹

May 1998 Thomas McCloskey acquires 164 acre Ryan Ranch. ²

June 1998 Clearing work began on Moloa'a Bay Ranch (MBR) without permits.

Thomas McCloskey cited for dust violation by state and required to put up protective screening.

September 15, 1998 Violation Notice issued over grading and creating reservoirs within the SMA.

July 17, 1998 Jimmy Pfleuger reported a cattle easement on Deborah Forester's land had been abandoned for over 20 years³, and therefore by law could not be reopened.

Nov. 1998 McCloskey's men cleared a 40' swath on Deborah Forester's land with bulldozers while attempting to clear this 10' cattle easement⁴. Local police department were in attendance and did nothing to stop the trespass grading.

Nov. 17, 1998 Lt Curnan from Hanalei substation of Kauai PD, reportedly supervises while workers cut lock to Historic Japanese Cemetery, allowing entrance by MBR cement truck over private property. Van parked on same private property (not easement)

ordered moved or caretaker April Courture would be arrested for Disturbing the Peace⁵.

Dec. 2, 1999 Grubbing violation - citation issued by public works.³⁴

March 3, 1999 Two separate gates smashed. Cemetery gate left open with rope missing. KPD files Criminal Property Report⁶. MBR manager says before witnesses and on tape it was done by one of his guys⁷.

March 1999 - Illegal tree Clearing in Conservation District.

April 1999 Kapua Sproat, Linda Sproat and Stanton Pa and others attempted to hike Na Ala Hele trail between Moloa'a and Ka'aka'aniu and were kicked off by someone matching McCloskey's description.

July 1999 Linda Sproat called DLNR to report clearing in the Conservation Zone.

July 16, 1999 Investigation filed by clean Air Branch over illegal burning on Moloa'a Bay Ranch⁸.

July 20, 1999 MBR notified of possible \$10,000/ day penalty for such open burning violations⁹.

July 30, 1999 Burning continues. DOH defers action to KPD¹⁰.

June/July 1999 Trees cleared from Conservation Zone.

August 13, 1999 McCloskey cited and fined by DLNR for unpermitted clear cutting the north end of the Conservation Zone¹¹. (South end of Conservation Zone still intact but will be illegally cleared in coming months)

August 2, 1999 DOH Sanitation Division conducts investigation and files report on large MBR manure composting pile 12' high directly across fence and upwind from Debbie Forester's home¹².

August 24, 1999 McCloskey reported for illegal fuel storage, being too close to Forester's property line¹³.

August 27, 1999 McCloskey sues Deborah Forester over easement¹⁴.

August , 1999 Local neighbor children kicked off the Na Ala Hele Trail by Ranch manager on quads.

August, 1999 Leslie Milnes, Kauai Planning Department and Conservation Officer received complaint about unpermitted pond construction encroaching into Conservation Zone.

Sept. 1999 McCloskey's quads driving over turtle nesting habitat¹⁵. Workers poisoned resprouts from stumps in the Conservation Zone that McCloskey had been cited for clearing¹⁶.

Sept. 1999 Grubbing Violation Complaint received by public works.

December 16, 1999 Public Works issues Violation Notice

December 6, 1999 Moloa'a trail closure front page article in Aspen Times¹⁷.

Dec. 1999 - Grading violation for illegal, unpermitted, uncompacted housepads and ponds. Initial fine assessed \$40,000
Nov. 8, 2000 - subsequently reduced to \$25,000 February 23, 2001.³⁴

December 1999 Facing financial hardship Deborah Forester forced to sell her farm to McCloskey.

Jan 2000 McCloskey cited for grubbing the stream and filling 4 truckloads of rock on Moloa'a Stream bed without permit. Cease and Desist¹⁸.

McCloskey applies for permit to build luxury house within stones throw of Na Ala Hele trail.

1999- early 2001 Damage to Cemetery Property and other private property along cattle easement continues.¹⁹ Where damage appeared intentional Criminal Property Reports were filed by KPD¹⁹. In one incident where MBR employees were placed at the scene a false statement is made by the investigating officer²⁰.

February 2000 Captain Moriguchi, Kauai PD recommends a Police Commission Complaint - which is filed²¹.

March 2000 South end of Conservation Zone clearing begins and continued until Sept. 2001

Summer 2000 Multiple pieces of equipment worked everyday grading Moloa'a Bay Ranch, including working 4th of July, with dust choking out holiday barbeques in Moloa'a. No permits, no plan, no dust or erosion control measures. Neighbors call county planning, public works.

August, 2000 Complaint to Public Works about Moloa'a Bay Ranch operating semi dump trucks and dozers all night long, seven days per week. Continual grading continues.

March 2001 McCloskey presents after the fact grading plan for driveways, housepads. Permits for driveway grading²³.

May 1, 2001 Moloa'a Bay Ranch is now divided into two TMK numbers (4-9-11-1 and 4-9-11-37) and the allowable density for house sites is 22 according to Thomas McCloskey.

May 1, 2001 After the Fact Permit for ponds and house pads issued²⁴.

May 21, 2001 Planning Department does site inspection and orders stop-work.

June 1, 2001 Notice of grubbing violation citation issued²³. This violation was still outstanding as of Jan. 9, 2003 Reported by Ian Costa.

Feb. 10, 2002 Malama Moloa'a letter to Public Works, signed by Greg Osborn²⁴.

Feb. 25, 2002 C. Portugal responds back to Malama Moloa'a inquiries on numerous questionable activities at MBR²³.

March 2002 McCloskey Applies for CPR shed permits- approval has been delayed pending outstanding violations.

March 2002 Heavy rains cause much loss of soil in denuded areas. Mud inundates residents at TMK 4-9-13-14 (See relevant photos)²⁵

June 2002 south end of CZ once treed continues to erode.
(Photo)²⁶

June 13, 2002 Malama Moloa'a appearance before Council asking questions regarding MBR.

June 27 2002 " " "

June 28, 2002 Letter to EPA concerning MBR²⁷.

June 27, 2002 Letter to Clean Water Branch regarding runoff from MBR²⁸.

July - August 2002 Various appearances before county council. Including 13 Aug (1 year from turtle nesting observation.)

Aug or Sept. 2002 Appearance before BLNR regarding MBR and Pila'a

Turtle nesting site destroyed (Photo)²⁹ Subsequently, County's Wally Kudo describes destroyed nesting as a Natural Ravine.

July 2002 Jeff Rivera shows an empty reservoir pond due to the fact that the pond's dike was failing. Pond was constructed without permits or engineering specs.

August 13, 2002 Heavy rains result in mud flows onto the reef at Moloa'a Bay. Refer to video and pictures³⁰.

Sept 5, 2002 Appearance before Council asking questions regarding MBR.

Sept. 2002 Meeting with EPA, DoH, Earthjustice regarding MBR.

June 13, 2002 County Planning issues letter that McCloskey never had legal access through cemetery driveway or the cattle easement for his residential CPR³¹.

November 2002 MBR submits application for after-the-fact SMA permit.

Jan 9, 2003. Malama Moloa'a makes another appearance to brief new Council on issues concerning MBR. Still many questions remain unanswered and different agencies trying to determine who's kuleana it is to bring action, hence, no action.

April 2003 Mud flows onto government road and is channeled away from a private residence (reportedly previously inundated) and onto neighboring vacant property without permission.³²

April 2003 Mud flow from MBR breaches the last of the silt fences and onto the sand at Moloaa Bay³³.

May 15, 2003 MBR still has not applied for permits to correct mud flows on roadways. Council member Yukimura asked in Chambers that they do so.

September 13, 2005 MBR attorney claims to Planning Commission no trees were cut before 2000 and erosion then was due to ironwoods. (See fines from DLNR for cutting trees in Conservation District dated August 13, 1999 -citation 11).

CITATION 1

J.A. YUKIMURA
MAYOR



JEFFREY LACY
PLANNING DIRECTOR

DEE M. SNOWELL
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4200 HIGH STREET
LILIOE, KAUAI, HAWAII 96766

March 22, 1993

Weth Francisca
Bali Hai Realty, Inc.
P.O. Box 930
Hanalei, HI 96714

3/25/93

SUBJECT: TMK: 4-9-11: 1 at Moloaa, Kauai

The subject property is 165.566 acres in size, is currently within the Agricultural and Conservation State Land Use Districts and is zoned Agriculture District (A) and Open District (O). Approximately 48 acres is zoned Agriculture and approximately 68.41 acres is zoned Open; the balance of the property is in the Conservation State Land Use District.

The property if not subdivided qualifies for five (5) dwelling units in the Agriculture zone and thirteen (13) dwelling units in the Open zone. We are uncertain about the dwelling unit density in the Conservation District.

If the property were subdivided, it would qualify for nineteen (19) lots; nine (9) lots in the Agriculture zone and ten (10) lots in the Open zone. The 9 Agriculture zoned lots would qualify for a minimum of two (2) dwelling units per lot, while the Open zoned lots would qualify for one (1) dwelling unit per lot. The minimum lot size for both the Agriculture and Open zoned lots is 5 acres.

We also note that portions of the property are in the slope constraint district. Development in the slope constraint district will have to follow the requirements of the Comprehensive Zoning Ordinance (CZO) which are attached for your information. This may affect the overall density allowed.

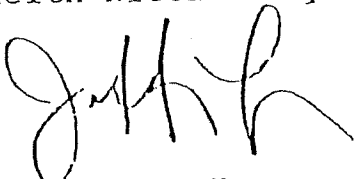
Portions of the property are in the County Special Management Area (SMA). A SMA Permit will be required should these affected portions be subdivided. The SMA Permit requirements are contingent upon the subdivision layout and like the slope constraint requirements, may also influence the ultimate permitted density.

CITATION 1 CONTINUED

Beth Francisca
Page -2-
March 22, 1993

Please be advised that further evaluation, requirements, and approvals from pertinent agencies, including the Planning Department may also be required prior to development of this property. Further, please be advised that this letter shall not be used as a representation of the County of Kauai's official consent for development of this property, or as part of the sale of this property to a prospective purchaser.

Should you have any questions on this matter, please contact Keith Nitta of my staff at 245-3919.



JEFFREY LACY
Planning Director

Attachments

CITATION 2

R-441

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JUN 04. 1998 08:02 AM

DOC No(s) 98-080522

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$1.00

LAND COURT SYSTEM

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ()

MOLOAA RANCH L.L.C.
132 WEST MAIN STREET
ASPEN, COLORADO 81611

Escrow No. 98120177
Job No. 00085550



TITLE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: RYAN EQUITY PARTNERS, LTD.,
a Texas limited partnership
5470 Prospect Ave., Ste. 1150
Dallas, TX 75206

GRANTEE: MOLOAA RANCH, L.L.C.,
a Colorado Limited Liability Company
132 West Main Street
Aspen, CO 81611

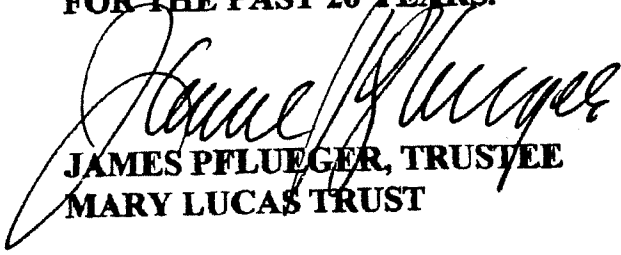
PROPERTY DESCRIPTION:

TAX KEY: (4) 4-9-11-portion 001

JULY 17, 1998

TO WHOM IT MAY CONCERN:

**THE 10 FOOT EASEMENT OVER LUCAS PARCELS
TMK: 4-9-11-9 AND 4-9-11-10 HAS BEEN INOPERATIVE
FOR THE PAST 20 YEARS.**


**JAMES PFLUEGER, TRUSTEE
MARY LUCAS TRUST**

CITATION 4

Tracked area 43 feet wide.



CITATION 4 CONTINUED Moloaa Ranch truck sliding toward
Special Guadua bamboo.



Later - special Guadua bamboo destroyed.



CITATION 5

To Whom it may concern

4/22/00

From March '97 - Dec '98 I was a caretaker of Peter Waldau's property on Koolau Rd, Moloa'a - There was a gate at the property entrance, off "Larsen's Beach rd" which was kept closed & locked. This gate was marked "Access for Cemetery families only" and "No Trespassing"

As I remember, on the morning of Nov 17, '98, Jeanie Wheeler (a guest of neighbour Deborah Forester) came over to tell us that there was a cement truck out at the front gate and that police & men from Moloa'a Bay Ranch were here and that the chain on the front gate had been cut.

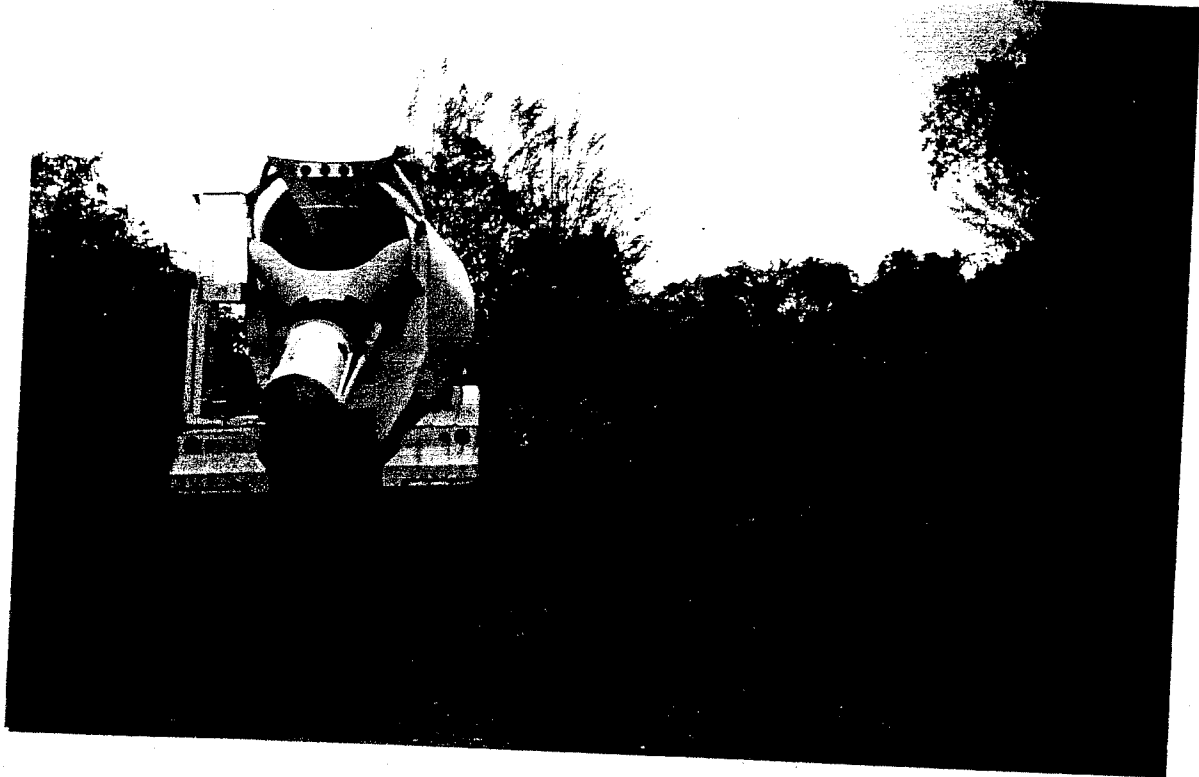
I walked out to where the police and other trucks were parked by the cemetery. A policeman asked me to move a van. When I tried to explain to the policeman that the driveway where the van was parked was NOT where the mapped "Easement 1" was, the policeman told me that if I did not move the van, I could be arrested for disturbing the peace. I moved the van and the cement truck and other vehicles passed through.

Sincerely, April Courture

KPD officer's name written down 11-17-99 at Cemetery Gate as it was being forced open:

L.T. MARTIN Curran
Honolulu District Commander
826-6214

¹ CITATION 5



Moloaa Ranch cement truck shown here directly
alongside of the cemetery green.



After cutting chain to cemetery gate Moloaa
Ranch added their lock. Note two locks

Report Number: 99-4680

Kauai Police Department Event/Crime Report

MAR - 8 1999

DISTRICT 5	BEAT 2	WATCH 1 ② 3	CRIME CLASSIFICATION CRIMINAL PROPERTY DAMAGE 4TH	RECLASSIFIED <input type="checkbox"/>	DATE OCCURRED / BETWEEN 030399	TIME OCCURRED 0930 / 1010 hrs.	DAY S M TU W TH F S
---------------	-----------	----------------	--	--	-----------------------------------	-----------------------------------	-------------------------------

VICTIM # _____ COMPLAINANT # 1 RELATIONSHIP _____

NAME (PERSON OR FIRM) WALDAN PETER STREET, HOUSE NO., CITY, STATE, & ZIP CODE 7200 Kooloa Road, Molokai, KAUAI HI 96754		11-AGE 46	12-DOB 061652	13-SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	14-RACE <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> HAWN <input type="checkbox"/> PTGSE <input type="checkbox"/> AM IND. <input type="checkbox"/> P-RICAN <input type="checkbox"/> ALASK IND. <input type="checkbox"/> JAPNSE <input type="checkbox"/> MEX <input type="checkbox"/> FILPN <input type="checkbox"/> CHINESE <input type="checkbox"/> KOREA <input type="checkbox"/> SAMOA <input type="checkbox"/> TONGA <input type="checkbox"/> VIETN
16-MAILING ADDRESS PO Box 233, Kilauea, KAUAI HI 96754		16-RES. PHONE () 828-0618	17-BUS. PHONE () SUE		19-OCCUPATION Biologist
EMPLOYER / SCHOOL Self-Employed		22-LOCAL ADDRESS UNTIL / DATE		20-ARRESTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	24-DOMESTIC VIOLENCE RELATED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

SYNOPSIS: Reported Damage to Gate at this property entrance.

INVESTIGATOR Jim #101	26-TIME ASSIGNED 1120	27-TIME ARRIVED 1125	28-TIME BACK 1200	29-KEY REPORT <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
REPORTED BY PETER WALDAN	31-ADDRESS Sue		32-PHONE NO. Sue	
REPORTED TO Dispatch	34-DATE 030399	35-TIME REPORTED 1117 hrs.	36-HOW REPORTED <input checked="" type="checkbox"/> Dispatch <input type="checkbox"/> Beat <input type="checkbox"/> Walk In <input type="checkbox"/> Letter	
LOCATION OF INCIDENT: 7200 Kooloa Road, Molokai, KAUAI HI 96754				

RELATED REPORTS / CLASSIFICATION: N/A

SUSPECT VEHICLE UCPV - VALUE: \$ _____ ABANDONED DERELICT

YEAR	41-MAKE	42-TYPE	43-LICENSE NO. / STATE	44-COLOR	45-METHOD OF ENTRY <input type="checkbox"/> Forced <input type="checkbox"/> Keys Used
R/O NAME			47-ADDRESS		

METHOD OF ENTRY <input type="checkbox"/> Lawful <input type="checkbox"/> No Force <input type="checkbox"/> Forced <input type="checkbox"/> Attempt Force		49-PREMISE CODE <input type="checkbox"/> Residence <input type="checkbox"/> School <input type="checkbox"/> Office <input type="checkbox"/> Other Business <input type="checkbox"/> Hotel/Apt. <input type="checkbox"/> Other Structure	50-POINT OF ENTRY <input type="checkbox"/> Front Door <input type="checkbox"/> Window <input type="checkbox"/> Other door <input type="checkbox"/> Other _____
--	--	--	--

THEFT CLASS

<input type="checkbox"/> Pocket Picking	<input type="checkbox"/> From Motor Vehicles	<input type="checkbox"/> Buildings	<input type="checkbox"/> Fraud / Deception
<input type="checkbox"/> Purse Snatching	<input type="checkbox"/> Motor Vehicle Parts & Acces.	<input type="checkbox"/> Coin Operated Machines	<input type="checkbox"/> N.W.N.I.
<input type="checkbox"/> Shoplifting	<input type="checkbox"/> Bicycles	<input type="checkbox"/>	<input type="checkbox"/> Embezzlement

CRIMES AGAINST PERSONS — WEAPON / FORCE USED

<input type="checkbox"/> Firearm	<input type="checkbox"/> Knife / Cutting Instrument	<input type="checkbox"/> Other Dang. Inst.	<input type="checkbox"/> Hands / Feet	<input type="checkbox"/> Threat	<input type="checkbox"/> Other
----------------------------------	---	--	---------------------------------------	---------------------------------	--------------------------------

COMMENTS / AREAS CHECKED:

PHOTOS YES # _____ NO

WITNESSES YES # _____ NO

OTHER EVIDENCE: YES (REFER TO P & E.) NO

ATTACHED FORMS

<input type="checkbox"/> OBTS / J.I.R.	<input type="checkbox"/> USE OF FORCE	<input type="checkbox"/> NWNi FORM
<input type="checkbox"/> STATEMENT FORM	<input type="checkbox"/> FAMILY ABUSE WARNING FORM	<input type="checkbox"/> MK CITATION
<input type="checkbox"/> P & E FORM	<input type="checkbox"/> IDENTIFICATION KEY	<input type="checkbox"/> APB
<input type="checkbox"/> CONSTITUTIONAL RIGHTS	<input type="checkbox"/> INJURY REPORT	<input type="checkbox"/> 481
<input type="checkbox"/> MOTOR VEHICLE SEIZURE	<input type="checkbox"/> FOLLOW-UP REQUEST	
<input type="checkbox"/> LOST OR STOLEN ITEMS LIST	<input type="checkbox"/> OTHER	

CITATION 6 CONTINUED

Page 2 Of 4 Pages

REPORT # 99- 4680

INVESTIGATOR/NOTIFICATIONS:
KIM # 101 / None.

ASSISTING OFFICERS:
N/A.

SECURITY PERSONNEL PRESENT:
N/A.

PROPERTY TAKEN:
a) 1/2" yellow nylon rope approximately 36" in length
(removed from front entry gate)
Replacement cost: \$3.00

PROPERTY RECOVERED:
None.

PROPERTY DAMAGES/ESTIMATED COST:
Oceanside access road;
a) post located at eastside shoulder of access road, scrap
anodized aluminum (angle) post approximately 3' in height and
8" diameter concret footing uprooted. No damage to
attachments nor to post (no visible signs of impact on post).
Estimate value to reset post: \$ 50.00 per complainant.

Mountainside access road;
a) post located at westside shoulder of access road, scrap
anodized aluminum (angle) post approximately 3' in height in
place and upright, appearing loose at footing. No damage to
attachments nor to post (no visible signs of impact on post).
Estimate value to reset post: \$ 50.00 per complainant.

Per complainant; estimate TOTAL for labor and materials = \$100.

MEANS USED TO CAUSE DAMAGES:
Unknown culprit(s) entered upon premises via;
1) oceanside front entry gate by removing rope that secured gate
to side post. Proceeded down access road that joins into other
access road (mountainside) which runs parallel and damaged
fencepost used to secure wire across road.

2) mountainside front entry gate (open 24 hours), proceeded down
access road and damaged fencepost used to secure wire across
road.

INJURIES TO VICTIM/TREATMENT:
N/A.

VICTIM/COMPLAINANT:
WALDAU, Peter 46 years dob: 061652 Caucasian Male
7200 Koolau Road, Moloaa, Kauai, Hawaii 96754 #828-0618
PO Box 233, Kilauea, Kauai, Hawaii 96754
Self-employed / Biologist



AN EQUAL OPPORTUNITY EMPLOYER

POLICE DEPARTMENT

COUNTY OF KAUAI

3060 UMI STREET
LIHUE, HAWAII 96766



GEORGE FREITAS
Chief of Police

PETER WALDAU
PO BOX 233
KILAUEA HI 96754

March 15, 1999

Refer to Report No.: 99-04680
Date Reported: 3/3/99
Classification: CRIMINAL PROPERTY DAMAGE 4TH

I have reviewed the patrol officer's preliminary report and I find there is no witness nor workable evidence to support an active investigation. If any significant development arises, you will be contacted again.

Should you gain information which may help in furthering the investigation or should you have any questions, you can contact me, Lt. William Ching, at (808) 241-6763.

Adult Investigation Section
Investigative Services Bureau

CITATION 7

On March 3, 1999 at approximately 10:00 A.M. Peter Waldau's gray gate was broken down, its concrete base pulled out of the ground. In addition the cemetery green cable gate was pulled out, its hook straightened by the force and its post bent over and loose in the ground. In addition the cemetery wooden gate was open and the rope stolen. Officer Kim arrived and took a police report on criminal property damage. Dan Briggs drove in while the police report was being taken. Dan, who was just starting employment as McCloskey's ranch manager, said if this is the kind of thing that's going on then he would not work for McCloskey. In Dan's words "I will not work for thugs." Dan said he would ask around and if this was done by his people he would come by and fix it. Shortly thereafter the post for the gray cable was re-concreted into the ground.

Peter Waldau telephones Dan Briggs 10:30 A.M. 4-22-99

Dan Briggs - I concreted the post back into the ground.

Peter Waldau - What's the name of the guy who did it?

D.B. - It was Kelsey or Dave.

P.W. - What is Kelsey's last name?

D.B. - Well I don't think Kelsey did it, I think Dave's the one who did it.

P.W. - What's Dave's last name?

D.B. - I don't know Dave's last name, I'd have to look it up..... He just hit it and it went down...

CITATION 7 CONTINUED

At approximately 2:15 P.M. 4-22-99 Dan Briggs meets with Peter Waldau and Bob Layer who is being sued over the easement. Again the gate damage is discussed.

D.B. - I know I asked somebody and it was one of our guys.

P.W. - You said it was done by David or Kelsey.

D.B. - One of our guys I said.

I have to be careful - I don't want to be in court.

Dan Briggs encourages dialog with Tom McCloskey to seek resolution:

D.B. - So sometimes when you get those people and they really feel that you're really not trying to get money from them just because they've got money, and you're really not trying to get nothing for nothing. Sometimes I've seen these people be human. And it's really easy over the phone not to be.

..Or to have another young guy go "Tom I'll take care of that for ya." "Hey Dan go ahead and knock down that G---" (Briggs cuts off sharply) Or you know or whatever. I'm making these things up. You know what I'm saying... You get them in person and magic happens, it does. So let me ask him [Tom McCloskey] these questions.

Dan Briggs discusses gating and posting of traditional public trails on Moloaa Bay Ranch:

D.B. - It's real easy for these people [Briggs' employers] I noticed to say "O.K. God damn it. Forget it. Anybody down there is trespassing." That's what I noticed and that's not going to work.

Bob Layer - That's not good. That's fire.

D.B. - That's fire. That's not good we don't need that here. Maybe that's the way it's done in the Big City.

As Witness
Bob Layer

CITATION 8

HAWAII STATE DEPARTMENT OF HEALTH
CLEAN AIR BRANCH-KAUAI
3040 Umi St.
Lihue, HI 96766
Telephone: 241-3323/Fax: 241-3566

INVESTIGATION REPORT

INVESTIGATION DATE: 7/16/99 INVESTIGATION TIME: 1010
NAME: Moloaa Bay Ranch TELEPHONE: 828-2095/635-4151
MAILING ADDRESS: P.O. Box 3500-140 Princeville, HI 96722
SITE LOCATION/ADDRESS: TMK: 4-9-11:01 Moloaa, Kauai
PERSON CONTACTED: Dan Briggs TITLE: Ranch Manager

REASON FOR INVESTIGATION: ANNOUNCED () UNANNOUNCED (X)
ROUTINE () COMPLIANCE SCHEDULE ()
PERMIT REQUIREMENT () VARIANCE CONDITION ()
COMPLAINT (X) EXPLAIN: Moloaa Bay Ranch has been burning
for the last 10 days, somewhere near the north end of the
property. They claim they have a DOH permit to burn (received
7/14/99--1315).
OTHER () EXPLAIN:

FINDINGS:
Burning was not occurring at the time of the investigation.
According to Dan Briggs, they did clear and burn mostly pine
needles in preparation for planting naupaka along the edge of the
bluff.

ACTION TAKEN:
Discussed the open burning rules emphasizing that disposal of
greenwaste from land clearing by open burning was not permitted.
Dan Briggs was not aware of this; he thought his DLNR permit
which allowed him to clear the side of the bluff and plant
naupaka also allowed him to burn the debris. He mentioned that
they were done clearing so there will no more burning.]

VIOLATION(S): None witnessed.

CAUSE OF VIOLATION: NA

SEE ATTACHED
BURNING VIOLATIONS
CONTINUE
7/30/99

CITATION 8 CONTINUED

RECOMMENDATION: Issue complaint letter (MOLBAYRH.CL)

REFERRED TO: Lisa Young, Clean Air Branch Monitoring

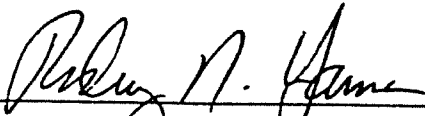
THROUGH: Clyde Takekuma, Chief Sanitarian-Kauai

REASON: Concurrence with and action on recommendation.

FOLLOW UP NEEDED: YES (X) WHEN: Whenever in the area.

NO () WHY:

REPORT DATE: 7/19/99



RODNEY N. YAMA
ENVIRONMENTAL HEALTH SPECIALIST

c: Dr. R. Metler, DHSA-Kauai

July 20, 1999

99-364 CAB

Mr. Dan Briggs
Ranch Manager
Moloaa Bay Ranch
P. O. Box 3500-140
Princeville, Hawaii 96722

Dear Mr. Briggs:

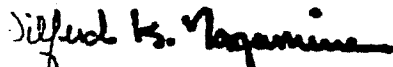
SUBJECT: CONTROL OF OPEN BURNING

This letter is to inform you that the Department of Health, Clean Air Branch, has received a complaint on open burning occurring on Moloaa Bay Ranch property located at TMK: 4-9-11:01, Moloaa, Kauai.

Please be aware that causing or permitting any open burning is a violation pursuant to HAR §11-60.1-52(a). Any substantiated violations of open burning from this site will subject your company to the provisions of HRS §342B and HAR §11-60.1, including penalties not to exceed \$10,000 for each day of each violation observed.

Enclosed is a brochure summarizing the Department of Health rules on open burning. The Police Department will issue citations to persons who are burning illegally. If you have any questions, please contact Mr. Rodney Yama of my staff on Kauai at 241-3323.

Sincerely,



WILFRED K. NAGAMINE
Manager, Clean Air Branch

RY:sw

Enclosure

c: Madeleine Austin, Deputy Attorney General, State of Hawaii

bc: Lisa Young, Supervisor, Monitoring Section

Katherine L. Hendricks, Supervisor, Enforcement Section

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (# Z 452 231 789)

CITATION 10

Molokai Bay Ranch Telephone: 828-2095

Address: Molokai, Kauai

4-9-11:01 Person Contacted: NA Title:

of Inspection: NA Time: Inspected By:

ngs:

Action Taken: Discussed enforcement responsibilities with complainant -- State DOH handles permit violations/investigations. KPD handles open burning complaints - Molokai Bay Ranch not have an open burning permit. referred complaint to KPD. Administrative Rules: Chapter NA Section Follow-up Needed: Yes No

Investigation Requested By: Tel. Bus.: NA

Address: NA Res.: NA

Complaint Received By: R. Yame Date: 7/30/99 Time: 1043

Additional Information: Molokai Bay Ranch has been burning for a couple of weeks. the odor bad last couple of days strong smoke odor last night around



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

AGRICULTURE DEVELOPMENT PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

AUG 23 1999

Ref:PB:SL

File No.:ENF-99-12
DOCARE: KA-99-155

Mr. Clark Lipscomb
P.O. Box 7846
Aspen Colorado 81612

Dear Mr. Lipscomb:

This is to inform you that on August 13, 1999, the Board of Land and Natural Resources found Moloaa Bay Ranch in violation of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes, for failing to obtain the appropriate approvals for tree cutting at Moloaa Bay, Kauai (TMK: 4-9-011:001), subject to the following:

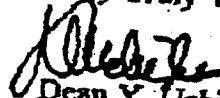
1. That the Board of Land and Natural Resources imposed a fine of \$2,000 pursuant to Chapter 183C, HRS. In addition, that the Board imposed fines to cover all administrative costs totaling \$1,000 (\$800.00 DOCARE and \$200.00 Planning Staff);
2. That the fine shall be paid within thirty (30) days of the date of the Board's action;
3. That the Division of Conservation and Resources Enforcement (DOCARE) conduct a detailed investigation of the Moloaa Bay Ranch property and forward its findings to the Land Division Planning Branch. If additional unauthorized work is documented, the Board may impose additional fines and administrative costs; and

4. That in the event of failure of the alleged to comply with items 1 and 2, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Please acknowledge receipt of this letter, with the above noted conditions, in the space provided below. Please sign two copies, retain one, and return the other within thirty (30) days with the fine amount of \$3,000.00.

Should you have any questions on any of these matters, please feel free to contact Sam Lemmo of our Planning Branch staff at 587-0381.

Very Truly Yours,



Dean Y. Uchida, Administrator
Land Division

Receipt acknowledged

Signature

Date

cc: Kauai Board Member
Kauai Land Agent
DOCARE (Kauai)
Kauai County Planning Dept.
Lorna Nishimitsu



Number: _____ Date: 8/2/99 Time: 11:55 a.m.
 Rec'd. by: ROD YAMA
 Complainant: _____ Phone: _____
 Address: _____
 Street Name: _____ Est. or Permit #: _____
 Location of Complaint: _____ SANDIST: _____
MOLOAA BAY RANCH (MBR) TMR: (4) 4-9-11:1

Character of Complaint:
"LARGE SCALE" COMPOSTING ACTIVITY AT MOLOAA BAY RANCH BY
FREEMAN (ECO-LOGIC EFFECTS USED TO BE FREEMAN'S COMPANY). IMPO
MANURE FROM MEADOW GOLD DAIRY AND GREENWASTE FROM WHEREEVER.

Responsible person(s):
DAN BRIGGS, MANAGER (808) 635-4151
 Address: P.O. BOX 3500-140, PRINCEVILLE HI 96722 Phone: (808) 826-136
 Violation of Rules or HRS:

Persons interviewed: MALCOLM LEE, MEADOW GOLD DAIRY (808) 822-98
DAN BRIGGS, MBR MANAGER; GREG KINGSLEY, MBR PROJ. MGR (635-
 Findings and action taken: _____
 (Additional space on back)

Investigated Date / Time	Findings and Action
8-02 / 3:05 pm	CALLED MALCOLM LEE TO INQUIRE ABOUT ANY MANURE BEING USED FROM MEADOW GOLD OPERATIONS. HE STATED THAT MOST OF THE RECOVERED SOLIDS WERE USED AS BEDDING MATERIAL IN THEIR PASTURES. LIMITED AMOUNTS ARE GIVEN TO LOCAL ORGANIC FARMER OR BACKYARD GROWERS. WHEN ASKED IF ANY WERE GIVEN TO LARGE SCALE COMPOSTING OPERATIONS, HE STATED THAT MARK FREEMAN HAD ASKED FOR SOME BUT THERE USUALLY IS NOT ENOUGH TO GO AROUND.

Site abated: _____ Sanitarian: _____ RS#: _____ Sandistrict _____

CITATION 12 CONTINUED

HE CHECKED HIS RECORDS AND FOUND THAT FREEMAN

Y900

PICKED UP 2 TRUCKLOADS (ABOUT 30 CU. YDS.) ON 6/23

-02/3:30 p.m. CALLED DAN BRIGGS TO SET UP AN APPOINTMENT FOR A

VISIT. ARRANGEMENTS WERE MADE TO MEET WITH GREG

KINGSLEY SINCE BRIGGS WOULD BE OFF-ISLAND.

-03/12:45 p.m. MET WITH GREG KINGSLEY WHO LED ME TO THE SITE OF

THE COMPOSTING OPERATION. THE COMPOST PILES WERE

IN TWO SEPARATE HEAPS (SEE ATTACHED SKETCH). THERE

WAS NO NOTICEABLE ODORS BUT NO RECENT ACTIVITY WAS

NOTED (TURNING). THE COMPOST MATERIAL WAS MOSTLY

SOIL WITH SOME WOOD CHIPPINGS MIXED IN. KINGSLEY

STATED THAT THE SOIL IS FROM THE PROPERTY AND WOOD

CHIPS BROUGHT IN FROM MARK FREEMAN. HE FURTHER

ADDED THAT THEY HAD BROUGHT IN SOME SOLIDS FROM

MEADOW GOLD DAIRY ABOUT 2 MONTHS AGO AND MIXED

IT INTO THE COMPOST PILES. HE APPROXIMATED THE SOIL

FROM MEADOW GOLD REPRESENT LESS THAN 1% OF THE

PILES. THE INTENDED PURPOSE OF THE COMPOSTED MATER

IS FOR APPLICATION OVER AREAS BEING CLEARED FOR A

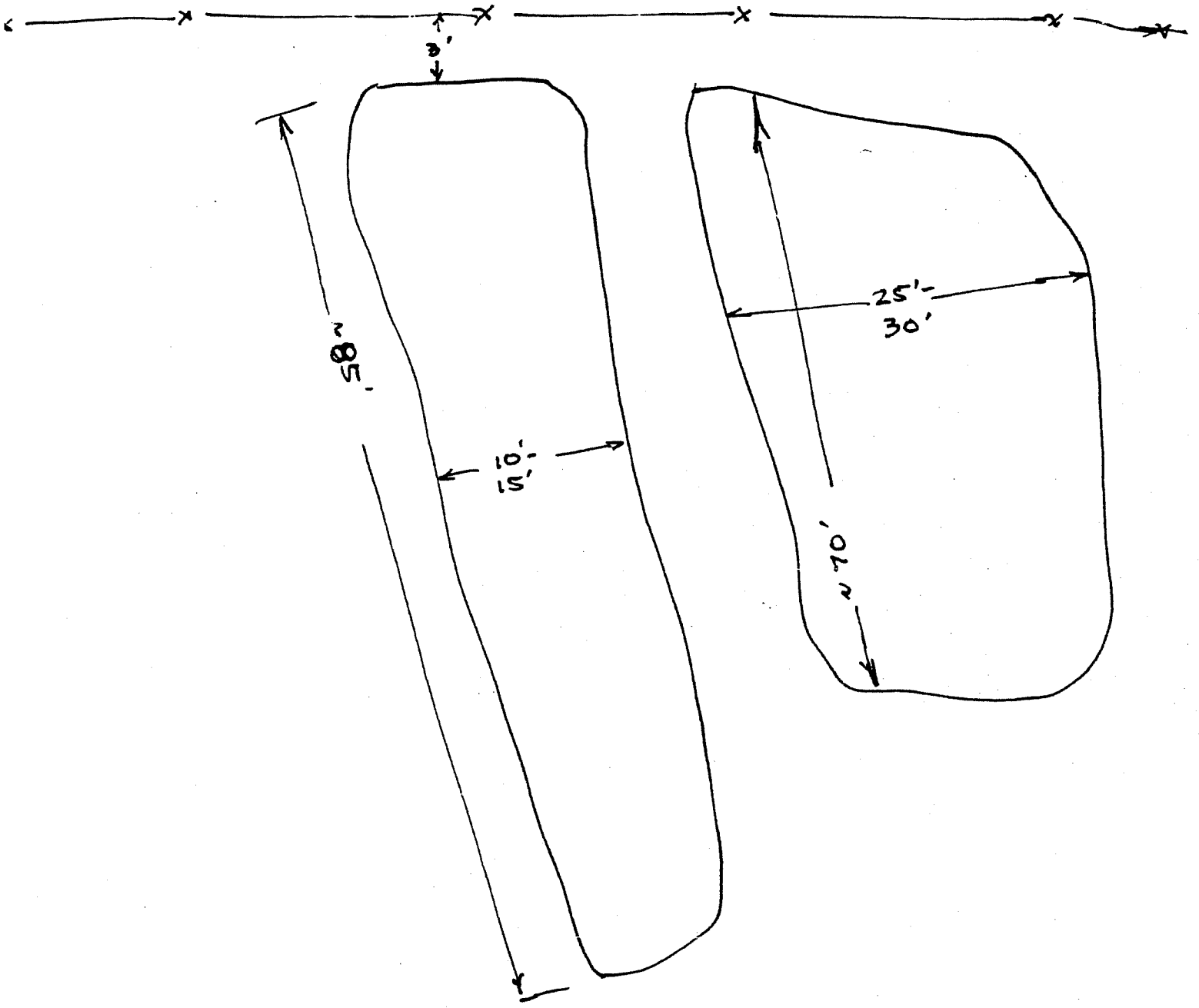
CITRUS ORCHARD. THERE IS NO INTENTION OF USING TH

MATERIAL OFF OF LBR.

INVESTIGATOR: JOE TATEYAMA, WWB

ACTION: FORWARD TO EDGAR SALIRE, OSWM

CITATION 12 CONTINUED



CITATION 12 CONTINUED

November 1999 - Photo shows compost pile not moved despite MBR claims to the contrary.



CITATION 13



MARYANNE W. KUSAKA
MAYOR

DAVID K. SPROAT
FIRE CHIEF

COUNTY OF KAUAI

FIRE DEPARTMENT
MO'IKEHA BUILDING
4444 RICE STREET, SUITE 295
LIHU'E, KAUAI, HAWAII

August 24, 1999

Debbie Forester
P. O. Box 867
Kilauea, Hawaii 96754

Dear Debbie:

RE: Fire Code Requirements for the Storage and Dispensing of Flammable and Combustible Liquids on Farms and Construction Sites

With regards to your question of the fueling operations of your neighbor, a summation of the fire code requirements are rendered, following our site inspection on August 23, 1999.

- !! The temporary installation of fuel tanks at Construction Sites or on Farms requires that owners/operators apply for and obtain a Tank Installation Permit as issued, reviewed, and approved by the Fire Department.
- !! Storage areas shall be kept free of weeds and extraneous combustible material. Open flames and smoking are prohibited in flammable or combustible storage areas.
- !! Tanks and containers for the storage of liquids aboveground shall be conspicuously marked with the name of the product they contain and: **"FLAMMABLE -- KEEP FIRE AND FLAME AWAY"**. Tanks shall bear the additional marking: **"KEEP 50 FEET AWAY FROM BUILDINGS"**.
- !! Fill openings shall be equipped with a locking closure device. Fill openings shall be separated from vent openings.
- !! Tanks shall be provided with a method of normal and emergency venting. Vents are sized according to the individual capacity of tanks. Emergency vents shall be arranged to discharge in a manner which prevents overheating or flame impingement on any part of the tank in the event vapors from such vents are ignited.

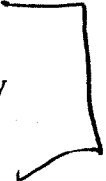
SEE P2 →

CITATION 13 CONTINUED

- !! Tanks containing Class I or II liquids shall be kept outside and located at least 50 feet from buildings and combustible storage. Additional distance shall be provided when necessary to ensure that vehicles, equipment and containers being filled directly from such tanks will not be less than 50 feet from buildings or other combustible storage.
- !! Tanks shall be provided with top openings only or shall be elevated for gravity discharge.
- !! Tanks with a connection in the bottom or the end for gravity dispensing liquids shall be mounted and equipped as follows:
 - Supports to elevate the tank shall be of adequate strength and designed to provide stability.
 - Bottom or end openings for gravity discharge shall be equipped with a valve located adjacent to the tank shell which will close automatically in the event of fire through the operation of an effective heat-actuated releasing device. If this valve cannot be operated manually, it shall be supplemented by a second manually operated valve. The gravity discharge outlet shall be provided with an approved hose equipped with a self-closing valve at the discharge end of a type that can be padlocked to its hanger.
- !! Outdoor storage areas shall be provided with drainage control or diking as follows:
 - The area surrounding a tank or group of tanks shall be provided with drainage control or shall be diked to prevent accidental discharge of liquid from endangering adjacent tanks, adjoining property or reaching waterways.
 - Drainage control and diking is not required for listed tanks constructed with an integral method of secondary containment.
 - Drainage control and diking is not required for the temporary installation of tanks at construction site.
- !! ***Recommend: The tank(s) operator shall have available a supply of approved absorbent materials to immediately contain and control accidental fuel spills and releases.***
- !! A portable fire extinguisher with a minimum rating of 4A:60B:C shall be provided at the fueling site.
- !! A permanent tank site shall require the installation of listed and approved protected aboveground tank equipment assemblies.

* * *

In summary, the installation in question appears not to have a Permit to Operate, is located too near to your property line and thus the combustible vegetation, and is not properly



CITATION 13 CONTINUED

placarded. A site inspection would be necessary to ascertain its compliance with other applicable requirements.

The compost pile shall be kept a minimum of 25 feet distance from property lines and be maintained at a maximum height of 4 feet. Our recommendation to commercial compost operations are to keep their piles long and low (4 feet or less) rather than wide and high. This recommendation minimizes a potential of spontaneous ignition in the pile and minimizes the impact of fire spreading to other piles or nearby wildlands from wind-blown embers and radiated heat if the pile does ignite. The compost heap (combustible material) shall be kept a minimum distance of 50 feet from dispensing operations at the fuel site.

The requirements as listed shall be forwarded to your neighbor and we will work with him to attain satisfactory compliance.

Call if you have further inquiry and comment.

Sincerely,



Mike Kano, Captain
Fire Prevention Bureau
TEL: (808) 241-6511

The Barrier Island

8-27-99 CADWELL

Dispute over Moloa'a road goes to court

By LESTER CHANG
Staff Writer

LHUE — Moloa'a Bay Ranch owners have filed a lawsuit seeking to prohibit neighboring property owners from interfering with the company's use of an easement leading to the ranch.

The lawsuit will go to trial Monday in the Fifth Circuit Court.

Named as defendants are Deborah Forester, Robert Layer and Heidi Brodie, Forester said the outcome of the trial could determine whether large developers will be allowed to forge a larger foothold on the North Shore.

"Many of us don't have the money to buy the legal help, and the legal advice and the backing to fight the big money that is coming in," she said Thursday.

Moloa'a Bay Ranch owns more than 160 acres by the road and has sued Forester to gain full use of the road.

The Ranch has a 10-foot easement

the ranch. Ranch owners charge in the lawsuit that Forester has refused to acknowledge the ranch's right to use the easement.

As a result, the suit alleges, the company's plans for the improvement of their property have been delayed.

The easement, which follows the alignment of most of the road, is tied to a portion of the parcels that were once owned by Olaf Thronas, the lawsuit said.

Forester, a teacher at Keolu Arts and Science Academy, Kilauea, said she and others want the ranch to cease use of the easement.

She said she was part of a deal that bought 23 acres from the Mafua Lucas Estate in 1996. The parcel located near the ranch.

She claims Moloa'a Bay wants to expand the width of the road in front of her 4.3-acre parcel from 1 to 20 feet.

The wider road, she said, will only encourage more development

CITATION 14



DEBORAH FORESTER is one of several Moloa'a property owners being sued by Moloa'a Bay Ranch

CITATION 14 CONTINUED

1
Condominium Property Regimes consisting of five (5) ^{UNITS} ~~acres~~ on the
of Thronas property, four (4) on the ALLOTMENT C and nine (9)
units on ALLOTMENT 1-A. Under the county rules and regulations
regarding roads and subdivisions, MBR, in order to access the
several building sites, would be required to install a road 50'
in width with a paved surface area of at minimum 20', if it were
to have such a subdivision approved.

Further, the Defendant Forester's parcel Unit E is greatly
encumbered by the way as it is now located. The land intended by
Forester to be the pasture for her cow is intersected by this
Easement right through the middle of this pasture. Defendant
Forester has sought to negotiate to relocate the way to the edge
of her property. The Plaintiff MBR initially had agreed to the
relocation but has now insisted on an extended width and use as a
condition for the relocation.

When Forester has sought to explore satisfying the
Plaintiff's demands in order to minimize the impact of the
Easement on her land, she has been rebuffed by the other four (4)
condominium unit owners who insist that there be no expanded use
of this way by MBR.

The Declaration of Condominium Property Regime of the
Defendant Forester provides that in order for any change or
alterations in any of the ways or Easement of property that all
the condominium property owners consent in writing. Forester has
brought a Motion under Rule 19(a) and 21 seeking a joinder of the
condominium owners as indispensable parties in this dispute.

CITATION 14 CONTINUED

In spite of its standstill agreement with Waldau and subsequent protests by Forester, MBR in November 1998 unilaterally proceeded to bulldoze the way through Waldau's and the Defendant Deborah Forester's property. MBR thereby connected the new roadway to their property by taking down the fence and locked gate at the point of the entry to the Thronas property. See Affidavit of Forester.

Subsequently the Plaintiff continued to use the right of way for all purposes of access to its three (3) parcels via use by tractors, cement trucks, semi trailers, bulldozers, all assortments of pick-ups, cars, workers' vehicles and other commercial vehicles. The Defendant Forester has repeatedly objected to and protested this unilateral and unpermitted road work and use by MBR since that time. See Affidavit of Forester.

In the course of this extension of use of its claimed Easement by MBR; valuable bamboo plantings belonging to the Defendant were destroyed; fence posts were knocked out; cattle gates were bent; the sides of the way were made muddy and impassible; and the way has been expanded to 19' up to 43' in some places. See Affidavit of Forester.

Subsequent attempts to resolve this dispute short of litigation involved several sessions of negotiations. During the course of these negotiations the Plaintiff acknowledged that it was seeking to use this way for access to all three (3) of its parcels which were being dedicated to three (3) separate

CITATION 15

June - July 1999 - MBR clears trees from north end of conservation zone.

August 1999 - DLNR cites and fines MBR for clearing trees from conservation zone (see attached). Trees still uncut at south end of conservation zone:



September 1999 - Quads are creating trail over prime turtle nesting sites:



CITATION 16

September 1999 - MBR employees applying herbicide in conservation zone to sprouting tree stumps (note erosion):



Another Hunter Creek for McCloskeys?

■ Hawaiian agency studies status of trail

By Scott Condon
Aspen Times Staff Writer

Editor's note: This is the second of a two-part series.

When Tom and Bonnie McCloskey tried to close access to public lands on the north side of Hunter Creek in May 1987, they became — unfairly or not — a symbol of what many people hated about "the new

Aspen."

Legal issues aside, they were widely perceived as breaking a sacred code of a mountain town — shutting off locals from an historic access to the backcountry for their personal gain.

The McCloskeys were willing to risk being ostracized to wage a 10-year legal war over closure of the north access. Ultimately they lost both the court battle and the respect of many Aspenites.

The hard lessons they learned in Aspen might be affecting their actions on the

Hawaiian island of Kauai.

As in Aspen, the McCloskeys sparked the concern of some locals when they bought a 164-acre ranch that was crossed by an historic trail. That trail leaves the public Moloa'a Bay Beach, climbs onto the McCloskeys' property, where it goes to a point, then falls back down to the shoreline, according to a source familiar with the route.

Tom and Bonnie McCloskey are preparing to build a vacation home on the parcel that includes that trail. A gazebo is pro-

posed close to a scenic point that the trail leads to, said the source, who is familiar with the development plan.

Separate from the foot-trail issue, the McCloskeys have sued a neighbor who doesn't want to let them use a road on his land to access their property. The road issue is in court. The trail issue isn't.

Right to use trail

Tom McCloskey and the general manager of his ranch, Clark Lipscomb, insist
■ See McCloskeys on page 19-A

McCloskeys

■ continued from page 1-A

in interviews with The Aspen Times that they have never closed access on the pedestrian trail.

"That trail is available to the public," said McCloskey before quickly correcting himself. "That's not true. It's available to the people who have the right to use it."

By McCloskey's definition, the people who have "the right to use it" include a handful of people who own property adjacent to Moloa'a Beach as well as native Hawaiians.

However, his ranch workers aren't stopping trail users to check their heritage, he said. For all practical purposes, the public can use the trail. Legally, the public probably cannot, according to McCloskey.

There were enough concerns over the trail's status that a citizens' advisory board took a "fact-finding" walk on it in April 1999, according to a participant who didn't want to be named.

Members of the EarthJustice Legal Defense Fund, formerly known as the Sierra Club Legal Defense Fund, participated in that fact-finding excursion.

The findings are scheduled to be discussed this week at a meeting of Na Ala Hehe, a state trail agency that's affiliated with Hawaii's Department of Land and Natural Resources.

Issues more cut and dried

The clarity of Hawaiian law and quick investigation by public agencies might prevent the

Moloa'a Beach trail issue from becoming as cloudy as the north Hunter Creek trail fight.

In Aspen, the McCloskeys shut access on the north trail and built their house virtually on top of it before before Pitkin County government or citizens could react. The McCloskeys and their workers — including Greg Kingsley, who now is the ranch manager in Kauai — regularly harangued any-

ty.

McCloskey has interpreted the law to mean he can close the trail to non-natives. Other observers claim that is an inaccurate interpretation.

"Will McCloskey try to limit the trail as 'Hawaiian-only?'" a source asked. "Will McCloskey try to push the trail from its existing location on his plateau onto a steep cliff area below?"

In the Hunter Creek north trail dispute, the McCloskeys and their allies eventually capitulated to a handful of private property owners that were battling them. The McCloskeys granted permanent access on the trail to those adverse landowners, but continued to try to block public access, arguing that would really be best for the pristine Hunter Creek Valley.

They lost the litigation 18 months ago, but a judge's decision is still needed on the width and location of the public easement. The McCloskeys want the trail located away from their house.

McCloskey doesn't want replay

McCloskey dismissed suggestions that the Kauai and Aspen trail issues are similar. For one thing, access has never been closed in Hawaii, he said.

"We have never done anything" to prevent use, he said. No trespassing signs have been posted to keep people off his land, but not off the trail, McCloskey added.

Lipscomb said any suggestion that access has been restricted — to anyone — "is simply not true."

"It is being used by the public, but it is a private trail," said Lipscomb. "We're allowing use of a private trail."

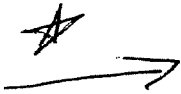
"It is being used by the public, but it is a private trail. We're allowing use of a private trail."

- Clark Lipscomb, ranch manager for McCloskeys

one who tried to use the north trail during much of the dispute.

Conflicting claims about whether the county abandoned an old toll road also doomed the issue to years of legal wrangling.

The status of the trail on the McCloskeys' Moloa'a Bay Ranch (they dropped the apostrophe in their spelling) appears more clear cut. There are PASH laws — Public Access Shoreline Hawaii — which dictate what landowners can do with trails on their proper-



Developer ordered to stop work on stream

By **LESTER CHANG**
TGI Staff Writer

MOLOA'A — The state Department of Land and Natural Resources and Kaua'i County have ordered land developer Tom McCloskey to suspend work on an unpermitted revetment wall along Moloa'a Stream.

McCloskey apparently authorized the work, including grubbing of the stream, to prevent erosion of the stream that runs through a 2.2-acre parcel he owns near Moloa'a Bay.

Last Friday, Department of Land and Natural Resources law enforcement officers issued a cease and desist order and halted the work.

DLNR officials claimed the work could affect the quality of the water that empties into Moloa'a Bay.

The county has cited McCloskey for grubbing the stream and putting four truckloads of rocks along the stream without first obtaining a Special Management Area use permit, said county official Leslie Milnes, who visited the worksite on Friday.

"They are in an area called the SMA," said Milnes, the county's Coastal Zone Management inspector. "They graded, grubbed and placed some boulders there. It is considered development in the SMA."

McCloskey could face fines of up to \$10,000 if the county takes him to court, Milnes said.

In the meantime, McCloskey has complied with county requests to remove the rocks and to obtain an after-the-fact SMA permit.

On Saturday, Sunday and Monday, McCloskey's work crew removed the rocks and placed them elsewhere on McCloskey's property, Milnes said.

Workers also revegetated parts of the stream area.

It could take six months to year for McCloskey to obtain the permit, if he meets permit conditions, Milnes said.

If the project costs more than



TAKANO NONAKA, 95, gets emotional after meeting U.S. Senator Daniel Inouye who consent chair for the Lawa'i International Center organization working to restore the 88 temples site in La by about 50 supporters as well as Boy Scouts from Troop 83 who recently helped with site clean up to conduct the Native Hawaiian Health hearings at the KCC Dining Room and met with th ings.

Kaua'i leads state in infant

By **PAUL C. CURTIS**
TGI Business Editor

New program aims to reduce risk

LIHU'E — Kaua'i has the state's highest percentages of infant deaths and infants born with diseases.

In addition, over 20 percent of Kaua'i mothers don't get prenatal care, or seek it late in their pregnancies.

To address these sobering statistics, state officials and community leaders have mount-

The percentage of low-birth-weight babies (under 5.5 pounds) on the island in 1997 (the last full year's statistics available) was around 7 percent, and the percentage of teen mothers (ages 18 and under) was even less than that, according to state Department of Health statistics.

"A lot of people, pediatri-

come to prenatal care it's almost like too late — they're almost giving birth," said Roy Nishida, Gov. Ben Cayetano's liaison on Kaua'i.

A \$350,000 anonymous donation is fueling the Malama Kaua'i program. "Malama" means "to care for" in the Hawaiian language.

"It's a prenatal, infant-care

Continued from Page 1-A

\$125,000, the county Planning Commission will hold a public hearing on the work, Milnes said.

Before work can resume, McCloskey also needs to have the project approved by other government agencies, including the Army Corp. of Engineers, DLNR and the county's Public Works Department.

Concerned Hawaiian burials on McCloskey's land might be affected by the work, Nancy McMahon of the DLNR's Historic Preservation Division also inspected the worksite, Milnes said. Because the burials are located away from the work, they weren't disturbed, he said.

Milnes said the work started about 1 1/2 weeks ago and was done with an excavator with a bucket.

McCloskey didn't need county approval as long as his work crews

just cleaned the stream, Milnes said.

"That was just general maintenance, but when they went beyond that, they needed the SMA."

The *Garden Island* contacted Greg Kingsley, a representative for McCloskey, by telephone last night. Kingsley said he would only make comment in a written response. At press time, there was no response.

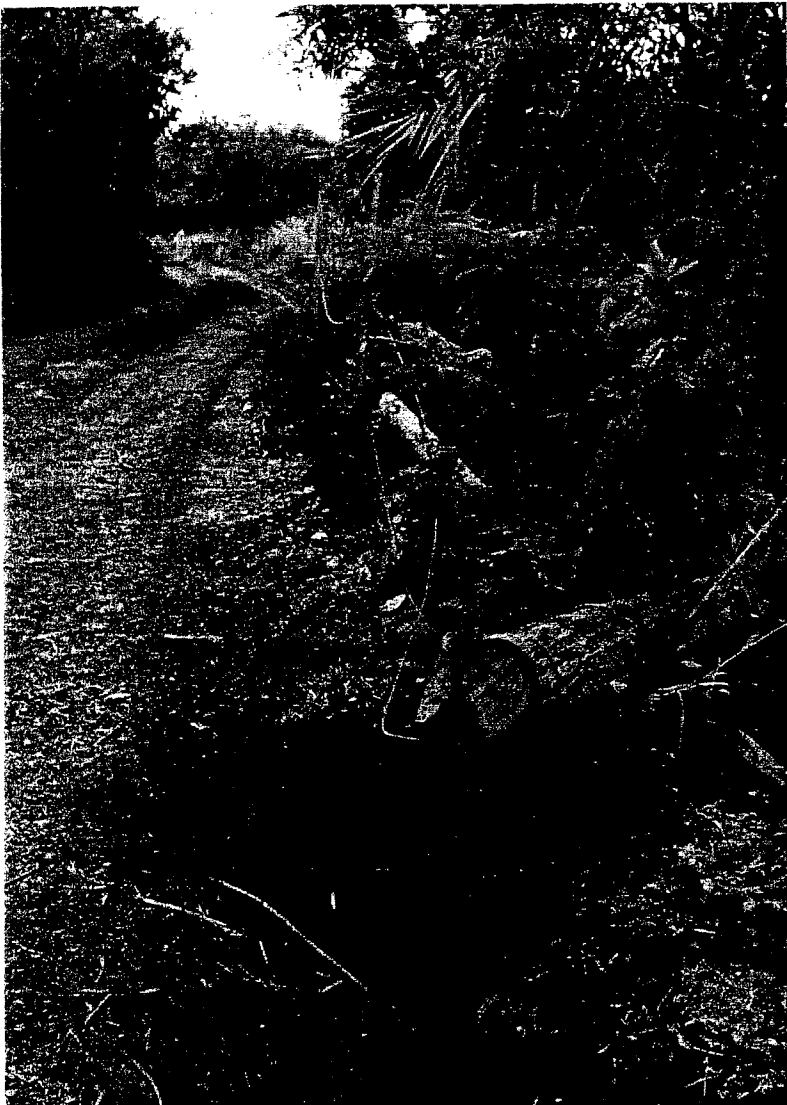
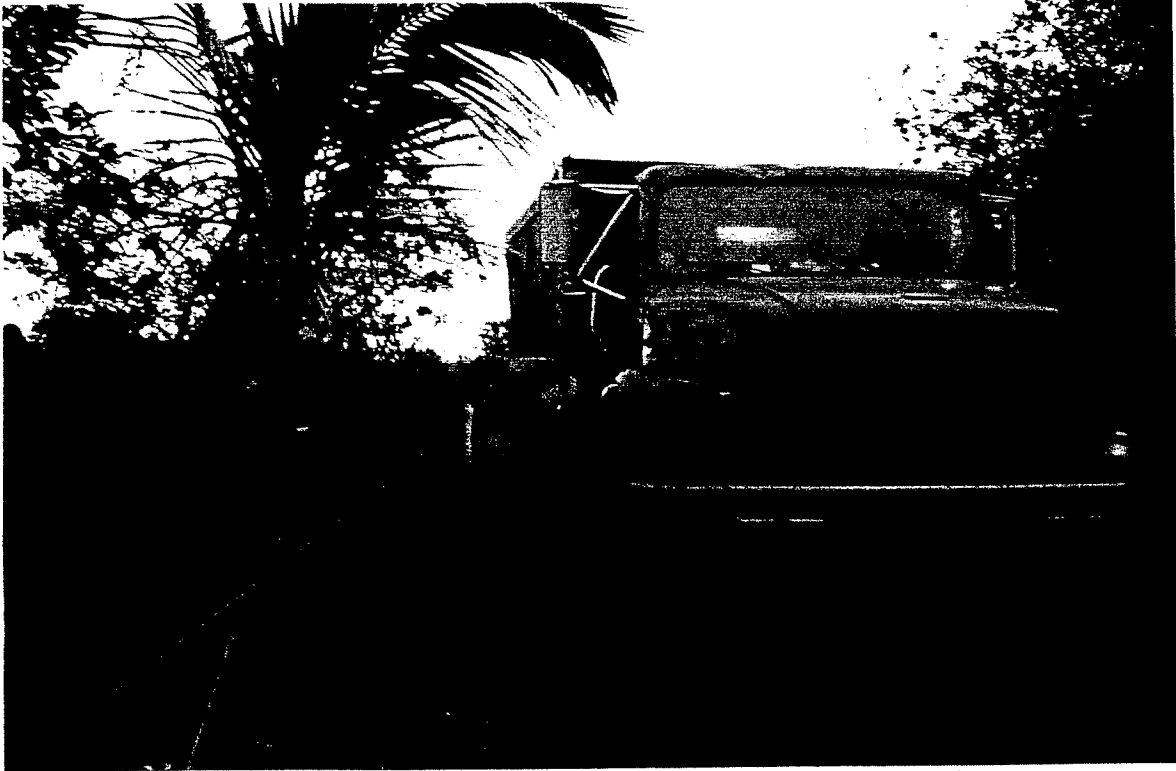
McCloskey has ownership in Moloa'a Bay Ranch, which is located near the project site.

The company has gone to court to protect and expand an easement from Larsen's Beach Road to the ranch. Smaller neighboring landowners have complained court action favoring Moloa'a Bay Ranch would encourage more urbanization of the North Shore and foil efforts to protect agricultural lands in the area.

CITATION 19

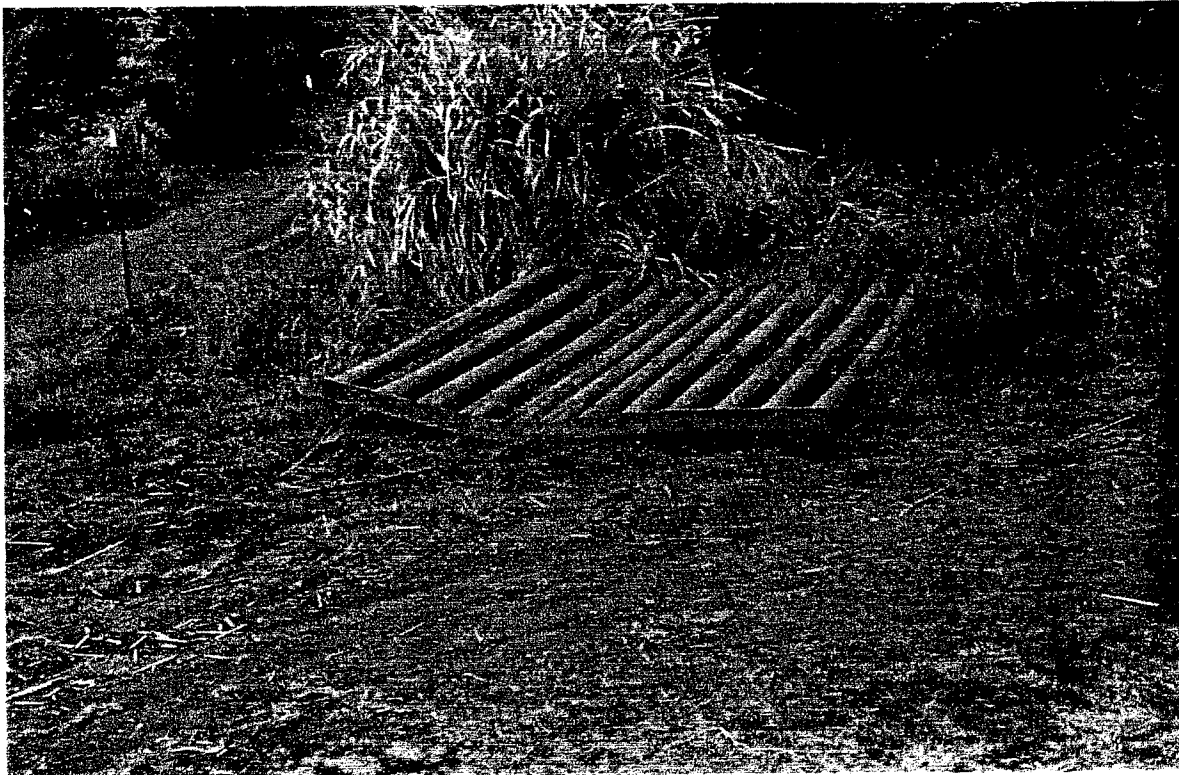
by fenceline.

Moloaa Ranch truck - tight squeeze



Later - fenceline down.

CITATION 19 CONTINUED : Moloaa truck bends cattle guard,
blocking access to Forester's home.
Cattle guard shown here removed to side during repair by
Forester.



Access to cemetery - a muddy mire.





Damage in photos shown in prior 4 pages did not result in KPD reports.

Other incidents that appeared intentional are described in KPD report #s:

99-14168

99-22745

99-17337

99-19921

99-4680

00-04140

00-29189

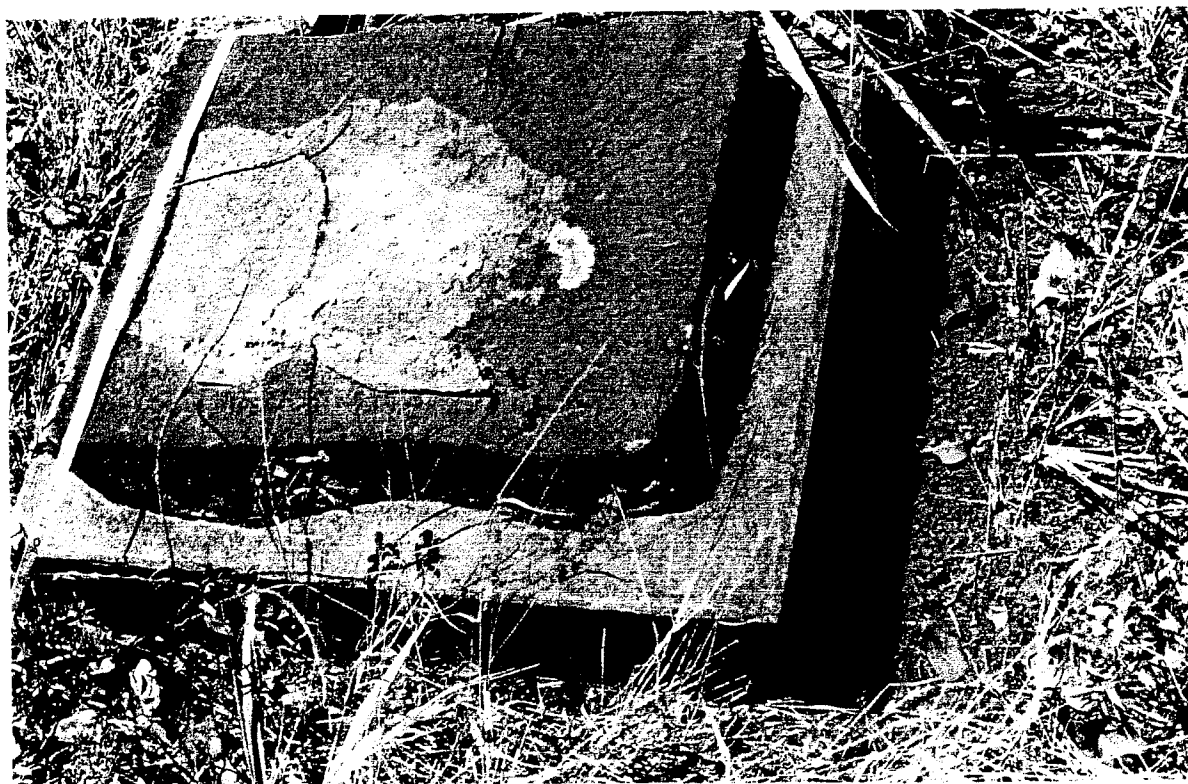
01-1451

01-22880

ALL UNSOLVED

CITATION 19 CONTINUED

Cemetery headstone hit.



CITATION 20

FEB 17 2000

COMPLAINANT
Waldau, Peter

DATE OF OCCURRENCE
10/22/99

REPORT NO.
99-22745

ADDRESS
Kilauea, Hi.

CLASSIFICATION
Miscellaneous Public

DISTRICT
5

FOLLOWUP: On 02/17/2000 the undersigned was contacted by a complainant regarding the damaging and tampering with signage on his property. He related that Prosecuting Attorney Derrick Chan concluded that the Prosecuting Attorney's Office was not going to seek prosecution regarding his complaint. This incident was originally reported as Criminal Property Damage but reclassified by Officer Michael Apilado to Miscellaneous Public.

Complainant was dissatisfied because Officer Apilado had determined that the incident was unintentional and he feels that involved party damaged the signs intentionally. He asked me why was one of the signs turned around if it was unintentional. I informed him that I would speak to Officer Apilado about his inquiry. Officer Apilado was contacted and related to me that when he investigated the incident, the sign was not turned around. Complainant stated to him that he found the sign turned around. }}

Complainant did approach the undersigned on December 29, 1999, because he was dissatisfied with the investigation. The undersigned did forward a copy of the entire report to Prosecuting Attorney Chan for review. After reviewing the investigation, Prosecuting Attorney Chan made the above mentioned determination.

Disposition: Pending

Harris T. Moriguchi 02/17/00, 1341 hrs.
Harris T. Moriguchi Date/Time



"Private Property No Trespassing" sign facing outward 9-27-99.



"Private Property No Trespassing" sign turned facing the wrong way 10-21-99.



Police cruiser # 775 driving toward Larsen's Beach Road 10-22-99. Note sign turned around.

Print Legibly

CITATION: 2 1

Rec'd. By: ST.
Date: 2/23/2000
Time: 9:00 AM

KAUAI POLICE COMMISSION
Formal Complaint

I, PETER WALDAN

whose residence address is PO. BOX 233 - 7198 KOOLAHA RD, KILAMEA,
and whose mailing address is PO. BOX 233, KILAMEA, HI 96754
and whose bus. phone is 828-0618 and whose resident phone is
SAME, do hereby affirm that the information given by me
is true and correct to the best of my knowledge and belief.

The above-named applicant makes the following complaint against:

DENNIS APILADO 183, of the Kauai Police Department.
Name of Employee(s) Badge No.

The charge is based on the following factual information or
observations:

COMPLAINT: INACCURATE REPORTS

DATE OF OCCURRENCE: 10-21-99 TIME OF OCCURRENCE: BETWEEN 11:30 AM & 5:00 PM

PLACE OF OCCURRENCE: 7198 KOOLAHA RD, KILAMEA

EMPLOYEE WAS: On-Duty X In Uniform ✓ Off-Duty _____

LIST ANY POLICE OFFICER(S) PRESENT: _____
→ THERE WAS ANOTHER OFFICER RESPONDING TO CALL ON 10-22-99
DENNIS APILADO THOUGHT IT MAY HAVE BEEN PHETTE PLACE.

WITNESSES: Please list names, if any, and attach their statement.
THE ~~REPORT~~ REPORTS IN QUESTION ARE A MATTER
OF RECORD.

SYNOPSIS

COMPLAINANT'S STATEMENT

Print Legibly

ON 12-29-99 I SUBMITTED A STATEMENT
AND COVER LETTER TO CAPTAIN MORIGUCHI,

THE STATEMENT COVERED EVENTS OF
10-21-99 AND 10-22-99 WHICH WERE THE
SUBJECT OF OFFICER APILADO'S INVESTIGATION &
REPORT # 99-22745.

MY COVER LETTER TO CAPTAIN MORIGUCHI
OBJECTED TO THE CONCLUSIONS "UNFOUNDED"
& "UNINTENTIONAL".

MY 12-29-99 STATEMENT INCLUDED PHOTOS
SHOWING THE POLICE CRUISER & THE
MANUALLY TURNED AROUND SIGN AT THE
CEMETERY GREEN.

CAPTAIN MORIGUCHI INFORMED ME BY PHONE 2-22-00
THAT OFFICER APILADO IS CLAIMING THIS SIGN WAS NOT
TURNED AROUND.

Peter A. Waldan 2/23/00
Signature Date

Personally appeared before me, Peter A. Waldan
who did make oath that the foregoing information is true and correct.

Jacqueline K. Russell
Notary Public, State of Hawaii
MY Commission Expires: 6-3-2003

Malama Moloa'a Meeting July 2001

Input From Jeff Rivera, Manager for Moloaa Bay Ranch and Soil Consevation Board member:

"Jimmy Pflueger is nuts. He got money, he don't care. He going to pay the fine he figured. So McCloskey, lolo, he listen to him and did the same thing. They got fines, 40 grand. Luckily they brought it down to 25 thouand. He paid 25 thousand for doing these pads. Now he gota redo the pads plus pay Roger Tamaguchi to do the pads wrong ... never roll them or anything. So now he has to pay the fines, go get some more permits - now do it again."

MARYANNE W. KUSAKA
MAYOR



CESAR C. PORTUGAL
COUNTY ENGINEER
TELEPHONE 241-6600

WALLACE G. REZENTES, SR.
ADMINISTRATIVE ASSISTANT

IAN K. COSTA
DEPUTY COUNTY ENGINEER
TELEPHONE 241-6640

AN EQUAL OPPORTUNITY EMPLOYER
COUNTY OF KAUA'I
DEPARTMENT OF PUBLIC WORKS
4444 RICE STREET
MO'IKEHA BUILDING, SUITE 275
LIHU'E, KAUA'I, HAWAII 96766

February 25, 2002

Mr. Greg Osborn
Malama Moloa'a
P.O. Box 655
Kilauea, HI 96754

Dear Mr. Osborn:

SUBJECT: GRADING PERMIT INQUIRY FOR MOLOA'A BAY RANCH
TMK: 4-9-11 PW2.123

This is in response to your letter of February 10, 2002 regarding to your grading permit inquiries for the subject property now owned by Mr. Thomas McCloskey. The following grading permits and after-the-fact grading permit are provided for your information:

<u>Grading Permit No.</u>	<u>Date</u>	<u>Applicant</u>	<u>Tax Map Key</u>	<u>Description</u>
2303/01-949	5/01/01	Max W. Graham	4-9-11-01	After-the-fact Building Pads and Ponds
2304/01-950	5/01/01	Max W. Graham	4-9-11-09	Driveway entrance grading
2305/01-964	5/01/01	Max W. Graham	4-9-11-37	Driveway entrance grading
2306/01-951	5/01/01	Max W. Graham	4-9-11-01	Driveway entrance grading

The erosion control measures for the above grading permits are as follows:

1. Temporary vegetative cover shall be planted immediately after grading is completed with 40 lbs. common rye grass seed per acre, 400 lbs. per acre 10-10-10 or equivalent fertilizer worked into seed beds before planting.
2. Temporary vegetative cover shall be planted within a period of 30 calendar days after the site has been graded or bared of vegetation, or if final grading of the site will be suspended for more than 30 calendar days.

CITATION 23 CONTINUED

Mr. Greg Osborn
February 25, 2002
Page (2)

3. Temporary sprinkler system is to be installed concurrently with all plantings. Planting and maintenance shall conform to the "Hawaii Standard Specifications for Road, Bridge and Public Works Construction , 1994".

Engineering grading plans are required for grading permits where grading is more than one acre or on slopes greater than 20%.

Approval of a grading permit from the Engineering Division goes through a Clearing House process. In this process, grading plans are submitted to the Planning Department for distribution to the various agencies for comments. Our Planning Department is the responsible agency for coordinating and processing of construction plans and permits. If a Clearing House is required, the grading permit is not approved until all comments from the commenting agency is resolved with the grading permit applicant. In regards to grading work in the conservation district, our Planning Department would route the grading plans to the State Department of Land and Natural Resources for comments. The Engineering Division inspectors would monitor the grading work in the Conservation District under the approved grading plans. If grading or grubbing work is on-going within the Conservation District without a grading permit, we expect the State to notify us, as well as cite the owner.

We do have an outstanding grubbing violation on the subject property which may have encroached within the Conservation District Area. Our notice of Grubbing Violation is dated 6/01/01. Although after-the-fact grubbing plans have been developed, we have not been able to approve the after-the-fact grubbing plans due to our Planning Department's SMA permit and the State Department of Land and Natural Resources' CDUA permit requirements. We understand from our Planning Department that Mr. Max Graham's request to grass and irrigate the grubbed areas was granted on January 22, 2002. As of this writing, the grubbing violation has not been resolved, nor have we approved an after-the-fact grubbing permit. Nevertheless, we believe the owner is responsible for providing mitigation measures to control the erosion while we are still reviewing the after-the-fact grubbing plans.

We trust the above responds to your inquiry. Should you have any questions, please feel free to contact Wallace Kudo of my staff at 241-6620.

Very truly yours,


CESAR C. PORTUGAL
County Engineer

wk

cc: Planning Department w/attached Osborn letter
Construction Inspection w/attached Osborn letter

10 February 2002

CITATION 24

Greg Osborn
Malama Moloa'a
POB 655
Kilauea, HI 96754

Ceasar Portugal
County of Kauai
Public Works
4444 Rice Street, Suite 275
Lihue, HI 96766

Dear Mr. Portugal :

We are a local watershed group of Moloa'a neighbors who have become concerned about the problems in the Moloa'a valley. Many questions have been raised about the work in progress on the former Moloa'a Bay Ranch, now owned by Thomas McCloskey. This project is experiencing severe erosion. We are very concerned about the health of our stream and reef and protecting our ocean resources. This project has had many acres of exposed dirt for over half a year.

Can you please tell us what grading permits have been issued for this project? What are the erosion control measures for this project? Would there be an engineering plan available for review? What is the expected completion date? Is there a mandated re-vegetation plan? Who designs and monitors excavation in the Conservation Zone? Have any mitigation measures been implemented?

Thank you very much for your prompt responses.

Sincerely,



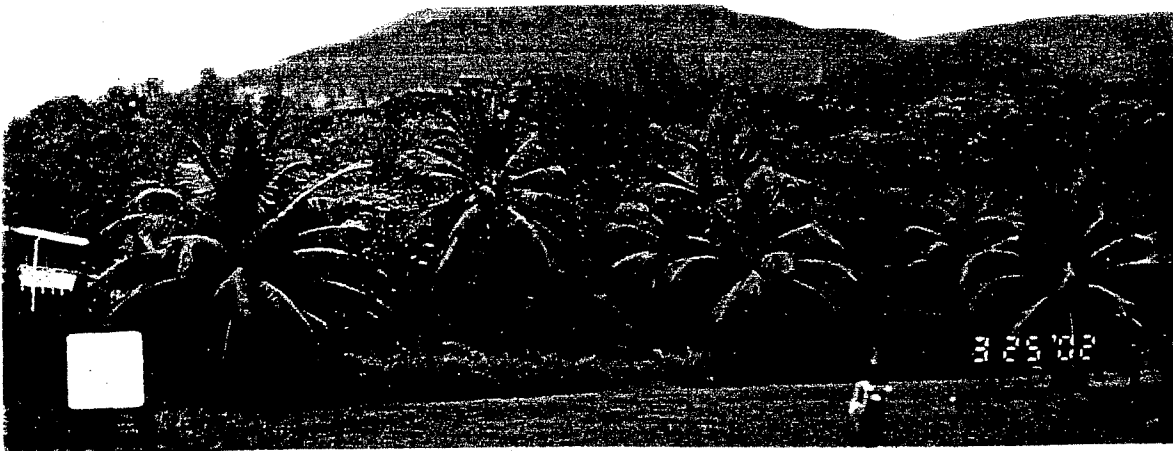
Greg Osborn

Cc: Kauai County Council

CITATION 25

February 2002 - MBR received after-the-fact permits after being fined for creating house pads (see below). Improperly compacted, these house pads were removed and redone.

March 2002 - Heavy rains cause much loss of soil from denuded areas including this housepad:



March 2002 - Moloaa Bay awash in mud after heavy rain:



CITATION 26

June 2002 - The south end of the conservation zone once treed (see August 1999 photo) is now cut and eroding:



28 June 2002

Malama Moloa'a
POB 655
Kilauea, HI 96754
malamamolooa1@hotmail.com

Dean Higuchi
Pacific Islands Contact Office
US EPA, Region 9
POB 50003
Honolulu, HI 96850

Dear Mr. Higuchi:

Thank you very much for your agency's involvement with the Pflueger/Pila'a situation. It's a huge environmental catastrophe, and every rain it gets worse. This has been allowed to perpetuate way too long. We would like to bring your attention to a similar situation nearby in Moloa'a. On the Moloa'a Bay Ranch, a developer, Thomas McCloskey, has cleared over 150 acres without permits, cleared and rerouted a stream, has been cited for SMA and Conservation Zone violations, built ponds and has caused eroding mudflows into the ocean that have destroyed green sea turtle nesting habitat and caused siltation of the reef. Estimates are that the erosion potential could be greater than the damage at Pila'a, it just hasn't happened to that extent yet. Besides green sea turtles, this area is frequented by nene, albatross, shearwaters, hoary bats and an i'o has been recently sited in the area. The beaches between Moloa'a and Pila'a are the best on Kauai for limu collection and are heavily used by native Hawaiians. These resources are precious and not replaceable.

Attached please find some of the background history files on Moloa'a Bay Ranch. Please, when investigating Pila'a, take a look at Moloa'a also. Mahalo.

Sincerely,

Greg Osborn

Attachments

27 June 2002

Malama Molod'a
POB 655
Kilauea, HI 96754

Denis Lau
Branch Chief
Clean Water Branch
919 Ala Moana Blvd.
Honolulu, HI 96814

Dear Mr. Lau:

Several large developments in our area of Kauai have been recently cited for clear cutting trees in the conservation zone and SMA violations. This has caused landslides of thousands of tons of mud into the ocean because of un-engineered, un-permitted grading of hundreds of acres. We are concerned about the health of the reef, and the water quality of the ocean and streams and the County of Kauai's inability to manage and monitor these situations. We are asking for your help monitoring and enforcing grading and soil conservation plans on Pila'a, Molod'a Bay Ranch and Kealia Kai and preventing any further discharge of mud into the ocean. Any help or suggestions would be appreciated.

Sincerely,

Greg Osborn

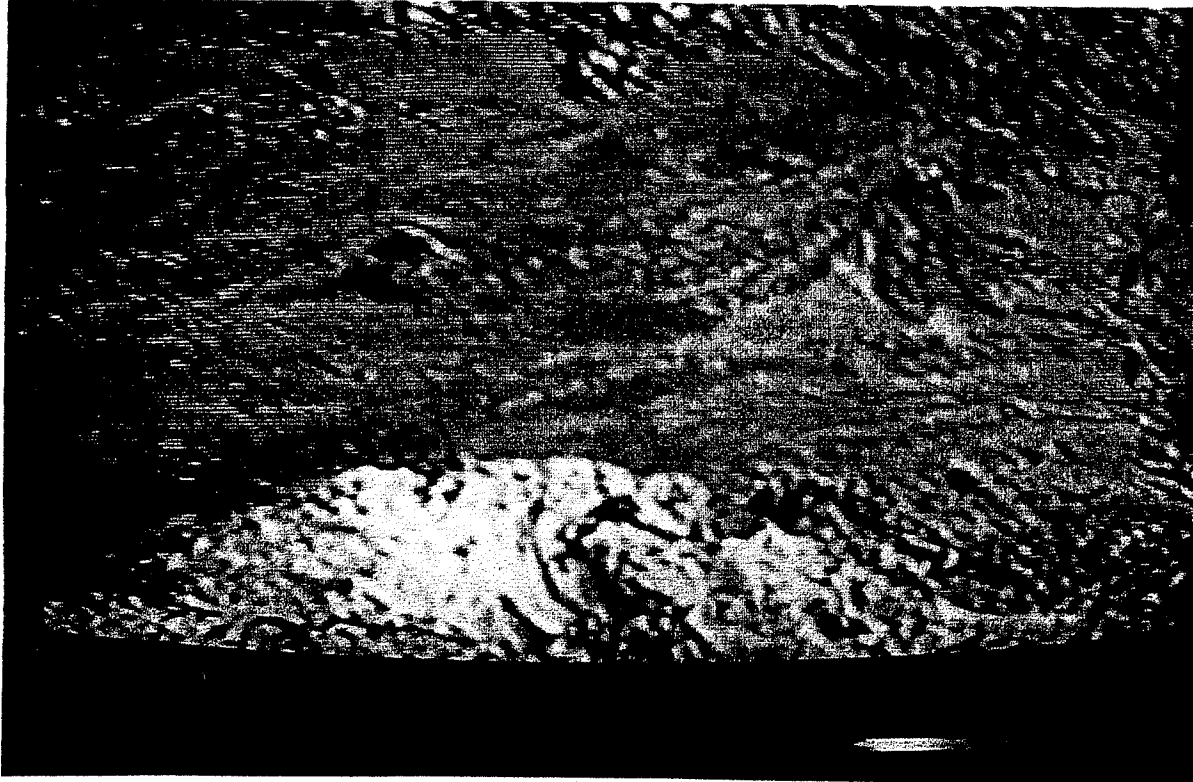
CITATION 29

June 2002 - Turtle nesting sites lost from erosion at south end of MBR conservation zone:



CITATION 30

August 13, 2002 - Video of mud flowing onto beach from MBR erosion.



August 13, 2002 - Video of mud flowing onto beach from MBR erosion.



MARYANNE W. KUSAKA
MAYOR



DEE M. CROWELL
PLANNING DIRECTOR
SHEILAH N. MIYAKE
DEPUTY PLANNING DIRECTOR
TELEPHONE (808) 241-6677
FAX (808) 241-6699

PLANNING DEPARTMENT

June 13, 2002

Sergai Bliss
P.O. Box 202
Kilauea, Kauai HI 96754

SUBJECT: CPR Sheds on TMK: 4-9-11: 1 at Moloaa, Kauai

This letter is in response to your question whether Moloaa Bay Ranch can utilize a ten (10) foot wide easement as driveway access for 22 potential homes, and whether the subject property can qualify for residences due to its distance from a public thoroughfare.

According to Section 8-3.7 (a)(1) of the Comprehensive Zoning Ordinance (CZO), a residence cannot be constructed on a parcel that is in excess of 600 feet traveling distance from a public thoroughfare, or that is in excess of 300 feet traveling distance from vehicular access adequate for service type vehicles. Also, according to Section 8-3.7(a)(2) of the CZO, a common driveway cannot serve more than four dwellings or be in excess of 120 feet in length.

The easement can be utilized for access if it is legally prescribed for the properties. However, its ability to be used as access for the CPR project will depend on whether the applicant is able to meet these CZO requirements or not.

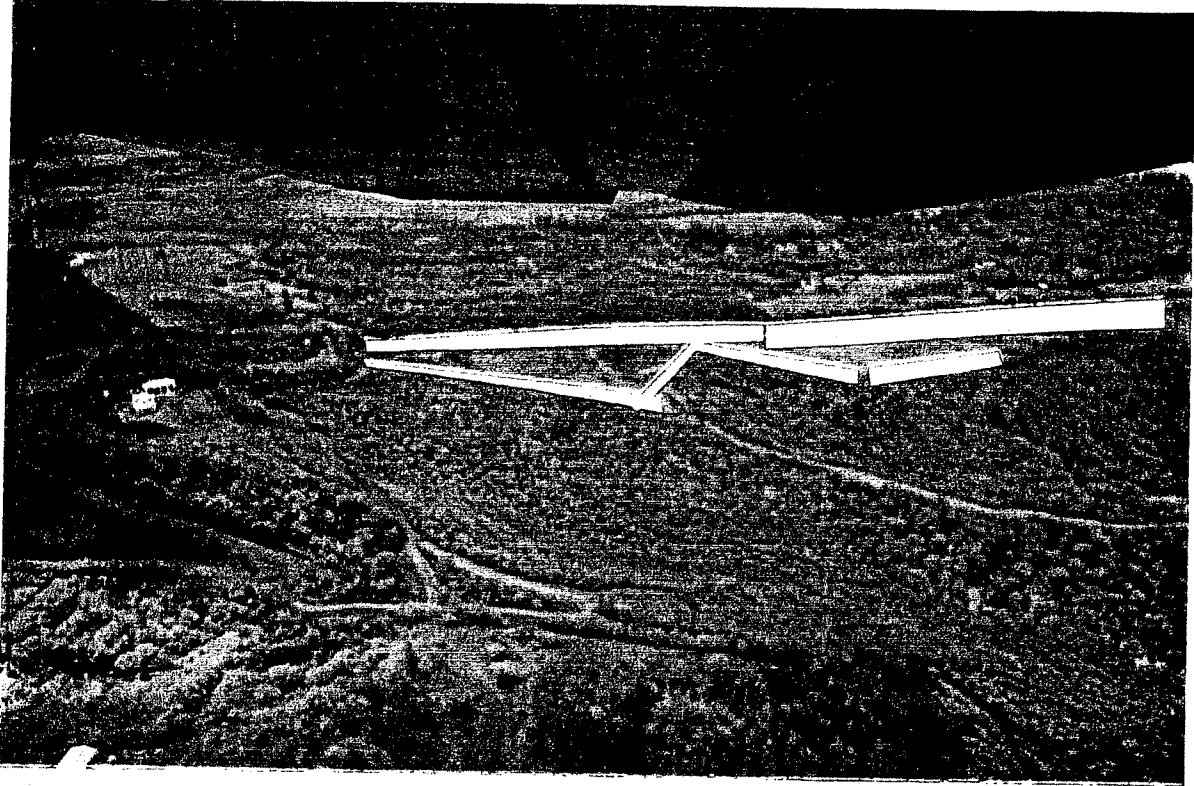
It should be noted that the minimum roadway width for an agricultural roadway is 44 feet, if its length is less than 2,000 feet. However, the minimum roadway width is 56 feet if it exceeds 2,000 feet in length.

Should you have any questions, please contact Keith Nitta of my staff at 241-6677.

A handwritten signature in cursive script, appearing to read "Sheila N. Miyake".

SHEILAH N. MIYAKE
Deputy Planning Director

CITATION 31 CONTINUED



Court Specifies only this "land sold to Olaf Thronas" for "Easement 1" access

House and 4 bay shop/garage constructed on Moloaa Ranch's Allotment C using "Easement 1".

Police did nothing to stop this trespass.

Photo taken August 6, 1999

Clearly visible in foreground is Moloaa Bay Ranch's access directly off the paved hairpin of Koolau Road

4/7/2003 - Mud flows have been diverted away from this residence and onto a neighbor's property (photo)



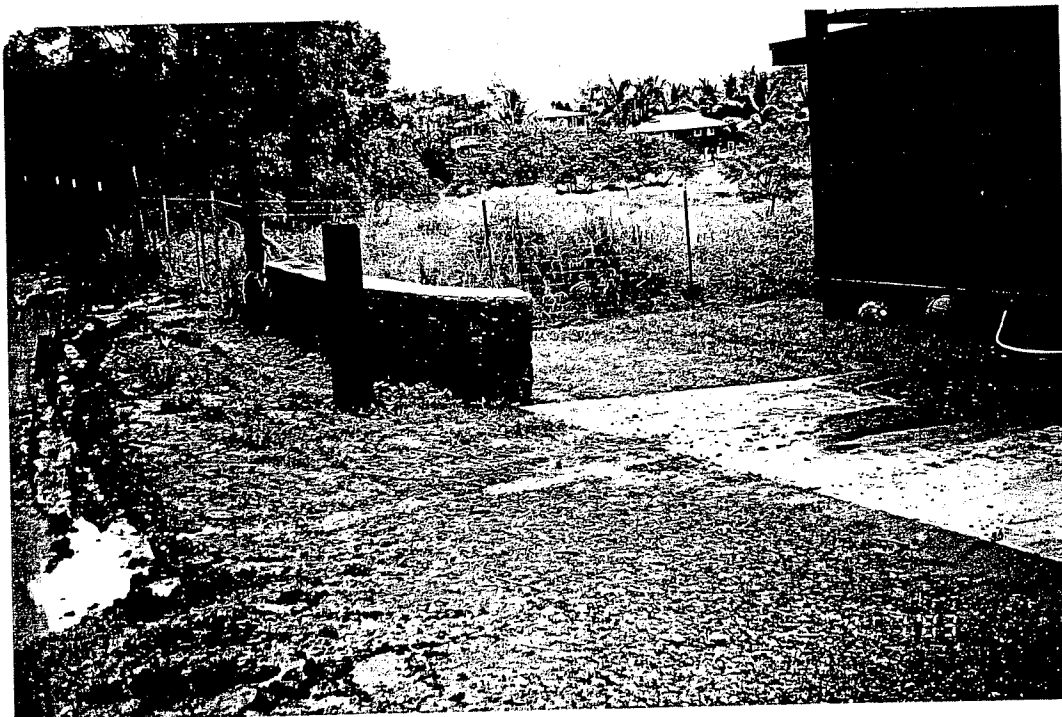
with some residual mud still flowing onto the residence driveway (photo).



making 2 WD passage virtually impossible for the four homes beyond (photo).

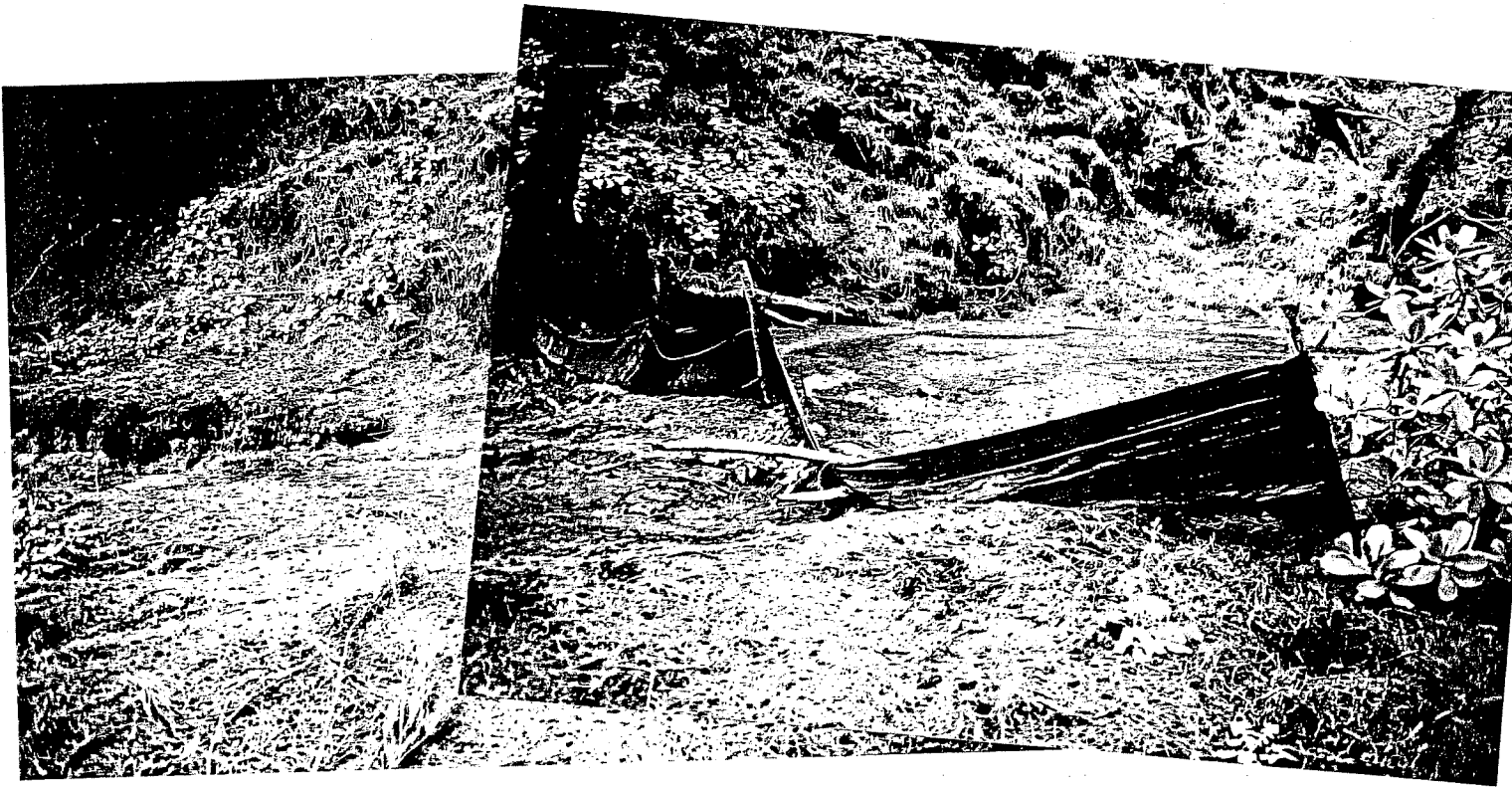


Heavy mud flows inundated this residence in November of 2001 at the time Amy Marvin's was being inundated in Pilaa (photos, map). McCloskey, unlike Pfleuger, reportedly paid the homeowner to vacate. Residence appeared to be still vacated 4/7/2003.



CITATION 33

4/7/2002 - At Moloaa Bay mud flows have breached the last of the MBR silt fences with mud flowing onto the sand (photos).



KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

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E-Mail: kkurahashi@hawaii.nn.com

November 8, 2005

Mr. Greg Osborn
Malama Moloaa
POB 1349
Kilauea, Hawaii 96754

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Mr Osborne:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letter, dated October 7, 2005, to the County of Kauai Planning Commission. The following responds to your comments:

1) *"Public Trail"*

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR's authority to establish the trail.

In an abstract attached to a letter that follows from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

"Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands."

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant's SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant's discussion with staff at Na Ala Hele, the applicant recognizes DLNR, as the successor to the "Commissioner of Public Lands" and DLNR's right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

2) *"Access Easement"*

The applicant does have legal access through this easement and continues to use this easement for access to his existing Moloaa Bay Ranch which includes the area that is the subject of the CDUA and SMA Use permits. A portion of the easement rests on property that has been acquired by the applicant. The remainder of the easement rests on a property (Tax Map Key (4) 4-9-11: 10) whose owner recognized in February 1999 that "his Subject Property is subject to an easement for a right-of-way ten (10) foot wide in favor of land sold to Olaf Thronas as set forth in Partition in Equity no. 85 of the Fifth Circuit Court".

3) *"Liability for Reservoirs"*

The reservoirs constructed on the property have been designed by the applicant's civil engineer and approved by the County. The reservoirs were constructed in accordance with the approved plans. The applicant believes that his civil engineer will be liable if the reservoirs fail.

4) *"Access from Hui Road A"*

Moloaa Hui Road A is clearly defined and does not extend to the shoreline. The applicant will remove an existing gate that replaced an earlier gate across Moloaa Hui Road A (this gate has been kept open). However the second gate that is located on private property beyond the end of Moloaa Hui Road A will remain. Specific access rights to Moloaa Stream for specific neighbors in Moloaa are described on the applicant's deed for the property and will continue to be honored by the applicant.

The applicant provides the following response to your time line:

“March 22, 1993, Maximum house density for Ryan Ranch (TMK4-9-11:1) determined to be 18 houses by the Kauai County Planning Department.¹”

The applicant concurs.

“May 1998 Thomas McCloskey acquires 164 acres of Ryan Ranch.²”

The property was acquired by Moloaa Bay Ranch, LLC, a Colorado limited liability company, whose manager is Mr. Thomas D. McCloskey, Jr.

“June 1998 Clearing work began on Moloa`a Bay Ranch (MBR) without permits.”

Clearing work by Paradise Grounds Care - Bruce Laymon did not start one month after acquisition. It was started fairly quickly though, but only after a permit was received for the grubbing by Bruce Laymon from the County of Kauai. Allotment C, the location of the existing house was inadvertently left out of the grubbing permit, but subsequently addressed after a violation was noted for grubbing outside of the area contained in the permit. However after meeting with Cesar Portugal and Wally Kudo (County Department of Public Works), it was agreed that the land was included in the permit submittal, but had been omitted. To resolve the issue, a fine of \$1,000 was assessed and paid, and a permit was applied for and obtained to cover the area that should have been included in the original permit.

“June 1998 Thomas McCloskey cited for dust violation by state and required to put up protective screening.”

Not true, the applicant was never cited for a dust violation during the clearing at Moloa'a Bay. Complaints were lodged by Debra Forrester, the adjacent neighbor who disputed the legal easement though her property. In order to address her complaint, a dust fence was erected at the property boundary.

“July 17, 1998 Jimmy Pfleuger reported a cattle easement of Deborah Forester's land had been abandoned for over 20 years³, therefore, by law, could not be reopened.”

The applicant does not have knowledge of Jimmy Pfleuger ever reporting a cattle easement being abandoned. The applicant does have legal access through this easement and continues to use this easement for access to his existing Moloaa Bay Ranch which includes the area that is the subject of the CDUA and SMA Use permits. A portion of the easement rests on property that has been acquired by the applicant (Larsen's Beach Road condominium unit E). The remainder of the easement rests on a property (Tax Map Key (4) 4-9-11: 10) whose owner recognized in February 1999 that "his Subject Property is subject to an easement for a right-of-way ten (10) foot wide in favor of land sold to Olaf Thronas as set forth in Partition in Equity no. 85 of the Fifth Circuit Court".

"Nov. 1998 McCloskey's men cleared a 40' swath on Deborah Forester's land with bulldozers while attempting to clear this 10' cattle easement⁴. Local police department were in attendance but did nothing to stop trespass grading."

In order to use the easement area, certain clearing was required to be done, and this primarily involved the removal of tree limbs which encroached into and blocked the easement area. At a turning point in the easement area, the clearing did exceed 10 feet in width, but at no point did it exceed 20 feet. The applicant's manager at the time was on the property when it was being cleared by Mr. Willie Sanchez on a D9 bulldozer. Mr. Ralph Kalalau also participated by walking in front of the bulldozer to assure minimal encroachments occurred. The applicant's manager met with the local police after the clearing was complete. They were not present during the clearing, but were called by Ms. Forester during the clearing process. The police officer was satisfied with the documentation presented by the applicant's manager, noting MBR's legal right to the easement. The applicant has subsequently acquired this property.

"Nov. 17, 1998 Lt Curnan of Hanalei substation Kauai PD, reportedly supervises while workers cut lock to historic Japanese cemetery, allowing entrance by MBR cement truck over private property. Van parked on same private property (not easement) ordered moved or caretaker April Courture would be arrested for Disturbing the Peace⁵."

The applicant was not aware of this event.

“Dec. 2, 1999 Grubbing violation - citation issued by public works.³⁴”

The applicant concurs with the issuance of a notice of violation for grubbing by the Department of Public Works, however, the date was December 2, 1998. This violation was corrected with an after the fact permit that was issued by the Department of Public Works on February 25, 1999.

“March 3, 1999 Two separate gates smashed. Cemetery gate left open with rope missing. KPD files Criminal Property Report⁶. MBR says before witnesses and on tape it was done by one of his guys⁷.”

The applicant was not aware of this event.

“March 1999 - Illegal tree Clearing in Conservation District.”

The applicant concurs. Subsequent to this event, a notice of violation was issued by DLNR. On August 13, 1999 the Board of Land and Natural Resources imposed a fine of \$2,000 and payment of \$1,000 in administrative costs. The fine and administrative costs were paid shortly thereafter.

“April 1999 Kapua Sproat, Linda Sproat and Stanton Pa and others attempted to hike Na Ala Hele trail between Moloa`a and Ka`aka`aniu and were kicked off by someone matching McCloskey's description.”

The applicant was not aware of this event.

“July 1999 Linda Sproat called DLNR to report clearing in the Conservation Zone.”

As mentioned earlier, under the March 3, 1999 response, subsequent to this event (in March), a notice of violation was issued by DLNR. On August 13, 1999 the Board of Land and Natural Resources imposed a fine of \$2,000 and payment of \$1,000 in administrative costs. The fine and administrative costs were paid shortly thereafter.

“July 16, 1999 Investigation filed by clean Air Branch over illegal burning on Moloa`a Bay Ranch⁸.”

“July 20, 1999 MBR notified of possible \$10,000/day penalty for such open burning violations⁹.”

“July 30, 1999 Burning continues. DOH defers action to KPD¹⁰.”

The applicant accepts the documents you have provided as being factual, but the applicant was not aware of the events described therein.

“June/July 1999 Trees cleared from Conservation Zone.”

“August 13, 1999 McCloskey cited and fined by DLNR for unpermitted clear cutting the north end of the Conservation Zone. (South end of Conservation Zone still intact but will be illegally cleared in coming months.)”

As mentioned earlier, under the March 3, 1999 response, subsequent to this event (in March), a notice of violation was issued by DLNR. On August 13, 1999 the Board of Land and Natural Resources imposed a fine of \$2,000 and payment of \$1,000 in administrative costs. The fine and administrative costs were paid shortly thereafter.

“August 2, 1999 DOH Sanitation Division conducts investigation and files report on large MBR manure composting pile 12' high directly across fence and upwind from Debbie Forester's home¹².”

The applicant accepts the report that you have provided. The compost material was primarily soil from the property. The compost product was to be used on the property, an accessory use to the nursery located on the property.

The applicant understands, based on a report from his ranch manager that Mr. Rod Yama from the DOH came out and found no violations.

“August 24, 1999 McCloskey reported for illegal fuel storage, being too close to Forester's property line¹³.”

The applicant understands, based on a report from his ranch manager that staff from the Fire Department came to the site and indicated that with provision of a fire extinguisher there are no violations. A fire extinguisher was purchased and is kept in close proximity to the fuel storage site.

“August 27, 1999 McCloskey sues Deborah Forester over easement¹⁴.”

The easement in favor of the applicant, Moloaa Bay Ranch, LLC, was being blocked by Ms. Forester, the then owner of Larsen's Beach Road

condominium unit E. The applicant attempted to establish its rights to the easement outside of the court system, but to no avail, and was ultimately left with no choice but to bring a legal action in the Circuit Court on Kauai. This step was also required by the terms of the applicant's title insurance policy. The Circuit Court ultimately ruled in a motion for summary judgment that an easement did exist over Ms. Forester's property. After this summary judgment was issued, Deborah Forester negotiated the sale of her land to the applicant.

“August, 1999 Local neighbor children kicked off the Na Ala Hele Trail by Ranch manager on quads.”

The applicant was not aware of this event, but has since instructed his staff not to deny pedestrian access to the trail.

“August, 1999 Leslie Milnes, Kauai Planning Dept. and Conservation Officer received complaint about unpermitted pond construction encroaching into Conservation Zone.”

The existing ponds/reservoirs are not located in the State Conservation District. The reservoirs constructed on the property have been designed by the applicant's civil engineer and approved by the County, through appropriate permit.

“Sept. 1999 McCloskey's quads driving over turtle nesting habitat¹⁵. Workers poisoned resprouts from stumps in the Conservation Zone that McCloskey had been cited for clearing¹⁶.”

Based on discussions with the individual who served as manager in 1999, the applicant was informed that a worker did inadvertently drive over a turtle nesting habitat once, while emptying trash cans that were placed on Moloa'a Beach to help reduce the littering on the beach. After that incident, the trash cans (about 5-6) were relocated so the turtle nesting habitat would not be disturbed. The applicant's donation of these trash cans and the effort to empty them and keep them available for the public's use is part of the applicant's effort to keep Moloa'a Bay and Beach clean.

The maintenance of the existing landscaping on the slopes of Moloaa Bay is a permitted activity in the Conservation District and the Special

Management Area. Part of this maintenance activity is the control of the invasive Ironwood trees (through cutting or poisoning of sprouts) and other weeds on the property.

This Final EA is part of the Conservation District Use application process to allow the further elimination of Ironwood trees and future maintenance activity will continue to control the growth or spread of Ironwood trees.

“Sept. 1999 Grubbing Violation Complain received by public works.”
“December 16, 1999 Public Works Issues Violation Notice”

The violation was for grading work done in connection with ponds and two house pads. The County Department of Public Works assessed a fine. The fine was paid, and proper permits were applied for and obtained by May 1, 2001.

“December 6, 1999 Moloa`a trail closure front page article in Aspen Times.”

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR’s authority to establish the trail.

In an abstract attached to a letter from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant’s SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant’s discussion with staff at Na Ala Hele, the applicant

recognizes DLNR, as the successor to the “Commissioner of Public Lands” and DLNR’s right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

*“Dec. 1999 - Grading violation for illegal, unpermitted, uncompacted housepads and ponds. Initial fine assessed \$40,000
Nov. 8, 2000 - subsequently reduced to \$25,000 February 23, 2001.”³⁴”*

As mentioned earlier, this violation was for grading work done in September 1999 in connection with ponds and two house pads. Please see our response above.

“December 1999 Facing financial hardship Deborah Forester forced to sell her farm to McCloskey.”

As noted earlier, after the summary judgment was issued, Deborah Forester negotiated the sale of her land to the applicant. She was not forced to sell her farm to the applicant. The applicant believes that the negotiated purchase price was over the market value of the property.

“Jan 2000 McCloskey cited for grubbing the stream and filling 4 truckloads of rock on Moloa`a Stream bed without permit. Cease and Desist¹⁸.”

The applicant concurs that this occurred. The applicant promptly complied with the County request to remove the rock.

“McCloskey applies for permit to build luxury house within stones throw of Na Ala Hele trail.”

The applicant concurs that a permit was applied for a personal residence on the plateau above Moloaa Bay. However, the trail is located about 400 feet away from the proposed location of the residence.

“ 1999- early 2001 Damage to Cemetery Property and other private property along cattle easement continues¹⁹. Where damage appeared intentional Criminal Property Reports were filed by KPD¹⁹. In one incident where MBR employees were placed at the scene a false statement is made by the investigating officer²⁰. ”

The applicant's legal rights to use the access easement have been established in court and through private settlement agreements. In one instance, these rights were interfered with by the placement of locks on a gate that blocked the easement. In that instance, the applicant, with police in observance, removed the locks to allow entry over the easement.

The applicant is not aware of any damage caused by the applicant or its employees as noted in the photographs or the police reports. The applicant has never been charged, nor does he believe that its employees have ever been charged with damaging any part of the Cemetery or the fence along the legal access easement.

In viewing the first two photos of Citation 19, the first photo shows a truck driving along the easement with adequate clearance to the nearby fence and a second photograph showing the fence-line down. Presumably the photographer taking this photo saw the truck as it hit the fence and reported this incident to the police. If this was done, the applicant would appreciate hearing of the outcome of any charges brought against the driver and whether this driver so charged was an employee of Moloaa Bay Ranch or one of its vendors.

The sixth and seventh photos of Citation 19 show a gate that appears damaged and a fallen headstone that is set off to the side of the access easement. It is difficult to see under what situation a vehicle would drive outside of the easement area and knock down the headstone, unless it was done purposefully. The applicant does not believe that its employees or vendors would willfully drive outside of the easement area and risk damage to their vehicle to knock down a headstone. The applicant does not condone

any malicious or mean spirited conduct by any of its employees against anyone, and particularly its neighbors.

On occasion, items have been found in the easement area, apparently placed there with the intent to block the use of the easement. In those instances, the applicant's employees have moved such items off to the side of the easement to allow their vehicles to proceed through the easement.

"February 2000 Captain Moriguchi, Kauai PD recommends a Police Commission Complaint - which is filed²¹."

The applicant has no information to offer on this police matter.

"March 2000 South end of Conservation Zone clearing begins and continued until September 2001."

Between February of 2001 and May of 2001, the applicant began clearing the property in the south end of the Conservation District. The applicant exceeded the limits of the approved SMA Use Permit and the approval by the Department of Land and Natural Resources for work in the Conservation District. During this period, the applicant relied on the oversight of its agricultural manager to insure that only dead and diseased trees were removed. The supervision of the actual work, including the determination of whether a particular tree was dead or diseased, was handled by one of MBR's managers, with extensive experience in agriculture.

The problems with Ironwood trees are described in greater detail in the following summary of a letter prepared by Mr. Stephen M. Nimz (ISA Certified Arborist #WC-0314):

Ironwood trees (Australian Pine, *Casuarina equisetifolia* and related species) are native to Australia and several other Indo-Pacific areas. These trees were introduced to Hawaii in the late 1800's. They have been planted for windbreaks due to high tolerance for salt spray and wind, ability to grow in poor soil with minimal irrigation, quick growth regeneration, and tall, thick growth habit. In Hawaii, these trees have been successful in reducing wind damage in sugar cane fields and in coastal areas.

Ironwood trees have less desirable growth characteristics with regard to erosion control, fire control and accompanying plantings. In Hawaii, Ironwood trees have been observed to be allelopathic with respect to successful growth under the canopy of the Ironwoods. The seeds and needlelike leaves form a thick mat which decomposes slowly, making growth of other plants difficult yet allowing the juvenile Ironwood trees to germinate and prosper. The root structure is thick and spreads out close to the surface, usually within the top six to eighteen inches of the soil. The thick dry mat of leaves and seeds, along with accumulation of dead wood in the trees, creates a potential for fire. Ironwood trees are not good at walling off decay (compartmentalization). This means that when major limbs are cut or broken off by wind, the new growth that generates from the sides of the wound has a weak structural connection, creating a greater potential for branch failure with subsequent high wind conditions. The main trunks may also decay, hollowing out to create structural stability problems. The thick mat of leaves below and downwind of the trees appears to create a protective blanket against erosion. However, when heavy rain occurs, the water runs underneath the needlelike mat, causing erosion gullies and crevasses as nothing is holding the mat in place. The tree root structure becomes undermined, causing uprooting and toppling.

Use of Ironwood trees in many areas of Hawaii has been an acceptable practice, however, as we gain more knowledge about characteristics of these trees and other tree species, grasses and plants, better alternatives can be established. Ironwood trees are now on the Hawaii invasive species list which identifies plants that interfere with native habitats as well as desirable urban landscapes and agricultural crops. In other areas of the United States, particularly in Florida, planting of Ironwood trees is no longer acceptable in landscapes, parks and reforestation.

The applicant's intention in doing the 2001 maintenance work was to remove the dead and diseased trees which littered the landscape of the slopes of Moloaa Bay. Once this work was done, new ground cover could grow in its place and support the soil along the sloped portion of the property. The potential for soil erosion and run-off from the slopes into Moloaa Bay during heavy rains had already existed long before the maintenance work was

started, and the applicant was trying to be proactive in preventing future soil run-off from ever occurring. The Planning Department issued a stop-work order on May 21, 2001. No further tree cutting has occurred in the Conservation District and Special Management area since that stop-work order.

Any work that occurred between March 2000 and February 2001 and between May 2001 and September 2001 involved regular mowing and removal of weeds and dead brush from the property but did not include cutting of trees in the Conservation District. During this period some clearing work may have occurred in the Agricultural District adjacent to the Conservation District.

“Summer 2000 Multiple pieces of equipment worked everyday grading Moloa`a Bay Ranch, including 4th of July, with dust choking out holiday barbeques in Moloa`a. No permits, no plan, no dust or erosion control measures. Neighbors call county planning, public works.”

“August, 2000 Complaint to Public Works about Moloa`a Bay Ranch operating semi dump trucks and dozers all night long, seven days per week. Continual grading continues.”

“March 2001 McCloskey presents after the fact grading plan for driveways, housepads. Permits for driveway grading²³.”

Based upon discussions with the individual who served as the manager at the time you refer to, the applicant understands that the work being done related to the ponds and house pads, discussed above. The work was done on weekdays and frequent watering was done to minimize dust impacts. The applicant applied for and obtained appropriate permits by May 1, 2001.

“May 1, 2001 Moloa`a Bay Ranch is now divided into two TMK numbers (4-9-11-1 and 4-9-11-37) and the allowable density for house sites is 22 according to Thomas McCloskey.”

The TMK numbers were granted to existing lots of record, no subdivision took place.

“May 1, 2001 After the Fact Permit for ponds and house pads issued²⁴.”

As noted above, the applicant applied for and obtained appropriate permits from the Department of Public Works by May 1, 2001.

“May 21, 2001 Planning Department does site inspection and orders stop-work.”

As mentioned earlier, no further tree cutting has occurred in the Conservation District and Special Management area since that stop-work order.

“June 1, 2001 Notice of grubbing violation citation issued²³. This violation was still outstanding as of Jan. 9, 2003 reported by Ian Costa.”

The applicant understands that the after-the-fact grubbing permit needed to correct the grubbing violation cannot be approved until the applicant receives approval of the pending Special Management Area Use permit and the Conservation District Use Application permit that is subject of this application and Final EA.

“Feb. 10, 2002 Malama Moloa`a letter to Public Works, signed by Greg Osborne²⁴.”

The applicant has been working to regrass the slopes of Moloaa Bay and has been successful in areas that have been cleared of Ironwood trees, however, areas of Ironwood trees still have bare soil under the heavy mat of needles and these areas continue to erode and run off during heavy rains. Another problem area involves areas of steep grades/cuts on which grass does not take. The applicant’s proposal would eliminate Ironwood trees and regrade steep areas and cuts to allow grass or other groundcover to take hold.

“Feb. 25, 2002 C. Portugal responds back to Malama Moloa`a inquiries on numerous questionable activities at MBR²³.”

The applicant concurs with the assessment provided by C. Portugal of the Department of Public Works.

“March 2002 McCloskey Applies for CPR shed permits- approval has been delayed pending outstanding violations.”

The applicant concurs.

“March 2002 Heavy rains cause much loss of soil in denuded areas. Mud inundates residents at TMK 4-9-11-14 (see pictures of hydro seeding and other relevant photos).”

“June 2002 south end of CZ once treed continues to erode (photo)²⁶”

The applicant has been working to regrass the slopes of Moloaa Bay and has been successful in areas that have been cleared of Ironwood trees, however, areas of Ironwood trees still have bare soil under the heavy mat of needles and these areas continue to erode and run off during heavy rains. Another problem area involves areas of steep grades/cuts on which grass does not take. The applicant’s proposal would eliminate Ironwood trees and regrade steep areas and cuts to allow grass or other groundcover to take hold.

“June 13, 2002 Malama Moloa’a appearance before Council asking questions regarding MBR.”

“June 27, 2002 Malama Moloa’a appearance before Council asking questions regarding MBR.”

The applicant accepts these statements.

“June 28 2002 Letter to EPA concerning MBR²⁷.”

The letter to the EPA provided in Citation 27 appears to exaggerate and misstate the facts about what transpired at Moloaa Bay Ranch. The applicant did not clear 150 acres without permits. If this were true, the applicant cleared all but 14 acres of the ranch property without permits, clearly an exaggeration. The applicant placed rocks in a stream, but did not reroute the stream. The stream continued to flow in the same basic location and the rocks were promptly removed at the County’s recommendation.

The applicant has removed Ironwood trees, which are an invasive species which drop needles that cover large areas of soil and restricts growth of ground cover leading to serious erosion problems, as presented by our qualified arborist and by the National Tropical Botanical Garden (NTGB) specialist that reported on plants at Moloaa. These Ironwood trees have created eroded areas that are too steep to be grassed or for other ground cover to be established. If these areas are not regraded and grassed, the

potential for erosion will remain. The applicant plans to remove most of the remaining Ironwood trees on the property, within the Special Management Area and Conservation District and to replace these trees on a one for one basis with Coconut Palms. The applicant has hydromulched exposed earth areas and irrigated to stabilize formerly exposed bare soil. Even today, although much of the hillside has grass or ground cover, areas under the Ironwood trees and where steep cuts have occurred, due to erosion, are still bare with exposed soils.

“June 27, 2002 Letter to Clean Water Branch regarding runoff from MBR²⁸.”

As mentioned above, the applicant has been taking a proactive approach to reducing runoff and erosion on the slopes of Moloaa Bay and is processing this CDUA permit application with DLNR and a SMA use permit with the County of Kauai Planning Commission and Planning Department to further reduce runoff and erosion on applicant's property.

“July - August 2002 Various appearances before county council. Including 13 Aug (1 year from turtle nesting observations).”
“Aug or Sept. 2002 Appearance before BLNR regarding MBR and Pila`a.”

The applicant accepts that Mr. Osborne has appeared as noted.

“Turtle nesting site destroyed (Photo)²⁹. Subsequently, County's Wally Kudo describes destroyed nesting as Natural Ravine.”

The applicant has been doing all that it can to minimize erosion and hopes to eventually, through the removal of most of the Ironwood trees and re-landscaping of the property, eliminate erosion potential created by the Ironwood trees. Erosion that has been occurring is the result of the Ironwood trees and not as a result of their removal, which has been recommended by a certified arborist and the NTGB specialist.

“July 2002 Jeff Rivera shows an empty reservoir pond due to the fact that the pond's dike was failing. Pond was constructed without permits or engineering specs.”

Mr. Rivera may have shown a reservoir with water at a low point of 8 to 12 inches, however, this was not due to the pond's dike failing. The ponds are kept low during periods of expected heavy rainfall to allow for heavy rains to fill the ponds without overflowing (best management practice to prevent overflow and runoff). All the ponds were designed by a licensed engineer and have received their permit approvals, although some have been after-the-fact.

"August 13, 2002 Heavy rains result in mud flows on to the reef at Moloa'a Bay. Refer to video and pictures³⁰."

To the applicant's knowledge, there has been only one occurrence of mud sliding from one portion of the applicant's property to another. In 2002, during a period of record rains on Kauai, mud from a portion of Moloaa Bay Ranch outside of the SMA slid to the lower reaches of the property. Although this portion of the property had been seeded and established, the slope of this portion of the property was too steep to hold the top soil in heavy rains. Prior to that date, MBR had been trying for some time to secure a grading permit to stabilize this soil, but the issuance of this permit was temporarily held up, pending the resolution of the SMA issue now before the Planning Commission.

"Sept 5, 2002 Appearance before Council asking questions regarding MBR."

The applicant accepts that Mr. Osborne has appeared as noted.

"Sept. 2002 Meeting with EPA, DoH, Earthjustice regarding MBR."

The applicant accepts that Mr. Osborne met with agencies as noted.

"June 13, 2002 County Planning issues letter that McCloskey never had legal access through cemetery driveway or the cattle easement for his residential CPR³¹."

As mentioned earlier, the applicant has legal access for his agricultural lot.

"November 2002 MBR submits application for after-the-fact SMA permit."

The applicant concurs.

“Jan 9, 2003 Malama Moloa`a makes another appearance to brief new Council on issues concerning MBR. Still many questions remain unanswered and different agencies trying to determine who's kuleana it is to bring action, hence no action.”

The applicant has been working with the Department of Land and Natural Resources and the Kauai County Planning Department and Department of Public Works to address outstanding violations related to a CDUA permit, SMA use permit and grubbing permit.

“April 2003 Mud flows onto government road and is channeled away form a private residence (reportedly previously inundated) and onto neighboring vacant property without permission.³²”

“April 2003 Mud flow from MBR breaches the last of the silt fences and onto the sand at Moloaa Bay³³.”

As stated earlier, to the applicant's knowledge, there has been only one occurrence of mud sliding from one portion of the applicant's property to another. In 2002, during a period of record rains on Kauai, mud from a portion of Moloaa Bay Ranch outside of the SMA slid to the lower reaches of the property.

“May 15, 2003 MBR still has not applied for permits to correct mud flows on roadways. Council member Yukimura asked in Chambers that they do so.”

Applicant has applied for permits to eliminate Ironwood trees to minimize mud flows on the slopes of Moloaa Bay that could affect Moloaa Hui Road A.

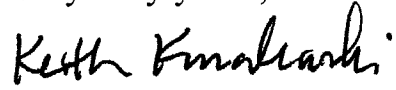
“September 13, 2005 MBR attorney claims to Planning Commission no trees were cut before 2000 and erosion then was due to ironwoods. (See fines from DLNR for cutting trees in Conservation District dated August 13, 1999 -citation 11).”

No such statement was made to the Planning Commission.

Mr. Greg Osborn
Page 19

Your letter and this response will be included in the Final EA.

Very truly yours,

A handwritten signature in black ink that reads "Keith Kurahashi". The signature is written in a cursive style with a prominent initial "K".

Keith Kurahashi

cc: Moloaa Bay Ranch LLC

LINDA LINGLE
GOVERNOR OF HAWAII



GENEVIEVE K. Y. SALMONSON
DIRECTOR OF OEQC

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
DEPARTMENT OF HEALTH
LEIOPAPA A KAMEHAMEHA
235 SOUTH BERETANIA STREET, SUITE 702
HONOLULU, HAWAII 96813
TELEPHONE (808) 586-4185

In reply, please refer to:
File:

October 5, 2005

Mr. Tom McCloskey
Moloa'a Bay Ranch, LLC
132 West Main Street
Aspen, Colorado 81611

Mr. Keith Kurahashi
Kusao and Kurahashi, Inc.
2752 Woodlawn Drive, Suite 5-202
Honolulu, Hawaii 96822

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


Dear Messrs. McCloskey, Kurahashi and Lemmo:

The Office of Environmental Quality Control has reviewed the draft environmental assessment for the Moloa'a Bay Ranch project, Tax Map Key 4-4-9-11, portion of 1, situated in the judicial district of Kawaihau at Moloa'a Bay, Kaua'i. We offer the following comment for your consideration and response.

1. **Public access:** Page 4 of the November 1999, Archaeological Assessment by Cultural Surveys Hawaii indicates that a trail traverses the project area; please ensure that public access to the shoreline areas is not blocked during the reforestation project.

Thank you for the opportunity to comment. If there are any questions, please call Mr. Leslie Segundo, Environmental Health Specialist, at (808) 586-4185.

Sincerely,


GENEVIEVE SALMONSON
Director

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231

FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.rr.com

November 8, 2005

Ms. Genevieve Salmonson, Director
Office of Environmental Quality Control
Department of Health
235 South Beretania Street, Suite 702
Honolulu, Hawaii 96813

Attention: Mr. Leslie Segundo, Environmental Health Specialist

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

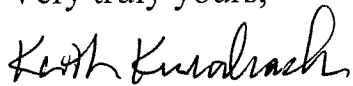
Dear Ms. Salmonson:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letter, dated October 5, 2005, to the Office of Conservation and Coastal Lands. The following responds to your comments:

The applicant will ensure that public access to shoreline areas will not be blocked during the reforestation project.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

Oct. 6, 2005
RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

DLNR

Kimberly Mills

POB 621

Honolulu, HI 96809

2005 OCT 11 A 9:21

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Subject: Moloa'a Bay Ranch (Kauai) HRS343DEA

To Whom It May Concern,

There are a number of serious concerns that should be addressed before permits are considered for Moloa'a Bay Ranch.

1) Access for the public must be maintained. There has always been a trail access from the beach to the bluff and then along the edge of the bluff to the north side of the MBR property. This traditional access should be surveyed and made a legal access that is registered with the state for all time.

2) Any fencing along the trail should be at least 40 feet mauka of the trail and should be a three rail, wooden fence no higher than 4 feet. Any painting should be in earth tones. Any later repairs to be kept to this same configuration and color. MBR to erect no barriers or vegetation on the makai side of the fence or trail that would interfere with the lovely ocean views.

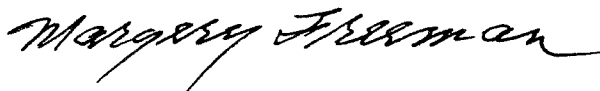
3) There have already been serious slides, because of manipulation of the hillsides, that impacted the ocean and reefs so no further grading, of any kind, should be made in the SMA or Conservation areas. (even if promises of later plantings to stabilize the hillside are made) The hillsides seem to be stable at this point so any grading can only cause problems.

4) MBR has already constructed 2 reservoirs on the property (not properly permitted) Especially one of them is very close to the hillside edge and I question whether this is a safe location for an earth dam. Were there engineers there to do soil testing and testing on the amount of compaction of the dam edge?

Moloa'a Bay Ranch has made several mistakes already which have resulted in their being citing by the County of Kauai and have impacted the reefs and ocean. They must be held tightly to the stipulations, like those above, that are imposed by the Kauai Planning Commission.

Please take these suggestions under advisement and impose them on the requested permit.

Thank You,



Margery Freeman
6448 Kaahele St.
Kapaa, HI 96746

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

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2752 WOODLAWN DRIVE, SUITE 5-202
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FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.rr.com

November 8, 2005

Ms. Margery Freeman
6448 Kaahele Street
Kapaa, Hawaii 96746

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Ms. Freeman:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letter dated, October 6, 2005, to the Office of Conservation and Coastal Lands. The following responds to your comments:

1) *Access for the public*

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR's authority to establish the trail.

2) *Fencing*

The applicant has decided that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail. The requested 40 feet would not provide the delineation for the trail that the applicant is seeking. The importance in providing delineation of the trail for the benefit of the public is found in the fact that when the Planning Commission and the public did a site visit to Moloaa on October 5, 2005 to walk the trail, the trail was not distinguishable after a certain point. A three rail fence would have provided delineation of the trail and aided in the use of the trail.

The applicant agrees with your recommendation that the applicant's proposed four foot high, three rail wooden fence will be either left in its natural state or painted with an earth tone color. The applicant further agrees not to erect barriers or vegetation on the makai side of the fence or trail that would interfere with ocean views from the trail, unless needed for safety.

3) *Grading*

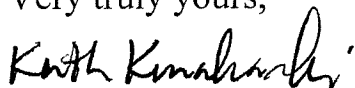
To the applicant's knowledge, there has been only one occurrence of mud sliding from one portion of the applicant's property to another. In 2002, during a period of record rains on Kauai, mud from a portion of Moloaa Bay Ranch outside of the SMA slid to the lower reaches of the property. Although this portion of the property had been seeded and established, the slope of this portion of the property was too steep to hold the top soil in heavy rains. Prior to that date, MBR had been trying for some time to secure a grading permit to stabilize this soil, but the issuance of this permit was temporarily held up, pending the resolution of the SMA issue now before the Planning Commission.

4) *Reservoirs*

The reservoirs constructed on the property have been designed by the applicant's civil engineer and approved by the County. The reservoirs were constructed in accordance with the approved plans. The compaction was tested after construction and found acceptable by a soils engineer.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

Koolau Cemetery Association

P.O. Box 202 Kilauea, Hawaii 96754

Planning Commission - County of Kauai
4444 Rice Street
Lihue, HI 96766

October 7, 2005

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 OCT 11 A 9:25
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Commissioners:

I am in receipt of the "Conservation District Use Permit Application and Draft Environmental Assessment, Moloaa Bay Ranch". A cover letter from BLNR Chair Peter Young indicates the SMA (U)-2006-2 is a pre-requisite.

The Kauai Planning Department has informed that MBR access is illegal for its proposed residential development through and along Koolau Japanese Cemetery (see exhibit A).

Koolau Cemetery Association wishes to know:

- 1) Does MBR owner plan to create a CZO compliant entrance from the hairpin on Koolau Road?
- 2) If so, when?
- 3) If not from the hairpin, from where?
- 4) Is there a problem using MBR's existing road from the hairpin to access this CDUP/SMA project?
- 5) The CDUP on p45 states "The access road needed to maintain the existing and planned landscaping will be improved." Are any "improvements" proposed on TMK (4) 4-9-11: 10?

The Draft Environmental Assessment (EA) has not addressed impacts to the Koolau Japanese Cemetery. In the past much damage was caused by MBR activities (See our letter dated 9-13-05). The Archeological and Cultural Assessments in the EA must be amended to include Koolau Japanese Cemetery.

Thank you for your help.



Koolau Cemetery Association

cc: OEQC/DLNR

Exhibit A

MARYANNE W. KUSAKA
MAYOR



DEE M. CROW
PLANNING DIRECTOR
SHEILAH N. MIYAKE
DEPUTY PLANNING DIRECTOR
TELEPHONE (808) 241-2111
FAX (808) 241-2111

PLANNING DEPARTMENT

June 13, 2002

Sergai Bliss
P.O. Box 202
Kilauea, Kauai HI 96754

SUBJECT: CPR Sheds on TMK: 4-9-11: 1 at Moloaa, Kauai

This letter is in response to your question whether Moloaa Bay Ranch can utilize a ten (10) foot wide easement as driveway access for 22 potential homes, and whether the subject property can qualify for residences due to its distance from a public thoroughfare.

According to Section 8-3.7 (a)(1) of the Comprehensive Zoning Ordinance (CZO), a residence cannot be constructed on a parcel that is in excess of 600 feet traveling distance from a public thoroughfare, or that is in excess of 300 feet traveling distance from vehicular access adequate for service type vehicles. Also, according to Section 8-3.7(a)(2) of the CZO, a common driveway cannot serve more than four dwellings or be in excess of 120 feet in length.

The easement can be utilized for access if it is legally prescribed for the properties. However, its ability to be used as access for the CPR project will depend on whether the applicant is able to meet these CZO requirements or not.

It should be noted that the minimum roadway width for an agricultural roadway is 44 feet, if its length is less than 2,000 feet. However, the minimum roadway width is 56 feet if it exceeds 2,000 feet in length.

Should you have any questions, please contact Keith Nitta of my staff at 241-6677.

SHEILAH N. MIYAKE
Deputy Planning Director

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
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E-Mail: kkurahashi@hawaii.nr.com

November 8, 2005

Koolau Cemetery Association
P.O. Box 202
Kilauea, Hawaii 96754

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Association Members:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments, in your letter, dated September 13, 2005, to the County of Kauai Planning Commission that included DLNR as a "cc" recipient.

The following responds to your comments:

1. *"This CDUP-SMA process has not addressed impacts to the Koolau Japanese Cemetery. In the past much damage was caused by MBR activities (see exhibits D & E). Subsequently Kauai Planning Department has informed that MBR access is illegal for its proposed residential development through and along Koolau Japanese Cemetery (see Exhibit A)."*

The proposed Special Management Area (SMA) Use permit application and the Conservation District Use Application (CDUA) are for improvements in the Special Management Area and Conservation District in areas that do not affect the Koolau Japanese Cemetery. In fact, the Cemetery is located about 2,500 feet away from the Conservation District and the Special Management Area that is the subject of two applications in process.

The applicant is not aware of any damage caused by the applicant or its employees and it has never been charged, nor does it believe that its employees have ever been charged with damaging any part of the Cemetery or the fence along the legal access easement.

In viewing Exhibit D, photos include a gate that appears damaged and a fallen headstone that is set off to the side of the access easement. It is difficult to see under what situation a vehicle would drive outside of the easement area and knock down the headstone, unless it was done purposefully. The applicant does not believe that its employees or vendors would willfully drive outside of the easement area and risk damage to their vehicle to knock down a headstone. The applicant does not condone any malicious or mean spirited conduct by any of its employees against anyone, and particularly its neighbors.

Exhibit E shows a truck driving along the easement with adequate clearance to the nearby fence and a second photograph showing the fence-line down. Presumably the photographer taking this photo saw the truck as it hit the fence and reported this incident to the police. If this was done, the applicant would appreciate hearing of the outcome of any charges brought against the driver and whether this driver so charged was an employee of Moloaa Bay Ranch or one of its vendors.

The Kauai Planning Department has determined that “The easement can be utilized for access if it is legally prescribed for the properties.” (Exhibit A). The Planning Department went on to note “However, its ability to be used as access for the CPR project will depend on whether the applicant is able to meet these CZO requirements.” The Planning Department has not made a determination that the access easement is illegal for an earlier proposed residential development.

The applicant does have legal access through this easement and continues to use this easement for access to his existing Moloaa Bay Ranch which includes the area that is the subject of the CDUA and SMA Use permits. A portion of the easement rests on property that has been acquired by the applicant. The remainder of the easement rests on a property (Tax Map Key (4) 4-9-11: 10) whose owner recognized in February 1999 that “his Subject Property is subject to an easement for a right-of-way ten (10) foot wide in favor of land sold to Olaf Thronas as set forth in Partition in Equity no. 85 of the Fifth Circuit Court”.

2. *“The CDUP p10 states ‘Access to the area is by way of an easement off Koolau Road...’ And on p45 ‘The access road needed to maintain the existing and planned Landscaping will be improved.’ Which easement? Which access?”*

Page 10 of the application described the project site’s access easement from Koolau Road. This 10-foot access easement is not within the area that is the subject of the CDUA and SMA Use permits.

The “access road needed to maintain the existing and planned Landscaping” describes the access drives (roadways) along the slopes of Moloaa Bay to allow landscaping and maintenance of the slopes. These improvements do not affect the access easement near the highway situated about 2,500 feet away.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

PAT TINGLEY
210 Eggerking Road, Kapa`a, HI 96746
Tel: 808-822-1029

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2005 OCT 11 A 9: 32

October 7, 2005

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Kimberly Mills
State Dept. of Land & Natural Resources
P. O. Box 621
Honolulu, HI 96809

Dear Ms. Mills:

RE: Moloa`a Bay Ranch (HRS 343 DEA) TMK (4)4 -9-11:001 (por.)
Draft Environmental Assessment - 45 acres in the conservation district

Thank you for the opportunity to comment on the Draft EA. The proposed landscaping, grading, road reclamation and three-rail fence do little to enhance the natural environment in the conservation district and should not be referred to as improvements. Nor, is it apparent how the welfare of the Moloa`a community will benefit from these alterations.

There are a disturbing number of errors and omissions in the EA. The name Olaf Thronas, the prior landowner, is misspelled as Thornas. The Ko`olau District is misspelled Lo`olau. Regarding the placement of the fence, it is unclear how many feet mauka of the trail is proposed. The report states that the access to MBR is "by way of an easement off of Ko`olau Road" but it does not give a mile marker designation or description to identify which easement. More clarity is needed to determine whether it is at the hairpin turn or at the juncture to Larsen Beach by the Japanese Cemetery. Providing a greater level of detail and accuracy should be required to satisfy the disclosure process.

Construction of a perimeter fence along the public's coastal trail.

In the past, encroachments into public right-of-ways have resulted from oversights and failure to record and dedicate public accesses, easements and trails. From the archeological report, the historic Moloa`a trail is a significant feature. It would be prudent to take steps to survey and legally record the trail to guarantee access rights for the general public in perpetuity, protected by law.

Established over many decades by residents traversing along the coastal bluffs and hillside between Moloa`a Bay and the Ka`aka`aniu *ahupua`a*, the preservation of this vital, traditional footpath is critical.

Documentation from Na Ala Hele Advisory Council meetings is being collected about this trail to validate the public's prescriptive rights. Additional kama`aina testimony and oral history statements are available and should be included in the EA. The traditional and customary use of this trail, the likelihood of potential burial sites, and the need for unrestricted access to marine resources, strongly suggest that the land should be altered as little as possible. Please note that at this site, the petroglyphs, that have been observed by residents, have not been documented. Therefore, many reasons justify the need to preserve the natural features of this area.

The CDUP application/DEA states that the fence will "provide better delineation of an existing trail" on the property (pages 51 and 58). However, a contradictory statement is found on page 45, which reads: "the applicant is currently unaware of any access rights of the general public to use the trail."

On pages 20-22 it states: "the applicant has thus far not denied access to anyone." However, this is strongly disputed by many residents as stated in Table 1-Results of Community Contacts Process and at the September 13, 2005 County Planning Commission public hearing. At least eight kama`aina (of the 18 individuals with a personal knowledge of the site) were contacted to comment on the cultural impact assessment, and expressed concerns about restricted access to and along the trail. Again, this demonstrates a need for DLNR to survey the trail, receive public input, and legally record it through the Bureau of Conveyances.

The EA states that MBR's placement of a fence along the coastal trail will "not substantially affect scenic vistas and view planes". This is not true. A fence cannot improve on nature and does not improve scenic vistas and view planes in the conservation district. Therefore, the proposed fence should not be referred to as an "improvement".

In order for the landowner to observe and maintain the State shoreline setback for public access, as recommended on page 22, and prior to any construction of fences, retaining walls and roads, a current shoreline certification should be obtained.

It is recommended on page 23, that any proposed impacts to the sites should be planned in consultation with the State Historic Preservation Division and the Kaua`i Island Burial Council. "Although no burials are indicated within the project area, the sandy sediment along the beachfront and slopes of the project area, as well as the presence of a subsurface cultural layer, both warrant concerns regarding human burials." Therefore, residents will be urging the County Planning Commission to set a condition that a SHPO monitor be on site for any ground disturbing activities.

As stated in the archeological report, it is very likely that unrecorded burial sites are present within the project area. Any ground disturbing activities such as vegetation clearing, grading, terracing, or construction of a fence should not occur within 40 feet of the historic trail.

The Kaua`i County Public Access, Open Space, Natural Resources Preservation Commission lists Moloa`a Bay "A" and "B" Accesses as one of 15 *Priority Sites with Unresolved Issues*, presented in their Report to County Council, dated May 12, 2005 (Appendix D). This site is also listed in the 1991 Kaua`i Access Inventory Update. Therefore, it should be required that issues relating to dedication of public accesses and easements be resolved. This would include addressing the controversial MBR gate across Moloa`a Hui Road-A, since this unimproved road provided traditional and customary access across Moloa`a Stream and to the beach.

Planting of new landscaping with associated irrigation system

For those who have walked this stunning trail from Moloa`a Bay, up the hillside and along the scenic bluffs, many would agree that the significant erosion and runoff occurred as a result of the removal of the stands of ironwood trees. Clearing these trees from the upper slopes above the ocean, within the Conservation District created severe erosion, mudflows and damage to green sea turtle nesting sites.

The National Tropical Botanical Garden (NTGB) specialist recommended in 1999 that re-vegetation of the slopes should be a mix of appropriate native and indigenous species. Plants, grasses and groundcovers which can tolerate the harsh, windswept coastal conditions of the site. "... the existing plants, especially ground cover and low-growing shrubs, should be used as stock plants to provide propagating material (seeds and/or cuttings) to increase their numbers. Other native species known to occur in dry coastal shrub lands on Kauai should also be planted to re-vegetate this area and stabilize the slopes (a list of suggested species is available upon request)." However, the MBR landscape plan does not follow these recommendations. Only hydromulched grassing and two groundcovers are listed in the plan: 3,500 naupaka and 800 wax banyan. There should be strict adherence to the NTGB's guidelines for any revegetation plan in the conservation district.

The natural resources and landscape of Moloa`a are fragile. Each alteration to the land diminishes and endangers their natural beauty and survival. In order to adequately protect the SMA and Conservation District, the removal of any more vegetation and trees should be prohibited. The Conservation District should not be molded, contoured and manicured. The NTGB specialist did not recommend grassing the site with hydromulch, nor planting 655 coconut trees. The "reforestation" plan is a misnomer and as proposed, is not sufficient compensation for the damaged landscape.

Artificially irrigated vegetation and the use of herbicides and fertilizers is troubling. The native species known to occur in dry coastal shrub lands should be able to survive on their own. If a "temporary irrigation system for landscaping and replanting purposes" is installed, how will DLNR ensure that it will not become permanent?

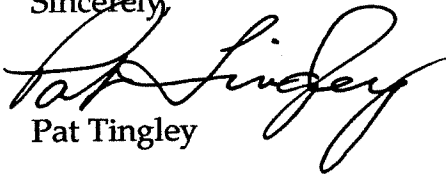
Grading associated with road reclamation and repair.

There is insufficient evidence, historic and otherwise, to verify that the roads to be "reclaimed" were pre-existing. The DEA should also document why these roads suffered from washouts and provide an engineer's assessment as to whether these roads are properly and safely sited, to prevent further damage to the land. An engineering report should also address the safety and proper placement of the un-permitted reservoirs and retaining walls. Considering past violations, it is reasonable to assess whether the proposed alterations to the land would indeed reduce environmental hazards.

Summary

MBR should not impose on the public any negative impacts on the environment that include altering this pristine coastal environment. In Moloa`a, the cumulative impacts of development over the years, continues to have significant social, cultural and environmental impacts. Perhaps an EIS would be appropriate. Thank you for this opportunity to comment.

Sincerely,


Pat Tingley

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

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FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.rr.com

November 8, 2005

Ms. Pat Tingley
210 Eggerking Road
Kapaa, Hawaii 96746

Subject: Conservation District Use Application (CDUA) KA-3190 and Draft Environmental Assessment (Draft EA) for Landscaping, Tree Removal and Other Improvements Located at Moloaa Bay Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001

Dear Ms. Tingley:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letter, dated October 7, 2005, to the Office of Conservation and Coastal Lands. The following responds to your comments:

“Improvements”

The proposed landscaping, grading and road reclamation are directly related to the removal of Ironwood trees and regrassing of the hillside to reduce erosion.

The applicant has removed approximately 126 ironwood trees, which are an invasive species which drops needles that cover large areas of soil and restricts growth of ground cover leading to serious erosion problems, as presented by our qualified arborist. The applicant plans to remove most of the remaining ironwood trees on the property, within the Special Management Area and Conservation District and to replace these trees on a one for one basis with Coconut Palms. The applicant has hydromulched exposed earth areas and irrigated to stabilize formerly exposed bare soil.

The proposed new Plantings Plan includes 261 - 15 gallon Coconut Palms; 30 - 15 gallon Beach Heliotrope; 40 - 15 gallon False Kamani; 30 - 15 gallon Hala; 86 - 1 gallon, 6' on center Naio shrubs; and plugs, 24" on center of Pangola grass.

In addition, in accordance with an approved Department of Land and Natural Resources landscape plan, the applicant will provide 9 - 25 gallon, 2"-4" caliper Beach Heliotrope and 32 - 25 gallon, 2"-4" caliper False Kamani.

The applicant proposes to regrass all exposed earth with hydromulch and provide irrigation as needed to reestablish grass and the proposed landscaping to stabilize the ground and reduce soil erosion and runoff.

In order to provide access to maintain the grass and landscaping planned for the slopes of the property, the applicant plans to provide for road repair and reclamation. For the most part it will be merely removing vegetation from the existing road alignment. However, for a portion of the road there will be some grading to reestablish the former grade of a portion of the road that has suffered from erosion due to the problems caused by the Ironwood trees.

These planned improvements are intended to help to reduce existing erosion on the slopes of Moloaa Bay and to provide support for maintaining new and existing landscaping to help minimize erosion. Grading, road reconstruction and landscaping activities will be conducted using best management practices to minimize erosion during these activities.

The end result will be a landscaped slope that will minimize erosion and will reduce water quality impacts to the Moloaa Bay.

These "improvements" will do much to enhance the natural environment and protect the landscaped slopes for future generations to enjoy.

The applicant also proposes to install a 3-rail perimeter fence with a 4-foot height to provide a delineation about 5 feet or more from the existing trail on the applicant's property. The location of the fence will not impede existing access on the property. The importance in providing delineation of the existing coastal trail is found in the fact that when the Planning Commission and the public did a site visit to Moloaa on October 5, 2005 to walk the trail, the trail was not distinguishable after a certain point. A three rail fence would have provided delineation of the trail and thereby aided in the use of the trail.

The benefit to the Moloaa community and the public in general is clear, with the enhancement to the natural environment with protection from soil erosion into Moloaa Bay and protection of the landscaped slopes presently threatened by soil erosion.

“Errors and Omissions”

I could not find the misspelling of “Thronas” as “Thornas” in the body of the Draft EA. Through your letter and this response, the correct spelling of the prior landowner is being corrected as Olaf Thronas, as you have noted. The Koolau District spelling has been corrected in the report from the Loolau (misspelling). The access to MBR will be clarified with the following added to the section on access:

“The access easement to Moloaa Bay Ranch is found by traveling east on Kuhio Avenue and making a right turn onto Koolau Road seven tenths of a mile past mile 16 (marker). After the right turn, travel on Koolau Road for 2.2 miles and turn left at Larsen’s Beach Road. On Larsen’s Beach Road, travel 130 feet and at the point where the road turns to the left, the easement will lie directly in front of you.”

“Perimeter Fence”

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR’s authority to establish the trail.

The Draft EA’s Archaeological Assessment and Cultural Impact assessment both recognize the trail and provides adequate discussion on kamaaina testimony on the trail.

No improvements are proposed in the area makai of the proposed fence. As such, the proposed improvements will not affect the trail or the subsurface cultural layer located makai of the trail that were noted as historic sites within the property. No petroglyphs have been identified in the Archaeological Assessment; however, if any are in fact present on the subject property, they would be expected to be found on the rock faces near

the shoreline or on the lower slopes of Moloaa Bay Ranch; these areas will not be affected by the proposed improvements.

As mentioned earlier, the proposed three rail fence will provide delineation of the trail. In an abstract attached to a letter that follows from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

This or a similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant’s SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant’s discussion with staff at Na Ala Hele, the applicant recognizes DLNR, as the successor to the “Commissioner of Public Lands” and DLNR’s right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

One of the individuals testifying on the denial of access to the trail noted that in his case access was not denied on the Moloaa Bay Ranch portion of the trail but on another property downstream from Moloaa Bay Ranch. The applicant has not taken any action to block access along the existing coastal trail and has notified its employees that they are not to restrict public access along this trail. The applicant is hopeful that the issue of the trail will be resolved by DLNR through the processing of this CDUA process.

The proposed natural looking three rail fence will not provide a significant visual impact on the views from the bay or from the trail. Adults will be able to see over the fence and children will be able to see through the fence to enjoy the view of the Moloaa Bay slopes. From the beach and across the bay, the fence will not create a significant distraction from the lush

landscaped slopes that the applicant hopes to restore. The primary views for trail users will be the ocean views afforded along the trail that will not be affected by the mauka fence.

The applicant will work with the Planning Department to determine an appropriate larger shoreline setback to ensure that the proposed fence will not penetrate the 40-foot setback, in lieu of providing a certified shoreline and building up to the 40-foot setback line.

The Archaeological Assessment Recommendations stated as follows:

“The two sites, 50-30-04-1033 and -1034 are recommended for preservation as is. No ground disturbing activities such as bulldozing, mechanized vegetation clearing or construction activity should occur on these sites.

No other archaeological constraints are deemed warranted for the remaining majority of the project area. However, in the unlikely event inadvertently discovered archaeological features are encountered appropriate government agencies (e.g., SHPD/DLNR) should be notified.”

Since the two archaeological sites, the buried cultural layer and the trail will not be affected by the proposed improvements and the State Historic Preservation Division has accepted the Archaeological Assessment report as final, an archaeological monitor does not seem warranted.

Neither the archaeological assessment or the cultural impact assessment state that it is “very likely that unrecorded burial sites are present within the project area”. The archaeological assessment states that “However, in the unlikely event inadvertently discovered archaeological features are encountered appropriate government agencies (e.g., SHPD/DLNR) should be notified.” The cultural impact assessment states that “Although no burials are indicated within the project area, the sandy sediment along the beach front and slopes of the project area, as well as the presence of a subsurface cultural layer both warrant concerns regarding human burials.” Both reports recommend notification of DLNR/SHPD should remains be found, but do not recommend an archaeological monitor.

Moloaa Hui Road A is clearly defined and does not extend to the shoreline. The applicant will remove an existing gate that replaced an earlier gate

across Moloaa Hui Road A (this gate has been kept open). However the second gate that is located on private property beyond the end of Moloaa Hui Road A will remain. Specific access rights to Moloaa Stream for specific neighbors in Moloaa are described in the applicant's deed for the property and have been and will continue to be honored by the applicant.

"New Landscaping"

The applicant has removed ironwood trees, which are an invasive species which drop needles that cover large areas of soil and restricts growth of ground cover leading to serious erosion problems, as presented by our qualified arborist and by the National Tropical Botanical Garden (NTGB) specialist that reported on plants at Moloaa. These Ironwood trees have created eroded areas that are too steep to be grassed or for other ground cover to be established. If these areas are not regraded and grassed, the potential for erosion will remain. The applicant plans to remove most of the remaining ironwood trees on the property, within the Special Management Area and Conservation District and to replace these trees on a one for one basis with Coconut Palms. The applicant has hydromulched exposed earth areas and irrigated to stabilize formerly exposed bare soil. Even today, although much of the hillside has grass or ground cover, areas under the Ironwood trees and where steep cuts have occurred due to erosion are still bare with exposed soils.

The applicant has been following the recommendations of the NTGB specialist in its proposed landscaping. The plan presented in 1999 by the NTGB specialist has been replaced by a new Planned Planting Plan (landscape plan) dated March 18, 2004. This new plan retains most of the existing ground cover and retains much of the existing plants, with the exception of most of the Ironwood trees that are planned for removal. As recommended by the NTGB specialist, the new plantings are all either native or indigenous plants.

The Ironwood trees are an invasive species that continue to adversely affect the slopes of Moloaa Bay. Allowing them to remain will lead to continued erosion and is not an acceptable option for the applicant. The reforestation plan has been approved by the DLNR and is being implemented in our proposed landscape plan, along with further removal of Ironwood trees and replacement with other indigenous trees.

The applicant understands that initially irrigation (with surface pipes) will be needed for new plants and ground cover. Once the plants and ground cover become self sustaining, irrigation will be removed and the applicant is agreeable to having an SMA condition that temporary irrigation be removed as noted. Herbicides and pesticides, will be used on an as needed basis, if weeds or insects become a problem. If the plants and ground cover are not adversely affected by weeds and/or insects, herbicides and pesticides will not be used.

“Grading associated with road reclamation and repair”

Our aerial photos show the on-site roads that we propose to restore and repair at their existing locations. These roads have been in place since the applicant acquired the property in 1998 and the applicant understands that they were in place well before that.

The Ironwood trees and the problems with soil erosion around these trees coupled with heavy rainfall events have washed out portions of the roadways. The problems with erosion are documented in the photographs provided in the Draft EA. This information will be included in the Final EA.

The “Driveway and Grading Plan” included in the Draft EA was prepared by a licensed professional engineer who also recommended improvements to minimize the potential for future washout of the roadways/driveways.

The reservoirs constructed on the property have been designed by the applicant’s civil engineer and approved by the County. The reservoirs were constructed in accordance with the approved plans.

“Summary”

The proposed landscaping, grading and road reclamation are directly related to the removal of Ironwood trees and regrassing of the hillside to reduce erosion. These Ironwood trees have created eroded areas that are too steep to be grassed or for other ground cover to be established. If these areas are not regraded and grassed, the potential for erosion will remain. Even today, although much of the hillside has grass or ground cover, areas under the

Ms. Pat Tingley

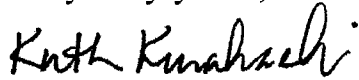
Page 8

Ironwood trees and where steep cuts have occurred, due to erosion, are still bare with exposed soils.

The Ironwood trees are an invasive species that continue to adversely affect the slopes of Moloaa Bay. Allowing them to remain will lead to continued erosion and is not an acceptable option for the applicant.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch, LLC

PAT TINGLEY
210 Eggerking Road, Kapa'a, HI 96746
Tel: 808-822-1029

October 10, 2005

Steven Weinstein, Chairperson
And Members of the Planning Commission
County of Kaua'i
4444 Rice Street
Lihu'e, HI 96766

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 OCT 13 A 10:00
DEPARTMENT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Chair Weinstein and Members of the Planning Commission:

RE: Special Management Area Use Permit SMA (U) 2006-2
Moloa'a Bay Ranch TMK 4-9-11: por. 1

Thank you for the opportunity to express concerns about this SMA Use Permit. The stewardship of this coastal land is a delicate balance that is best accomplished through minimal human intervention and interference.

The applicant is combining after-the-fact use permits that stems from un-permitted violations, with additional uses resulting in a new scope of work. This combined format makes it difficult to understand the components of each permit on its own merits. Separating the two in order to carefully examine them independently, would be less confusing.

Bringing this SMA permit before the County Planning Commission, prior to the Draft Environmental Assessment (DEA) being finalized, is like putting the cart before the horse. DLNR is currently reviewing the Conservation District Use Permit (CDUP) and Draft EA for these very same proposed land alterations. Therefore, the public hearing should be kept open until the Draft EA is accepted. The intention of HRS 343 is that the County and the State address the important issues of environmental impact during the permitting review process.

With regard to the historic Moloa'a public trail, the Archeological Report in the DEA clearly states that "the trail allows access to and from Moloa'a Bay and Larsen's Beach". Historical accounts and maps (see attached Equity 80 map) document the Moloa'a trail as the traditional and historic-era access route to the *limu kolu* harvesting areas. As guaranteed in the 1932 Land Grant, DLNR still has the responsibility to survey the trail. The Commission could impose a condition that this survey and legal recordation through the Bureau of Conveyances be completed prior to any fencing. This would ensure that the historic alignment is accurately documented and that the public is guaranteed their right to use the trail in perpetuity. Without the survey, there is a high risk of inadvertent encroachment by the applicant.

Moloka'i Bay Ranch - SMA (U) 2006-2
October 10, 2005

Page 2

Another inconsistency is the applicant's map which indicates that proposed fence and trail are placed 30-40 feet apart. However, the attorney's testimony on September 13th, stated that their intent is to position the fence only 5-feet mauka of the trail. This is an extremely large discrepancy.

Everyone who has walked this trail along the 70-foot high bluff would concur that the historic trail was well preserved prior to MBR's alterations to the land. In large part, this was due to the ironwood trees and their protective layer of needles that prevented invasive vegetation from overwhelming the footpath. As a result of removing ironwood trees, the historic trail is being erased by subsequent erosion and encroaching vegetation. Intensive mowing and ground clearing has also altered the historic path making it more challenging to find. The Archeological Report strongly recommends preservation of this footpath and states that "no mechanical vegetative clearing should occur on the historic trail".

A careful review of the environmental effects of the proposed alterations to the land in this culturally sensitive area is vital. Tree removal, fence construction, ground clearing, grading, landscaping and irrigation and road reclamation may place the natural environment at risk. Heavy winter rains can cause newly excavated, non-compacted soils to wash down over the bluff and into the reef, despite best management practices. Therefore, without a finding of no significant impact (FONSI), the SMA use permit should not be approved.

Based on these problematic issues, it would be in the best interest of the SMA to keep the public hearing open until these issues are resolved. The landscape of Moloka'i is fragile and further alterations to this pristine coastal environment should not be considered at this time.

Thank you for this opportunity to comment.

Sincerely,


Pat Tingley

cc: Senator Gary L. Hooser
Representative Hermina M. Morita
FAOSNR Commission, County of Kaua'i
Thomas Oi, Land Division-Kaua'i District, DLNR
Curt Cottrell, Trails & Access Manager, DOFAW
Kimberly Mills, DLNR Office of Conservation & Coastal Lands

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E-Mail: kkurahashi@hawaii.nn.com

November 8, 2005

Ms. Pat Tingley
210 Eggerking Road
Kapaa, Hawaii 96746

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Ms. Tingley:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letter, dated October 10, 2005, to the Planning Commission with a cc to the Department of Land and Natural Resources, Office of Conservation and Coastal Lands. The following responds to your comments:

“Combining Permits”

The applicant had discussed the permit processing separately with the staff at the Office of Conservation and Coastal Lands. After explaining that in addition to correcting the violations, the applicant wanted to remove most of the remaining Ironwood trees to eliminate erosion caused by those trees, staff recommended that it be done in one application to save time and cost for all parties involved in the process, including their staff and the Board of Land and Natural Resources, the applicant’s consultants and the general public. It would also allow one environmental review process instead of a bifurcated process which is generally frowned upon by governmental planners. Similar discussions with staff at the Kauai Planning Department resulted in a similar recommendation that the SMA permit contain all improvements being proposed.

“Draft EA”

The Draft EA is not required for the processing of the SMA use permit, however, it is a requirement for the processing of the CDUA permit. Since the processing of the Draft EA is tied to acceptance of the CDUA permit for processing, the 180-day limit for review and decision on the CDUA application began on August 24, 2005 with an expiration date of February 20, 2006. This acceptance date was agreed to since the SMA use permit had been scheduled for public hearing in September with the Planning Commission and it was felt that five and a half months would be a reasonable amount of time to receive a decision on the SMA application.

The applicant expects to file the Final EA with the Office of Conservation and Coastal Lands and hopes that a Finding of No Significant Impact (FONSI) will be issued by that office prior to November 22, 2005. The applicant feels, however, that since an environmental assessment is not required for the SMA use permit that the processing of this permit should not be tied to the receipt of a FONSI on the Final EA.

“Trail”

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR’s authority to establish the trail.

In an abstract attached to a letter from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant’s

SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant's discussion with staff at Na Ala Hele, the applicant recognizes DLNR, as the successor to the "Commissioner of Public Lands" and DLNR's right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

The landscape plan was intended to provide a general location for the fence and not a precise location due to the scale of the plan (a five foot separation would have been about a little over 1/60 of an inch). A dashed line was used to denote an approximate location. The applicant agrees that upon establishment of the trail by DLNR, the fence will be located five feet mauka of the trail.

The applicant believes that at one time, the trail may have been used as an access to Larsen's Beach. However, with the acquisition of Larsen's Beach Road by the County and the provision of parking at the end of this access road, the trail has limited use or purpose. The trail ends at the neighboring property which has a fence at their property line and continuing on to Larsen's Beach requires climbing down the rock face of Moloaa Bay hillside and following the shoreline to Larsen's Beach. The lack of use is evidenced by the overgrowth that has occurred that has made the trail difficult to find. The proposed three rail fence would help to delineate the trail, should it be established by DLNR.

"Environmental Effects"

The tree removal, ground clearing, grading, landscaping, irrigation and road reclamation are directly related to the removal of Ironwood trees and regrassing of the hillside to reduce erosion. These Ironwood trees have created eroded areas that are too steep to be grassed or for other ground cover to be established. If these areas are not regraded and grassed, the

potential for erosion will remain. Even today, although much of the hillside has grass or ground cover, areas under the Ironwood trees and where steep cuts have occurred, due to erosion, are still bare with exposed soils.

The proposed three rail fence would help to delineate the trail, should it be established by DLNR.

Based on the schedule for review of the CDUA permit application, a decision may be forthcoming in February, should the SMA use permit be approved in a timely fashion before February, the applicant would likely begin work in March or April, after the heavy winter rains that you have mentioned. Use of best management practices during landscaping and road repair activities will further minimize potential runoff and erosion.

The Ironwood trees are an invasive species that continue to adversely affect the slopes of Moloaa Bay. Allowing them to remain will lead to continued erosion and is not an acceptable option for the applicant.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC



NA ALA HELE
Hawai'i Trail & Access System

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2005 OCT 12 A 11: 16

October 12, 2005

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Ref: K98:1 Moloaa

TO: Tiger Mills, Office of Conservation and Coastal Lands

FROM: Doris Moana Rowland, Na Ala Hele Abstractor *DMR*

THROUGH: Curt Cottrell, Na Ala Hele Program Manager *CAC*

SUBJECT: Comments regarding Conservation District Use Permit Application and Draft Environmental Assessment submitted by Moloaa Bay Ranch affecting Tax Map Key: 4-9-11-portion of 1

Enclosed you will find Na Ala Hele Abstract filed as K98:1 Moloaa dated December 3, 1998. Please accept this abstract as our comments on the subject application.



NA ALA HELE
Hawaii Trail & Access System

December 3, 1998

REF: K98:1 Moloaa

TO: Ed Petteys, Branch Manager

THROUGH: Curt Cottrell, Program Manager *AC*

FROM: Doris Moana Rowland, Abstractor *DMR*

SUBJECT: Public Access Right of Way to Moloaa Bay from the following Tax Map Keys:
4-9-11:01, 23 and 24; 4-9-14:12, 13 and 33

Research has been completed in response to your request dated September 1, 1998 seeking abstracting assistance on the above subject matter. The investigation of title revealed that the Territory of Hawaii conveyed all its interest in the old Alaloa that ran along near the sea in Moloaa Makai. A review of all available records and maps fail to disclose a dedicated public access or right of way to Moloaa Bay from the subject parcels. However in 1932 the Territory of Hawaii did make general provisions for a trail near the highwater mark. The specifics of this agreement will be discussed more fully herein.

The information presented in this report is based on data gathered from the repositories of the following agencies: Hawaii State Archives, Fifth Circuit Court, Bureau of Conveyances, State Survey Office and the DLNR Land Office. The research did not include a site visit to the subject lands.

A general history of the land titles for the ahupuaa of Moloaa will open this report followed by an amplified discussion of the individual parcels that are the subject of this inquiry. Information regarding the conveyance of the old Alaloa will be presented together with a review of all relevant map data. This memorandum will close with some suggestions and possible alternative sites that provide public access to Moloaa Bay. All exhibits are located at the end of the report. Xeroxed copies of the subject tax plats are included as Items I and II.

Should you have any questions you may reach me at 587-0057.

Creation of the Moloaa Hui

At the time of the Mahele in 1845, the lands of Moloaa, Papaa and Aliomanu were set aside as Government lands. In July 1850 the Privy Council chose to reserve those ahupuaa for school purposes. A deed dated January 13, 1860 appears of record in Book 12 page 400 whereby Richard Armstrong, as President of the Board of Education conveyed to the Trustees of the Oahu College, portions of the lands of Moloaa, Papaa and Aliomanu. This conveyance was for an aggregate area of 518 acres more or less as described by metes and bounds survey. A year later, S.N. Castle, as Treasurer of Oahu College conveyed those same three pieces of land to H.A. Widemann. In August 1864 the title history to the ahupuaa of Moloaa became chaotic when H.A. Widemann chose to convey his interest in the above lands to 100 different individuals in a single conveyance recorded in Book 18 page 337. This created what became known as the "Moloaa Hui." In effect all 100 persons owned the lands in common with no boundaries defining where each individual's real estate lay on the ground. Sixty one years would pass before a law was enacted to allow for an equitable partition amongst all the landowners.

In 1925 the Legislature enacted HRL 1925 Chapter 159 titled "Partition of Real Estate" to provide a mechanism for judicial partition of various hui lands. Section 2773 set forth the powers of the court as follows:

The court shall have power in its discretion to appoint a commissioner or commission to act under the directions and subject to the approval of the court...and where partition is deemed practicable to prepare a plan for division of the property into lots or parcels, including provision for any necessary roads or rights of way, and making of maps and surveys...with their recommendations as to the division or allotment of the parcels among the parties...

By 1931 Lihue Plantation and other sugar companies had acquired interest in the Moloaa Hui lands by purchasing the shares of various hui members and/or their successors in title. Lihue Plantation now purportedly owned 45 31/84 shares in all the lands and wished to quiet the title to its respective shares and to partition the property. Section 2761 of Chapter 159 provided the guidelines to initiate a partition suit:

When 2 or more persons hold or are in possession of real property as joint tenants or as tenants in common, in which one or more of them have an estate in fee, a suit in equity may be brought by any one or more of them in the circuit court of the circuit in which the property is situated, for a partition of the property, according to the respective rights of the parties interested therein, and for a sale of the same or a part thereof if it shall appear that a partition cannot be made without great prejudice to the owner.

Thus the Lihue Plantation Company, Makee Sugar Company and Hawaiian Canneries Company joined forces as Petitioners to partition the Moloaa Hui Lands in an action filed on August 7, 1931 as Equity No. 80 in the Fifth Judicial Circuit. The Respondents were Rebecca K. Achi, William C. Achi and 98 others who held or claimed an interest in the shares of the said hui lands.

The Commissioner of Public Lands (C.T. Bailey) and the Territorial Surveyor (Robert D. King) worked closely with the Commissioners of the Moloaa Hui (Lyle Dickey, Carlos Long and W.O. Crowell) to reach an equitable settlement of all parties' interests. The firm of R.M. Towill prepared the maps and Allotment charts to provide clear and concise boundaries of each allotment.

During the review process of any quiet title or equity action, the Government is given an opportunity to present a claim for any prerogative belonging to the public such as roads, trails, rights of way or lands. Numerous letters found in the file for Land Office Deed (LOD) No. 4468 indicates that C.T. Bailey was actively involved with various government agencies as well as private parties in addressing access issues affecting the public. A letter dated May 9, 1932 from A.G. Kaulukou, a County of Kauai Attorney to C.T. Bailey urges the reservation of certain portions of trails for fishermen. He (Kaulukou) makes the following recommendation:

1. The government remnant on the Northside of Moloaa Bay should be subject to a foot trail such as that now in use. (emphasis added) Without the use of this trail, fishermen and especially, dealers in limu kohu, will be subjected to severe inconvenience if they are required to travel along the beach.
2. The government remnant makai of the Moloaa Hui boundary in the vicinity of the Moloaa Triangulation Station should be subject to a foot trail as fishermen that fish along this section of the coast are unable to follow high water mark immediately in front of the Moloaa Triangulation Station because a precipitous pali abounds along this region.

An earnest attempt was made to locate on maps the foot trail referred to in item 1 above but to no avail. The reference to a 'government remnant on the northside of the bay' suggest it may have been within the boundaries of the parcel shown on Registered Map No. 2981 as belonging to the Territory of Hawaii. (Exhibit A) However, within a few months the Territory of Hawaii conveyed its interest in that parcel to the Moloaa Hui in Land Patent No. 10095 (Parcel D) . A more complete discussion of that conveyance is presented in a later section,

The next excerpt is from a letter dated April 18, 1932 from Philip L. Rice and the law firm of Robertson & Castle to Charles T. Bailey. The letter is meant to summarize results of a conference had with several Territorial officials, Mr. Arthur Alexander of American Factors Ltd., Commissioner Mr. Dickey, Mr. Kaulukou and Mr. Anthony of the Rice law firm.

We understand that the old maps show a trail across the Hui Lands existing apparently in 1878 and that this for many years long since has been abandoned. It might be just as well to clean up this matter by way of resolution of the Board of Supervisors at this time.


This would lead to the eventual relinquishment by the Government of the old Alaloa depicted on the 1878 map on file in the Survey Office as Registered Map No. 1395. (Exhibit B)

Simply put, the Territory conveyed its interest in the old Alaloa in exchange for lands to widen the roads as well as a future trail at an indeterminate location along the shoreline. With those issues addressed, all affected parties could finalize the Partition Decree.

Title Study of the Subject Tax Map Parcels

Upon completion of the surveys and adjudication of title to all the shares in the Hui of Moloaa, a Final Decree in Partition was filed on September 24, 1932. The confusion that had been created in 1864 with the conveyance by H.A. Widemann to 100 individuals had finally been put in order. The Final Decree set forth by metes and bounds survey the 100 individual lots and corresponding allottees that were entitled to land shares in the Hui.

With the boundaries of the Hui lots clearly defined, a title study was conducted to determine if a customary trail or road existed in the subject areas. The study of each tax map parcel began at the time of the Mahele in 1845 when private property ownership was initiated. Various sources were examined to study the historical, legal and title matters that affected each parcel. The research concludes with the most recent conveyance that transferred title to the current owner and any encumbrances affecting or providing public access.

 4-9-11-01

A portion of this parcel was created from Allotment 1A - one of the first lots awarded in the Final Decree of Partition of the Moloaa Hui. This allotment located on the northside of Moloaa Bay also contained a portion of Parcel D of LP Grant 10095. The survey description of this allotment discloses the area to be 105.713 acres and establishes its seaward boundary along the highwater mark.

This allotment was conveyed to Olaf Thronas by a deed executed on September 24, 1932, and filed in the Bureau of Conveyances in Book 1189 Page 53. The deed contained the following reservation (similar to the recitation in LP Grant 10095):

Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.

Records fail to disclose a designation of a shoreline trail by the Commissioner of Public Lands or its successors in office. Furthermore, maps on file fail to reveal a trail along the shoreline with the exception of the Old Alaloa that was relinquished by the Territory of Hawaii.

From the date of the original conveyance in 1932 until the most recent transfer of the subject parcel in May 1998 to Moloaa Ranch, L.L.C., a Colorado Limited Liability Company, the aforesaid reservation remains an encumbrance on the land.

4-9-11-23

Long before the Moloaa Hui lands were a consideration, the Hawaiian Government was actively engaged in sales of Government land to its Hawaiian citizens. In 1851, the Hawaiian Government sold a 25.30 acre parcel of land to Kauluhiwa in Royal Patent (RP) 612. The survey description discloses the makai boundary as running along the sea. There is no mention in the RP or its accompanying metes and bounds description of a road or shoreline trail within the boundaries of this tract of land. However Registered Map No. 1395 (**Exhibit B**) indicates a foot path or trail traveling along the coastline as well as a road that runs in a mauka-makai direction in the district of Kaakaaniu [nui].

The current owners acquired title to this land in 1987. Records reveal the area of this land has not changed since 1851. The deed is silent as to provisions for public access over and across this land to the shoreline.

4-9-11-24

In August 1850, a kama'aina named Kahele made a request to the Hawaiian Government to purchase a piece of land in Kaakaaniu. He indicated a desire to cultivate taro and raise other crops in the area. In response to that request, Royal Patent 522 was issued to Kahele in 1851 for the sale of 10 5/6 acres of land. Like RP 612, this RP fails to describe a road or foot path access, although the map data indicates otherwise.

This land is owned by the same individuals who also own parcel 23. The most recent deed fails to disclose conditions that provide public access over and across this land to the shoreline.

When the Government sold the lands above to the respective purchaser, the sale was made subject to the rights of the native tenants. The Hawaiian language version of said RP cites this condition as: *Koe ke kuleana o na kanaka*. Recognizing the change in land tenure, and seeking to assure that private property ownership would not interfere with the common practices of the native tenants, the Legislature enacted the Kuleana Act of 1850. This Act meant to acknowledge that the native tenants were afforded certain rights and privileges that could not be disposed of by purchase. The right of way was one of the stated privileges in the Kuleana Act. This Act survives as Chapter 7 of the State Constitution which states in part: "The people shall also have a right to drinking water, and running water and the right of way."

Perhaps it was the general understanding of the purchaser, surveyor and government officials that the right of way was an implied right, thus making it unnecessary to specifically mention the road or foot path in the district of Kaakaaniu. Based on the taro cultivation as well as other agricultural and fishing endeavors in the area, these activities would dictate reasonable access rights. It is important that all available evidence is seen as a whole and not as singular events.

4-9-14-12

Located directly on the beach fronting Moloaa Bay, title to this parcel was examined to determine if a customary access to the beach was provided. One of the earliest records found regarding this piece of land include the survey sketch made a part of Land Commission Award (LCA) No. 238K awarded to Kahelahaole in 1851. (Exhibit D) The survey description describes the first piece as a houselot (*pahale*) situate on the beach while the second larger piece consists of 3 taro patches (*akolu lo'i*). The focus of this inquiry is the houselot piece containing an area of 0.13 acre.

The sketch depicting the houselot cites a road (*alamui*) as the western boundary of this land. Registered Map No. 2981 prepared for the Moloaa Hui Partition indicates the road did not end as abruptly as shown on the current tax map. (Exhibit E) Prior to the partition process, the road extended more makai providing access to the shoreline. Apparently portions of the road was incorporated into Allotments 7 and 8, thereby creating the dead end road that exists today on the tax map.

A review of all subsequent transfer documents fail to provide any information regarding usage of the road. The land is now owned by several family members who acquired title through various conveyances. The deeds fail to disclose a public access easement or right of way to the beach.

4-9-14-13

This 0.33 acre beachfront parcel was carved out of the Moloaa Hui lands by the Commissioners to provide compensation for the taking of land necessary to widen Hui Road B. The owner of the desired land at the time of the Partition and the respective road widening was Rebecca K. Achi. In September 1932, the Commissioners executed a Deed recorded in the Bureau of Conveyances in Book 7357 Page 352 whereby Rebecca Achi conveyed to the Hui a portion of LCA 239B and received in exchange the subject piece of land.

This sliver of land was eventually acquired by the owner of parcel 33. There are no provisions cited in the deed to accommodate public access to the shoreline.

4-9-14-33

Rebecca K. Achi was awarded this 1.019 acre oceanfront parcel at the time of the Hui Partition. This parcel of land designated as Allotment 7 is comprised of a portion of the Ahupuaa of Moloaa, LCA 238Q:1 (also covered by Grant 1889:1), and LCA 239B:1. The data found regarding this parcel is mute as to any type of customary access to the shoreline.

Examination of all available records and maps fail to disclose a trail, easement or right of way providing shoreline access in the area of the subject parcels.

Summary of Findings

One of the mechanisms that enable the Government to declare a trail or old government road as public is based on the principles of the Highways Act of 1892, chapter 47, 1892 Hawaii Session Laws which declared:

“All roads, alleys, streets, ways, lanes, courts, places, trails and bridges in the Hawaiian Islands, whether now or hereafter opened, laid out or built by the Government or by private parties, and dedicated or abandoned as a highway are hereby declared to be public highways. All public highways once established shall continue until abandoned by due process of law.”

Consequently research efforts focused on documenting the existence of any roads or trails in the shoreline area of Moloaa Bay that could possibly be claimed as a public thoroughfare. The only trail or road found that fit the Highways Act criteria was the Old Alaloa delineated on Exhibit B. But as the records indicate, the Territorial government would relinquish its easement over the Old Alaloa.

Every attempt was made to exhaust all available resources yet no other shoreline trail or road was found that conform to the edict of the Highways Act of 1892. Should new information become available in the future, a renewed effort will be undertaken to explore all possibilities.

All information detailed in this report so far has come from the public records of various government agencies. Ideally this report would include a section of kama'aina testimony regarding historical access to Moloaa Bay. Oral history statements supply valuable insights into population patterns, natural resource and cultural practices, and events that affect the community's attitude regarding public access issues. As this matter moves toward resolution, an effort to gather kama'aina testimony would be a worthwhile endeavor.

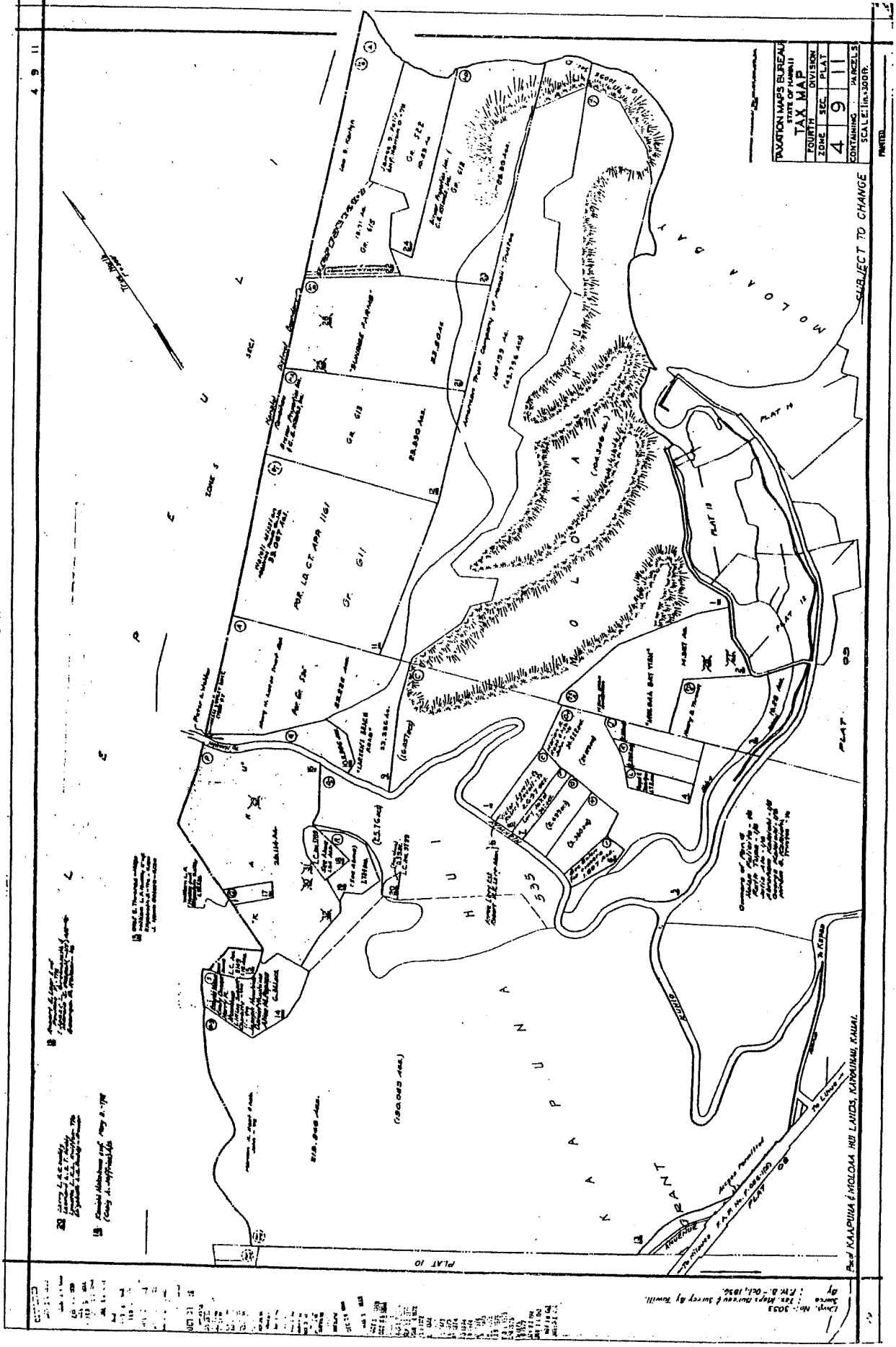
The groundwork to secure shoreline access in the vicinity of tax plat 4-9-11 was laid when the Territorial officials expressly reserved a trail of indeterminate location in LP Grant 10095. Appropriate action should be initiated by the affected government agencies and community members to secure a safe and reasonable shoreline access.

An alternative shoreline access in tax plat 4-9-14 could be reached by utilizing the public road between parcels 16 and 17. Although not in the location pointed out by the citizens who made the original inquiry, the road leads directly to the beach. Having not seen the site, it is impossible to know if any barriers exist to preclude public access.

It is hoped the information contained in this report will help resolve the issue of public access to the shoreline in the subject lands. Should you need any further assistance, please feel free to contact me.



TAX PLAT 4-9-11



4911

TERRITORY MAPS BUREAU	
CITY OF HONOLULU	
TAX MAP	
FOURTH	SEVEN
ZONE	SEC.
4	9
PLAT	
11	
CONTAINING PARCELS	
SCALE: 1 in. = 100 ft.	

SUBJECT TO CHANGE

PLAT 10

PLAT 11

PLAT 12

PLAT 13

PLAT 14

PLAT 15

PLAT 16

PLAT 17

PLAT 18

PLAT 19

PLAT 20

PLAT 21

PLAT 22

PLAT 23

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PLAT 97

PLAT 98

PLAT 99

PLAT 100



ITEM II

TAX PLAT 4-9-14

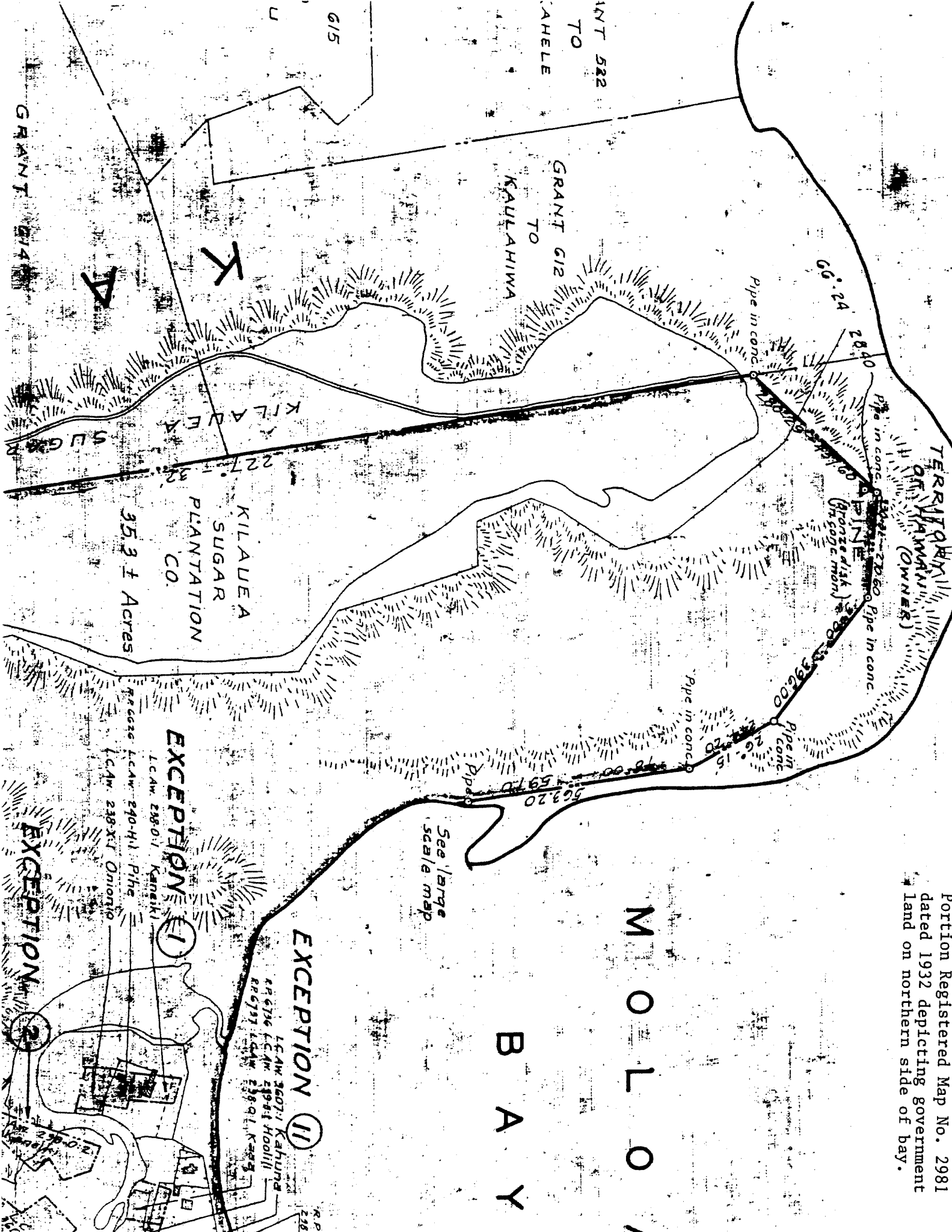


EXHIBIT A

Portion Registered Map No. 2981 dated 1932 depicting government land on northern side of bay.

M O L O

B A Y



TERRITORY OF HAWAII (OWNER)

GRANT 522 TO MAHELE

GRANT 612 TO KAULAHIMA

KILAUEA SUGAR PLANTATION CO. 35.3 ± ACRES

EXCEPTION (I)

EXCEPTION (II)

See large scale map

GRANT 614

EXCEPTION (2)

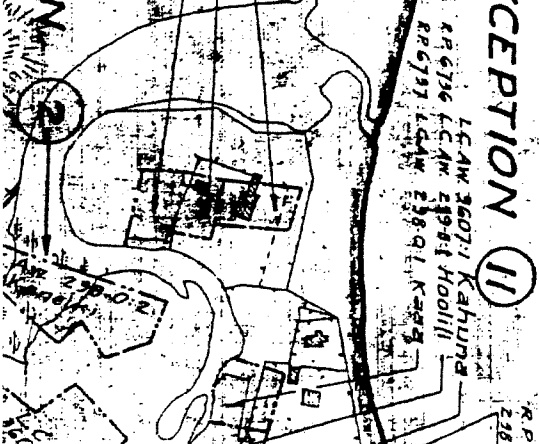




EXHIBIT B



EXHIBIT C

Land Patent No. 10,095

(Grant)

Issued On

LAND EXCHANGE

By THIS PATENT the Governor of the Territory of Hawaii, in conformity with the laws of the United States of America and of the Territory of Hawaii,

and in accordance with the provisions of Section 73 of the Hawaiian Organic Act, and the Revised Laws of Hawaii 1925,

makes known to all men that he has this day granted and confirmed unto

LYLE A. DICKEY, WILLIAM O. CROWELL and CARLOS A. LONG,
AS COMMISSIONERS IN THE MOLOAA HUI LAND PARTITION,
EQUITY NO. 80

for the consideration of the conveyance of certain lands required by the Territory of Hawaii for public use, to wit; for road purposes and Triangulation Station Sites, situate at Aliomanu, Papaa and Moloaa, Koolau, Kauai, and more particularly described in a deed dated the 26th day of July, A. D. 1932, from the said Lyle A. Dickey, William O. Crowell and Carlos A. Long, Moloaa Hui Land Commissioners, to the Territory of Hawaii,

all of the land situate at ALIOMANU and MOLOAA
in the District of KOOLAU *Island of* KAUAI *bounded and described as follows:*

PARCEL A: - Government Reserve within the Ahupuaa of Aliomanu, situate at the seashore and adjoining the land of Anahola, Koolau, Kauai, T.E.

BEGINNING at a pipe in concrete at the South corner of this parcel of land, being also the East corner of the Moloaa Hui Land and on the Anahola - Aliomanu boundary, the true azimuth and distance from Government Survey Triangulation Station "WAL" being 312° 19' 30" 270.60 feet, and running by true azimuths from the above described initial point:

1. 148° 30' 775.60 feet along the Moloaa Hui Land to a pipe;
2. 248° 30' 74.00 feet along L. C. Award 4636, Apana 1 to Puaokauwala to high water mark at seashore;

Thence following along high water mark at seashore for the next eight (8) courses, the direct azimuths and distances being:

3. 312° 50' 180.00 feet;
4. 308° 30' 182.00 feet;
5. 302° 30' 133.00 feet;
6. 301° 16' 110.57 feet;

7. 321° 00' 113.00 feet;
 8. 333° 30' 83.00 feet;
 9. 339° 40' 85.00 feet;
 10. 357° 00' 21.00 feet;
 11. 77° 50' 290.00 feet along the land of Anahola to the point of beginning and containing a gross area of 3.90 Acres and a net area of 3.45 Acres, after reserving and excepting a strip of land 30.00 feet wide for road purposes, described as follows:

BEGINNING at a point on the Southwest boundary of the above described parcel of land, being also on the Eastern boundary of the Moloaa Hui Land; the true azimuth and distance from a pipe in concrete, which marks the initial point of the above described parcel of land being 148° 30' 561.85 feet and running by true azimuths:

1. 291° 30' 80.44 feet;

Thence on a curve to the right with a radius of 500.00 feet, the direct azimuth and distance being:

2. 308° 15' 288.20 feet;

3. 325° 00' 168.00 feet;

Thence on a curve to the right with a radius of 300.00 feet, the direct azimuth and distance being:

4. 335° 40' 30" 111.14 feet and containing an area of 0.45 ACRE.

Gross Area	3.90 Acres
Less Road	<u>0.45 Acre</u>
NET AREA	<u>3.45 ACRES</u>

Excepting and reserving therefrom a trail over and across this land along near highwater mark, which said highwater mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest, the location of said trail to be designated by the Commissioner of Public Lands.

PARCEL B: - Government Remnant within
the Ahupuaa of Aliomanu, situate at
the seashore and adjoining L.C. Award
4636 Apana 1 to Puaokauwala, Koolau,
Kauai, T. H.

BEGINNING at a pipe at the South corner of this parcel of land, being also on the boundary of the Moloaa Hui Land, and on the Northern boundary of L. C. Award 4636, Apana 1 to Puaokauwala, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAL" being 593.40 feet North and 275.25 feet West, and running by true azimuths from the above described initial point:

1. 148° 30' 80.00 feet along the Moloaa Hui Land to high water mark at seashore, and passing over a pipe at 40.00 feet;

Thence following along high water mark at seashore for the next two (2) courses, the direct azimuths and distances being:

2. 303° 12' 35.96 feet;
3. 312° 30' 55.00 feet;
4. 65° 30' 31.00 feet along L. C. Award 4636, Apana 1 to Puaokauwala to the point of beginning and containing an area of 1,380 SQUARE FEET. *7 0 0 32 Dec*

Excepting and reserving therefrom a trail over and across this land along near highwater mark, which said highwater mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest, the location of said trail to be designated by the Commissioner of Public Lands.

PARCEL C: - Government Reserve within
the Ahupuaa of Aliomanu, situate at
the seashore and adjoining the land of
Papaa, Aliomanu, Koolau, Kauai, T. H.

BEGINNING at a pipe in concrete at the Northwest corner of this parcel of land on the boundary between the lands of Aliomanu and Papaa, being also on the Eastern boundary of the Moloaa Hui Land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 6,791.80 feet South and 3,137.75 feet East and running by true azimuths from the above described initial point:

1. 261° 00' 290.00 feet along Papaa along the Moloaa Hui Land to high water mark at seashore, passing over a pipe in concrete at 239.45 feet;

Thence following along high water mark at seashore for the next eighteen (18) courses, the direct azimuths and distances being:

2. 330° 00' 190.00 feet;
3. 360° 00' 56.00 feet;
4. 332° 30' 178.00 feet;
5. 315° 30' 227.00 feet;
6. 354° 20' 136.00 feet;
7. 339° 30' 172.00 feet;
8. 319° 15' 162.00 feet;
9. 29° 45' 186.00 feet;
10. 9° 20' 175.00 feet;
11. 326° 00' 175.00 feet;
12. 358° 00' 25.00 feet;
13. 42° 45' 142.00 feet;
14. 6° 05' 115.00 feet;
15. 344° 32' 67.20 feet;
16. 39° 50' 186.00 feet;
17. 60° 20' 67.00 feet;
18. 36° 00' 62.00 feet;
19. 15° 20' 92.00 feet;
20. 148° 30' 577.00 feet along the Moloaa Hui Land to a pipe in concrete and passing over a pipe in concrete at 35.00 feet;
21. 174° 30' 1534.50 feet along the Moloaa Hui Land to the point of beginning and containing an area of 22.70 ACRES.

Excepting and reserving therefrom a trail over and across this land along near highwater mark, which said highwater mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest, the location of said trail to be designated by the Commissioner of Public Lands.

PARCEL D: - Government Reserve within the Ahupuaa of Moloaa, situate at the seashore and adjoining the land of Kaakaaniu, Moloaa, Koaiau, Kauai, T. H.

BEGINNING at a pipe in concrete at the Northwest corner of this parcel of land, being also the North corner of the Moloaa Hui Land, and on the Southeastern boundary of the land of Kaakaaniu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PINE" being 91.00 feet North and 404.25 feet West, and running by true azimuths from the above described initial point:

1. 227° 32' 362.00 feet along the land of Kaakaaniu to highwater mark at seashore, passing over a "+" on large rock at 274.20 feet;

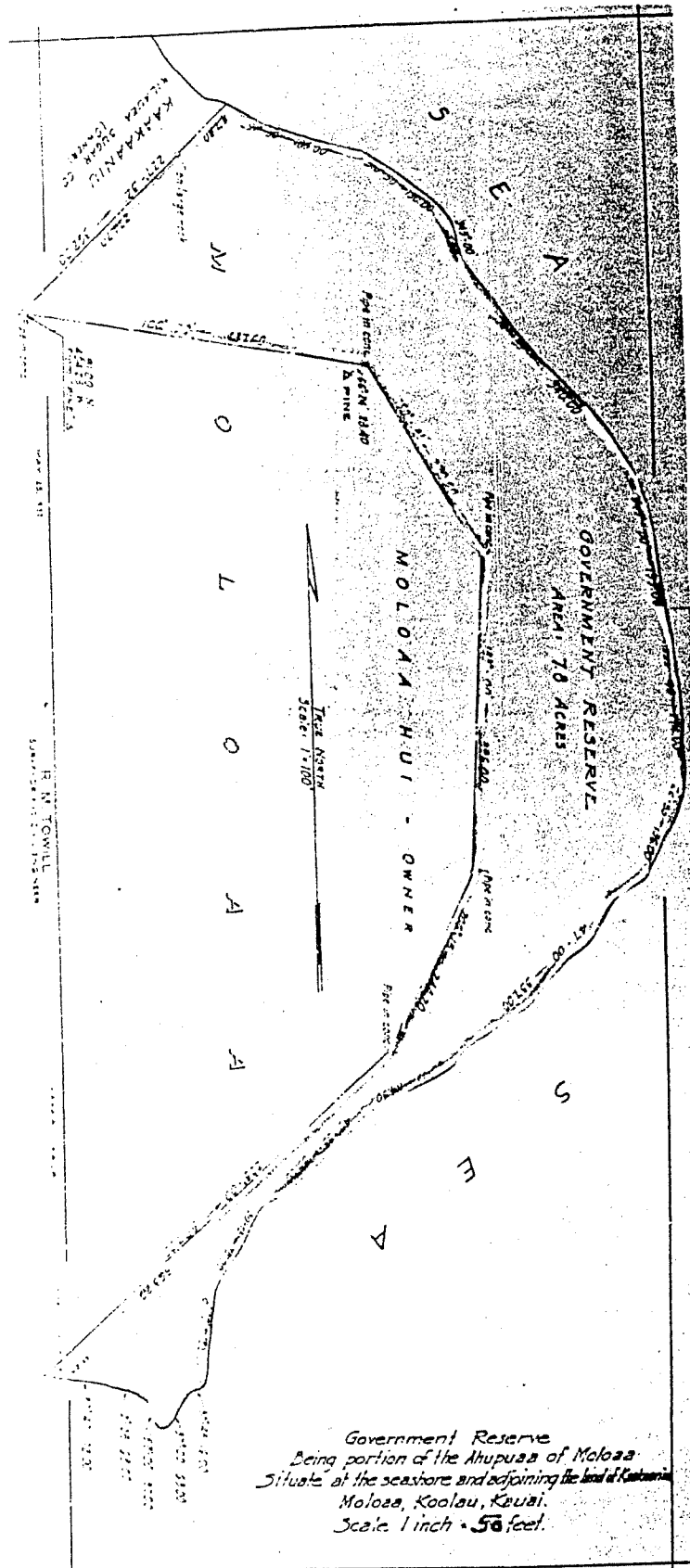
Thence following along high water mark at seashore for the next seventeen (17) courses, the direct azimuths and distances being:

2. 291° 30' 185.00 feet;
3. 310° 30' 130.00 feet;
4. 345° 00' 51.00 feet;
5. 322° 35' 340.00 feet;
6. 349° 50' 199.00 feet;
7. 355° 40' 174.00 feet;
8. 22° 55' 136.00 feet;
9. 47° 00' 337.00 feet;
10. 60° 39' 114.50 feet;
11. 49° 35' 183.00 feet;
12. 30° 15' 115.00 feet;
13. 8° 10' 122.00 feet;
14. 80° 45' 16.00 feet;
15. 37° 00' 63.00 feet;
16. 159° 00' 37.00 feet;
17. 112° 25' 68.00 feet;
18. 97° 47' 72.00 feet; thence
19. 228° 00' 597.00 feet along the Moloaa Hui Land to a pipe in concrete and passing over a pipe in concrete at 33.80 feet;
20. 206° 15' 244.20 feet along the Moloaa Hui Land to a pipe in concrete;
21. 183° 00' 396.00 feet along the Moloaa Hui Land to a pipe in concrete;
22. 150° 31' 270.60 feet along the Moloaa Hui Land to a pipe in concrete, and from said pipe in concrete the true azimuth and distance to Government Survey Triangulation Station "PINE" being 66° 24' 28.40 feet;

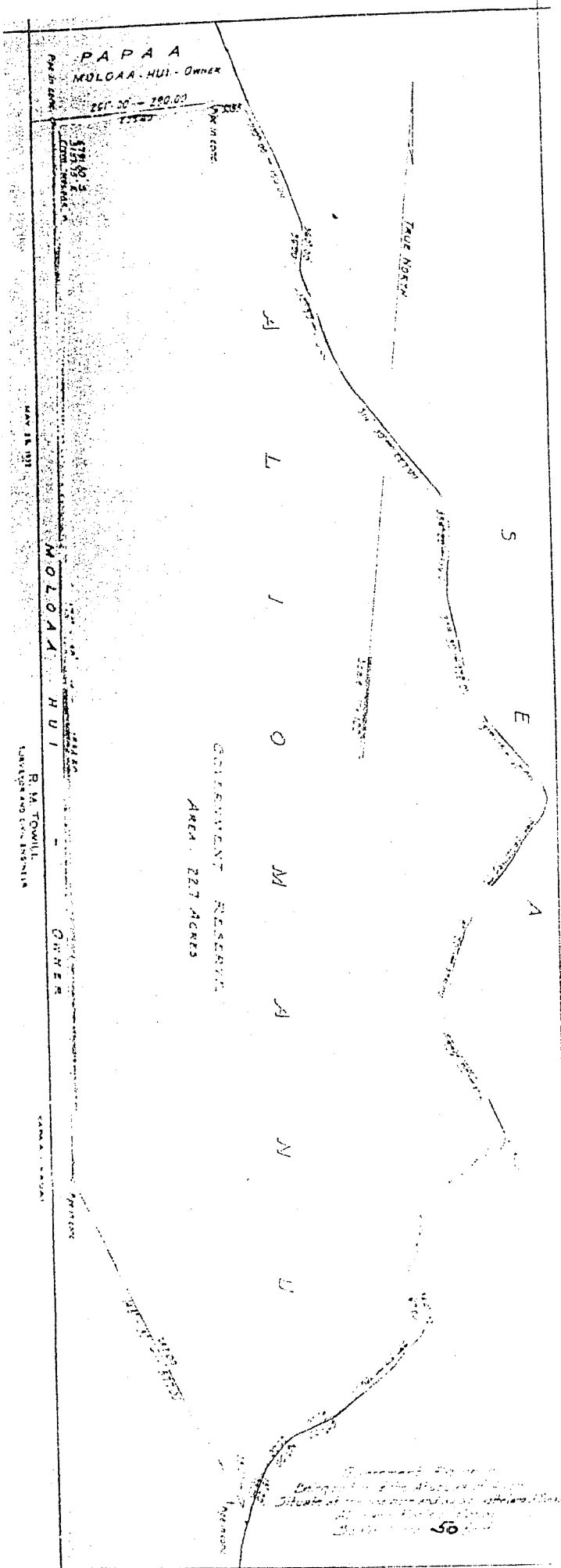
23. $100^{\circ} 29'$ 437.60 feet along the Moloaa Hui Land
to the point of beginning and
containing an area of 7.8
ACRES.

Excepting and reserving therefrom a trail over
and across this land along near highwater mark, which said
highwater mark is that part of the shore of the sea to
which the waves ordinarily reach when the tide is at its
highest, the location of said trail to be designated by
the Commissioner of Public Lands.

Attached

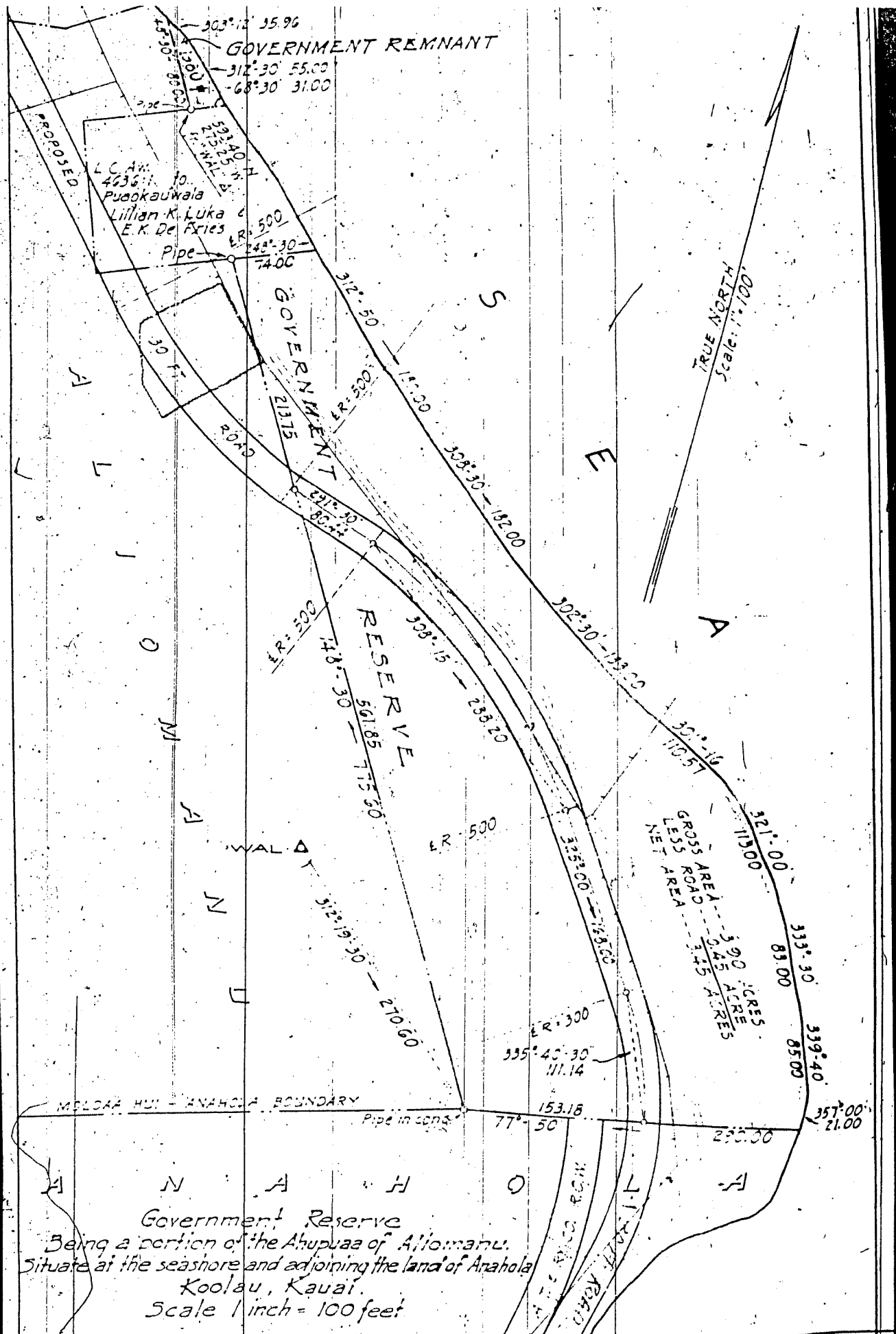


Government Reserve
 Being portion of the Ahupua'a of Mo'loa
 Situate at the seashore and adjoining the land of Koolau
 Mo'loa, Koolau, Kauai.
 Scale 1 inch = 50 feet.



Atta

Government Reserve
 Belong to the State and are
 Situate at the corner and are of the following dimensions
 50



MAY 25, 1932

R. M. TOWILL
 SURVEYOR AND CIVIL ENGINEER

KAPAA - KAUAI

Containing _____ 33.98 _____ Acres, more or less.

TO HAVE AND TO HOLD the above granted Land unto the said

LYLE A. DICKEY, WILLIAM O. CROWELL and CARLOS A. LONG,
AS SUCH COMMISSIONERS AS AFORESAID

and their / successors in trust
~~heirs~~ and assigns forever.

IN WITNESS WHEREOF, The Governor of the Territory of
Hawaii has hereto set his hand and caused the Great
Seal of the Territory to be hereunto affixed, this

22nd day of August A. D. 1932

BY THE GOVERNOR:

Samuel R. Judd

[Signature]
Commissioner of Public Lands.

The above exchange was approved by the
Board of Public Lands, April 28, 1932

Approved as to form:

[Signature]
Member, Board of Public Lands,
Territory of Hawaii.

[Signature]
Deputy Attorney General.

Written by *[Signature]*

Checked by *[Signature]*



EXHIBIT D

 EXHIBIT E

OPTION (11)
0.553 AC

R.P. 7130
L.C.A.W. 238-K:1
Kahelahaole
Wm. K. Waialeale (Own)

Heirs of J.K. Apolo
John Opia (Owner)

Mrs. Kamaka Oili
A. Moke Kuhaulua
Eli Opio (Owner)

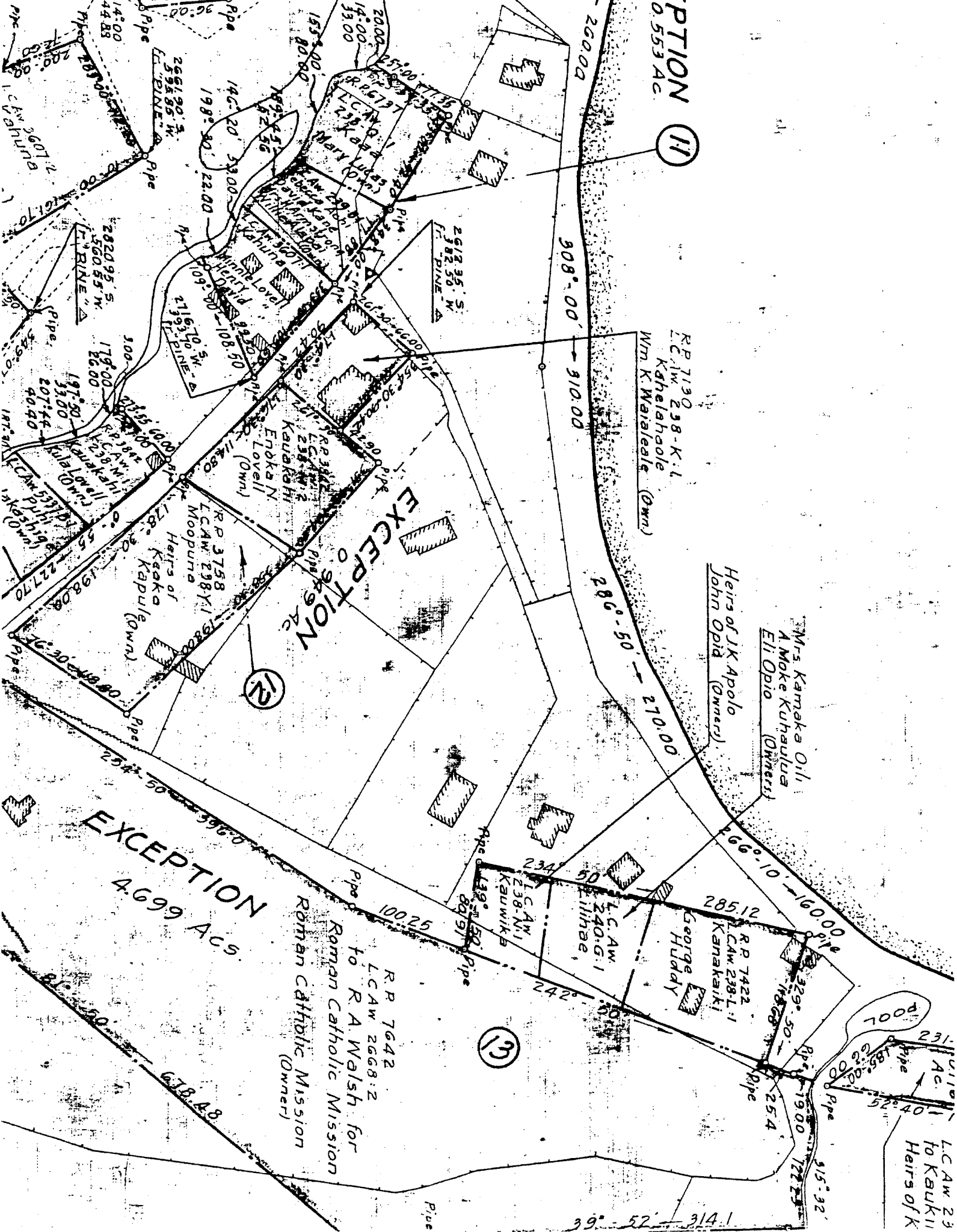
R.P. 7422
L.C.A.W. 238-L:1
Kanakaiki
George Huddy

L.C.A.W. 23
To Kauki
Heirs of K

R.P. 7642
L.C.A.W. 2668:2
to R.A. Walsh for
Roman Catholic Mission
(Owner)

EXCEPTION
0.919 AC

EXCEPTION
4.699 ACS



(11)

(12)

(13)

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
2752 WOODLAWN DRIVE, SUITE 5-202
HONOLULU, HAWAII 96822

BUS. (808) 988-2231

FAX. (808) 988-1140

E-Mail: kkurahashi@hawaii.nr.com

November 8, 2005

Mr. Curt Cottrell, Na Ala Hele Program Manager
Division of Forestry & Wildlife
State, Department of Land and Natural Resources
1151 Punchbowl Street, Room 224
Honolulu, Hawaii 96813

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Mr. Cottrell:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and for comments provided, in your memorandum to the Office of Conservation and Coastal Lands.

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR's authority to establish the trail and your Na Ala Hele program as the leader in State trails.

In the abstract you have provided, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

Mr. Curt Cottrell
Page 2

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant's SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on the applicant's consultant's discussion with you, the applicant recognizes DLNR, as the successor to the "Commissioner of Public Lands" and DLNR's right to designate the trail as noted in the deed reservation. However, the applicant further understands that the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

The applicant has decided in consultation with you and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

Your memorandum and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

DLNR

Kimberly Mills

POB 621

Honolulu, HI 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2005 OCT 13 A 10:33

Subject: Moloa'a Bay Ranch (Kauai) HRS343DEA

Testimony before the Planning Commission - 10/11/05

Marge Freeman- for the record

DEPT OF LAND &
RESOURCES
STATE OF HAWAII

On Oct. 5 there was a tour of the Moloaa area with commissioners, the public and representative of Moloaa Bay Ranch present. As a member of the public, who took the tour, I want to report on it.

Stop #1 - Base of the public trail.

At this point the MBR manager said the trail goes along the rocks & crashing surf. They then stated we were getting low on time and needed to start back. The Planning Commission decided to go up the hill on the trail the public pointed out. The Manager admitted he never went along rocks, where there is no trail. A member of the public gave local input that years ago the only access to Larson's beach was this trail and it is still used.

STOP #2 - UP THE HILL - After climbing up the hill we could see the trail going on from this higher point. The trail is clear on 2 maps and it can be seen that the trail goes up the hill to about the 70 foot level-the topo lines are on the map. The March 2004 map shows the same thing. So obviously everyone has agreed that what is being asked for by the Conservation District Use Permit Application is the trail up the hill not along the rocks. If we had walked further the trail becomes much more obvious.

THEREFOR WE ARE ASKING: Stick to the original public trail going up the hill, to about the 70 foot level to the north edge of the property as the maps show and make it a legal public trail.

Please, do not wait for a later time for this.

STOP 3 - On Hui Road A - The 1st gate was open and we walked through and to a closed gate #2. The MBR representatives stated there was no public access. However the original right-of-way went off to the right and along the stream toward the beach. This area is now overgrown, and was not pointed out to Commissioners, but still has white stakes along it.

Greg Kingsley (manager) stated there had always been gate #1 so there was no public access. Three Locals stated they did not remember a gate there, not even a preexisting gate as stated by the MBR representative and they always continued on to the stream and beach.

2) THEREFORE WE ARE ASKING: That the original public road access to the stream and beach be reopened and a parking area provided near the beach.

STOP #4 - CEMETERY - MBR attorney says his client has an easement over and along the cemetery property. He didn't say the County had already issued a letter saying that this access is illegal for the MBR residential project. Commissioners, you saw house pads and know this is a residential project. You have a letter in your packets - called CITATION 31 appended to "MBR timeline" stating access on the cemetery easement is illegal for the housing.

THEREFORE WE ARE ASKING: That MBR use their direct access from Koolau Rd. and not through the cemetery easement which has already been refused them.

STOP #5 & 6 - ITEM #1 - AT The bluff overlooking the steep slope, down to the beach. MBR is asking to grade the slopes with heavy

equipment. They stated they would use 18 silt fences however their grading plan shows only one silt fence.

When asked by a public member, where the slide area was they denied knowing of any. This is the slide where the hill gave away, which is just now beginning to heal. The slide can be seen easily from the beach. We also saw the other slopes that had naturally healed quite well and any heavy machinery would increase the chance of further slides.

THEREFORE WE ARE ASKING: That no permission be given for any grading or manipulation of the slopes at all.

ITEM #2 at stop 5 & 6. - Greg Kinsley said that eventually the 4 McCloskey children may want to build on the house pads we could see at this stop.

What he didn't say is that the property is for sale now and potential buyers are calling DLNR about the status of this CDUA.

AND REMEMBER County engineers need to issue the engineering permit before Commissioners can act on the SMA permit that we are discussing today.

WE ARE ASKING for 4 things:

1. Keep the original trail going up the hill to about the 70 foot level to the north edge of the property as shown on the maps and be sure it is legally registered as a public trail.

2. That the original road access to the stream and beach be reopened and a public parking area provided near the beach.

3. That MBR use their direct access from Koolau Rd. and not through the cemetery easement which has already been refused them.

4. That no permission be given for any grading or manipulation of the slopes at all.

Thank You,

Margery Freeman
6448 Kaahele St.
Kapaa, HI 96746

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

MANOA MARKET PLACE
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E-Mail: kkurahashi@hawaii.rr.com

November 8, 2005

Ms. Margery Freeman
6448 Kaahele Street
Kapaa, Hawaii 96746

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Ms. Freeman:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letter dated, October 11, 2005, to the Office of Conservation and Coastal Lands. The following responds to your comments:

“Stop #1 - Base of the public trail”

“Stop #2 - Up The Hill”

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR's authority to establish the trail.

In an abstract attached to a letter from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant's SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant's discussion with staff at Na Ala Hele, the applicant recognizes DLNR, as the successor to the "Commissioner of Public Lands" and DLNR's right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

"Stop #3 - On Hui Road A"

Moloaa Hui Road A is clearly defined and does not extend to the shoreline. The applicant will remove an existing gate that replaced an earlier gate across Moloaa Hui Road A (this gate has been kept open). However the second gate that is located on private property beyond the end of Moloaa Hui Road A will remain. Specific access rights to Moloaa Stream for specific neighbors in Moloaa is described in the applicant's deed for the property and will continue to be honored by the applicant.

"Stop #4 - CEMETERY"

The applicant does have legal access through this easement and continues to use this easement for access to its property, which includes the area that is the subject of the CDUA and SMA Use permits. A portion of the easement rests on property that has been acquired by the applicant (Larsen's Beach Road condominium unit E). The remainder of the easement rests on a property (Tax Map Key (4) 4-9-11: 10) whose owner recognized in February 1999 that "his Subject Property is subject to an easement for a right-of-way ten (10) foot wide in favor of land sold to Olaf Thronas as set forth in Partition in Equity no. 85 of the Fifth Circuit Court".

With respect to the usage of the entrance at the hairpin turn on Koolau Road, this entrance cannot be used safely by certain vehicles due to the steep grade that must be climbed to enter the property. At the present time four-wheel drives and certain smaller vehicles may be able to enter the property safely from the hairpin turn, but larger vehicles would have trouble on the steep incline and at the hairpin turns on the property.

The applicant proposes to continue to use the legal access easement located along the Koolau Japanese Cemetery for vehicles which are unable to use the entrance at the hairpin turn.

“Stop #5 & 6 - Item #1”

Needles from ironwood trees on the subject property have created eroded areas that are too steep to be grassed or for other ground cover to be established. If these areas are not regraded and grassed, the potential for erosion will remain. Even today, although much of the hillside has grass or ground cover, areas under the Ironwood trees and where steep cuts have occurred, due to erosion, are still bare with exposed soils.

“Stop #5 & 6 - Item #2”

The property is not being advertised for sale, although the applicant has received unsolicited inquiries regarding the property. The applicant does not believe that the issuance of engineering permits are necessary for the Planning Commission to act on the SMA permit.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch, LLC

JUAN WILSON

PO Box 949

Hanapepe HI 96716

ARCHITECT

JuanWilson@earthlink.net

phone 808-335-0733

Hawaii State DLNR
Att. Kimberly Mills
PO Box 621 Honolulu HI 96809

RECEIVED
OFFICE OF CONSERVATION
AND SPECIAL LANDS
2005 OCT 12 A 9: 23
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

10 October 2005

Aloha;

The enclosed letter, dated October 8, 2005, is a corrected version of the letter dated October 7, 2005, concerning Moloaa Bay Ranch LLC proposed work on Kauai. The original letter had typographical errors that made some points unclear. No substantive issues have been changed. Here is a list of the changes.

- 1) On page 1 In paragraph 1 the spelling of "reclamation" was corrected
- 2) On page i In paragraph 2 the "Sierra Club" has been inserted where it was missing:

"The (Sierra Club) has watched with alarm..."

- 3) The signing agent of the letter has been corrected to read

"Kaua'i Group of the Hawai'i Chapter of the Sierra Club"

- 4) On page two the 3rd line in the title was removed so as to read:

***"Public Access Recommendations for
Conservation District of Moloaa Bay Ranch"***

- 5) On page three the 3rd line in the title was removed so as to read:

***Environmental Recommendations for
Conservation District of Moloaa Bay Ranch"***

My apologies for any misunderstanding or wasted time these errors may have caused you.



Juan Wilson



SIERRA CLUB Kaua'i Group of the Hawai'i Chapter
Post Office Box 3412, Lihue, Kauai, Hawai'i, 96766

Applicant: Moloaa Bay Ranch, LLC
Att: Tom McCloskey
132 West Main St., Aspen CO 81611

8 October 2005

Approving Agency: Hawaii State DLNR
Att. Kimberly Mills
PO Box 621 Honolulu HI 96809

Consultant: Kusao & Kurahashi, Inc.
Att: Keith Kurahashi
2752 Woodlawn Drive Suite 5-202,
Honolulu HI 96822

OEQC
Att: Leiopapa A. Kamehameha
235 South Beretania Street, Suite 702
Honolulu HI 96813

This letter is in regards the Moloaa Bay Ranch (MBR) property on Kauai (ID TMK 4-4-9-11:001). The MBR proposes to do work on this land in the Conservation District and within the Special Management Area (SMA). This proposal includes grading, road "reclamation", and landscape planting.

The Sierra Club has watched with alarm the work done by MBR on its property. Some of the work has been done without proper permits, including grading, clear cutting natural stands of trees, and road building. Some of this work has led to mud slides, ocean contamination, disfiguration of the landscape and restricted public access to areas of the ocean front historically used by hikers, fishermen and plant gatherers.

Much of the remedial work requested in this proposal is due to the previous work done by the applicant. Other aspects of the proposal appear to be preparation for a large scale development within the Conservation District that has not been shared with the public or the State and County agencies that would need to approve such work.

The reason many of us have chosen to live on Kauai is its spectacular natural beauty. In the past the mountains, fields and shorelines were much more accessible. Due to changes in use, increased privatization, risk management, security and other factors most people have little access to many places they once enjoyed.

The Kauai Sierra Club takes the position that land designated Conservation District should live up to its name and be "conserved." Special care should be taken by private landowner (as well as responsible agencies) to ensure that the natural environment and public access to it is protected.

The Kauai Sierra Club recommends that that applicant not "beautify" nature and develop roads on steep embankments of the ranch, particularly within the Conservation District. Moreover, the Kauai Sierra Club believes that the unpermitted construction of Reservoir Ponds 1 & 2 are too close to the embankment of the Thronas Plateau and should be relocated mauka to insure that another disastrous failure is not repeated.

The following two pages detail some of our concerns regarding the CDUP proposal. Also, attached with this letter are two presentations drawings, P-1 and P-2, (and reduced-size copies of them) that illustrate our recommendations. Thank you for your attention to these materials.

Juan Wilson:
Executive Committee of the Kaua'i Group of the Hawai'i Chapter



Public Access Recommendations for Conservation District of Moloaa Bay Ranch

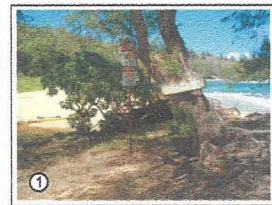
- A) The general public has access rights along the Coastal Trail in the Moloaa area deeds that are crossed by the trail. The Moloaa Bay Ranch (MBR) owners will make an acknowledgment of this access right of the public across MBR land in a legal covenant attached to deed and recorded in the State Bureau of Conveyances.
- B) Due to discrepancies between different shoreline boundary maps and the age of the most recent (1994) State Shoreline Certification, a new certified shoreline will be completed, and accepted by DLNR, prior to the commencement of any site work.
- C) The Coastal Trail on MBR land will be surveyed and legally recorded by the DLNR, and a ten foot wide public right-of-way will be officially designated and recorded in the State Bureau of Conveyances. The course of this trail will take an easily passable route along the high ground of the land identified as Grant 10095 Section D. Part of the existing Coastal Trail may be mauka of Grant 10095 boundary and should be left in its present location if no passable route exists makai of the 10095 boundary.
- D) The DLNR survey and recordation will document the Coastal Trail between Moloaa Beach and the northern boundary of MBR property. MBR development documents will reflect this continuity of the Coastal Trail.
- E) The recommendations of the archeological study commissioned by MBR will be incorporated as conditions of the permit to protect and preserve all sites that study identified.
- F) MBR will agree that any man-made or vegetative barrier to the public (e.g. fence or artificially planted and irrigated vegetation). will be setback at least 40 feet mauka of the designated Coastal Trail right-of-way, the State certified shoreline and the northern shore of Moloaa Stream. No barriers shall be constructed by the MBR that obscures the panoramic views of Conservation District land mauka of the Coastal Trail. The design (or replacement) of any man-made or artificially planted and irrigated vegetation barrier will be subject to Planning Commission review and approval.
- G) The DLNR will not permit "reclaiming" the segment of road between "Road 2" and "Road 3" as a restricted private road. That segment will be aligned with the Moloaa Hui Road and provide public parking and access to Moloaa Beach on the north of Moloaa Stream and be maintained by MBR.
- H) The DLNR will not permit "reclaiming" the roads in the Conservation District descending from the upper Thronas Plateau to the lower portions of the property; namely portions of "Road 1", "Road 3" and "Road 5". A MBR Master Plan for development of Conservation District land should be submitted for review to the DLNR prior to any road or grading requests.



Environmental Recommendations for Conservation District of Moloaa Bay Ranch

- 1) The 1999 construction of unpermitted pond/reservoirs at the embankment edge of the Thronas Plateau has led to engineering failures and will likely lead to further compromises to the environment. It is recommended that reservoir Pond #2 be decommissioned and re-engineered at a location further from the embankment located outside the Conservation District.
- 2) There has been a history of unpermitted landscaping and construction in the SMA zone dating back to shortly after MBR acquired this property in 1998. Unpermitted work subsequently led to the 2002 erosion, ocean pollution and disfigurement of the landscape.
- 3) Any remedial work on Conservation District hillsides damaged by unpermitted tree cutting should be executed in small phased sections without adding soil or fertilizer. Plantings should include appropriate naturally occurring species that will not require irrigation. No further grading or grubbing should be permitted within the Conservation District.
- 4) A good deal of natural healing after the catastrophic erosion in 2002 has already occurred. This demonstrates that natural processes can do an efficient job of restoring the landscape.
- 5) The development of roads with steep grades (over 5%) within the Conservation District should be discouraged. During rain they become highways for erosion and muddy runoff that finds its way into Moloaa Stream and onto the reefs of Moloaa Bay. No regrading should be permitted on hillsides within the Conservation District, particularly between Road #3 and Road #4.

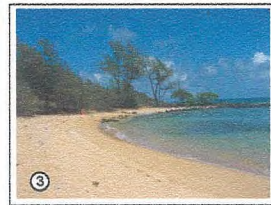
Larsen's Beach Road



1 View towards beach from end of Moloaa Road, where there is no parking for public



2 View from beach towards recommended public access parking north of Moloaa Stream



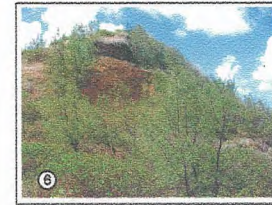
3 Public use of north end of Moloaa Beach enhanced by new access route.



4 Coast Trail ascending inland from shoreline requires designation and acknowledgment



5 View up "Road 5" towards Pump House & wall where public review of master plan needed



6 High ridge above Coastal Trail on MBR property where maintenance is needed



7 View north along Coast Trail connecting Moloaa Beach and Larsen Beach

Moloaa Bay Ranch Coastal Trail

Images taken September 8, 2005

For legend see P-2

Public Access Recommendations for Conservation District of Moloaa Bay Ranch concerning CDUP request approval

A) The general public has access rights along the Coastal Trail in the Moloaa area deeds that are crossed by the trail. The Moloaa Bay Ranch (MBR) owners will make an acknowledgment of this access right of the public across MBR land in a legal covenant attached to deed and recorded in the State Bureau of Conveyances.

B) Due to discrepancies between different shoreline boundary maps and the age of the most recent (1994) State Shoreline Certification, a new certified shoreline will be completed, and accepted by DLNR, prior to the commencement of any site work.

C) The Coastal Trail on MBR land will be surveyed and legally recorded by the DLNR, and a ten foot wide public right-of-way will be officially designated and recorded in the State Bureau of Conveyances. The course of this trail will take an easily passable route along the high ground of the land identified as Grant 10095 Section D. Part of the existing Coastal Trail may be mauka of Grant 10095 boundary and should be left in its present location if no passable route exists makai of the 10095 boundary.

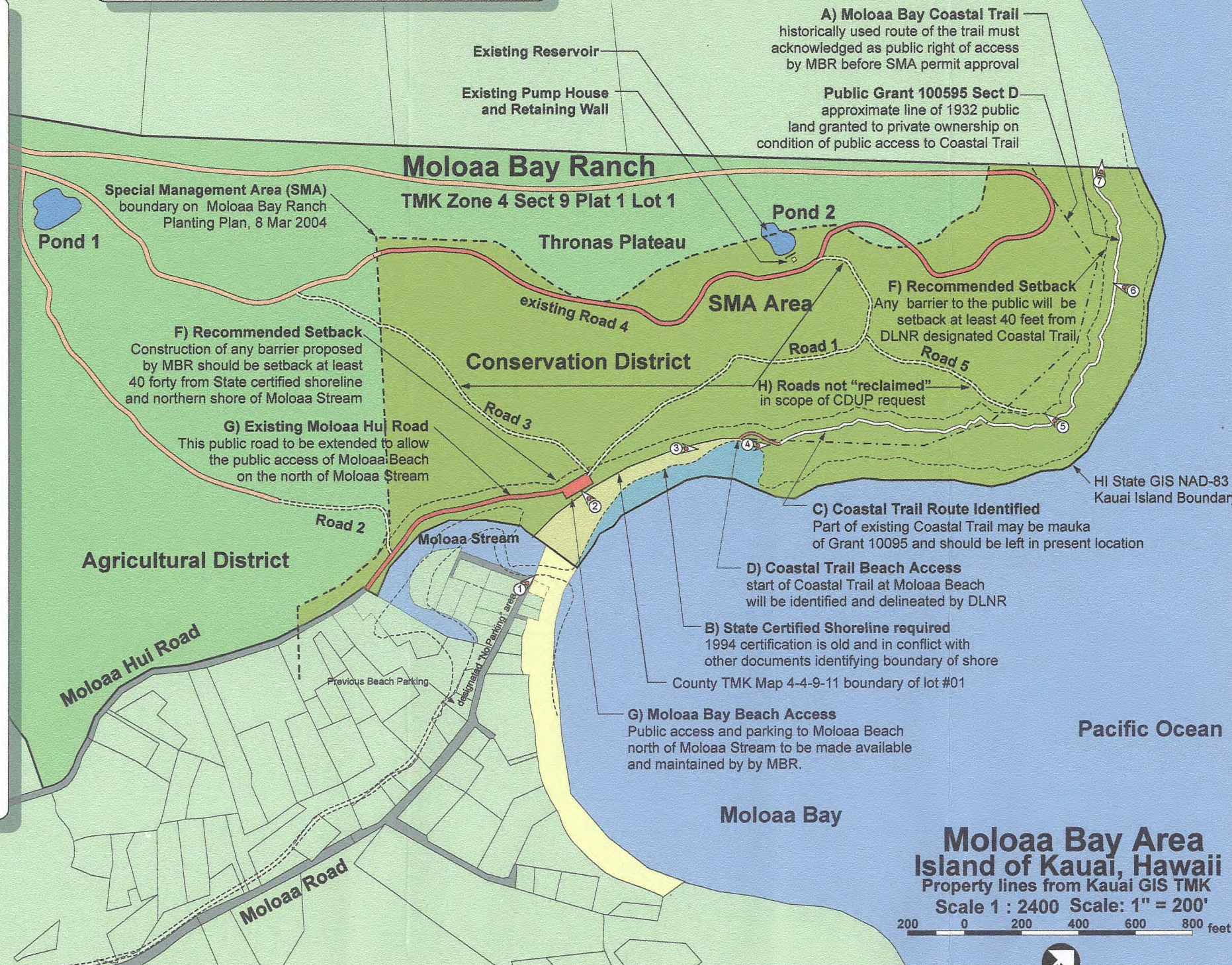
D) The DLNR survey and recordation will document the Coastal Trail between Moloaa Beach and the northern boundary of MBR property. MBR development documents will reflect this continuity of the Coastal Trail.

E) The recommendations of the archeological study commissioned by MBR will be incorporated as conditions of the permit to protect and preserve all sites that study identified.

F) MBR will agree that any man-made or vegetative barrier to the public (e.g. fence or artificially planted and irrigated vegetation), will be setback at least 40 feet mauka of the designated Coastal Trail right-of-way, the State certified shoreline and the northern shore of Moloaa Stream. No barriers shall be constructed by the MBR that obscures the panoramic views of Conservation District land mauka of the Coastal Trail. The design (or replacement) of any man-made or artificially planted and irrigated vegetation barrier will be subject to Planning Commission review and approval.

G) The DLNR will not permit "reclaiming" the segment of road between "Road 2" and "Road 3" as a restricted private road. That segment will be aligned with the Moloaa Hui Road and provide public parking and access to Moloaa Beach on the north of Moloaa Stream and be maintained by MBR.

H) The DLNR will not permit "reclaiming" the roads in the Conservation District descending from the upper Thronas Plateau to the lower portions of the property; namely portions of "Road 1", "Road 3" and "Road 5". A MBR Master Plan for development of Conservation District land should be submitted for review to the DLNR prior to any road or grading requests.



A) Moloaa Bay Coastal Trail historically used route of the trail must be acknowledged as public right of access by MBR before SMA permit approval

Public Grant 100595 Sect D approximate line of 1932 public land granted to private ownership on condition of public access to Coastal Trail

Moloaa Bay Ranch
TMK Zone 4 Sect 9 Plat 1 Lot 1

F) Recommended Setback
Any barrier to the public will be setback at least 40 feet from DLNR designated Coastal Trail

H) Roads not "reclaimed" in scope of CDUP request

F) Recommended Setback
Construction of any barrier proposed by MBR should be setback at least 40 feet from State certified shoreline and northern shore of Moloaa Stream

G) Existing Moloaa Hui Road
This public road to be extended to allow the public access of Moloaa Beach on the north of Moloaa Stream

C) Coastal Trail Route Identified
Part of existing Coastal Trail may be mauka of Grant 10095 and should be left in present location

D) Coastal Trail Beach Access
start of Coastal Trail at Moloaa Beach will be identified and delineated by DLNR

B) State Certified Shoreline required
1994 certification is old and in conflict with other documents identifying boundary of shore
County TMK Map 4-4-9-11 boundary of lot #01

G) Moloaa Bay Beach Access
Public access and parking to Moloaa Beach north of Moloaa Stream to be made available and maintained by MBR.

HI State GIS NAD-83 Kauai Island Boundary

Pacific Ocean

Moloaa Bay Area
Island of Kauai, Hawaii
Property lines from Kauai GIS TMK
Scale 1 : 2400 Scale: 1" = 200'

200 0 200 400 600 800 feet



Juan Wilson: Architect-Planner
Post Office Box 949
Hanapepe, Kauai HI 96716
Telephone (808) 335-0733

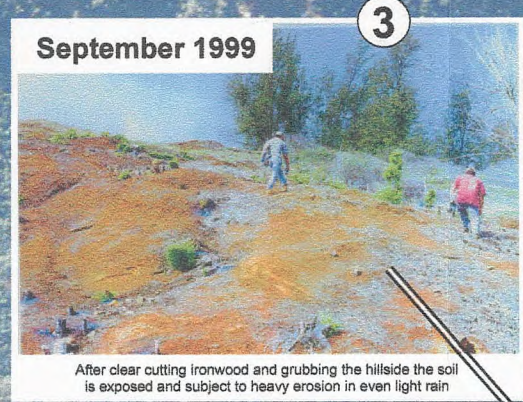
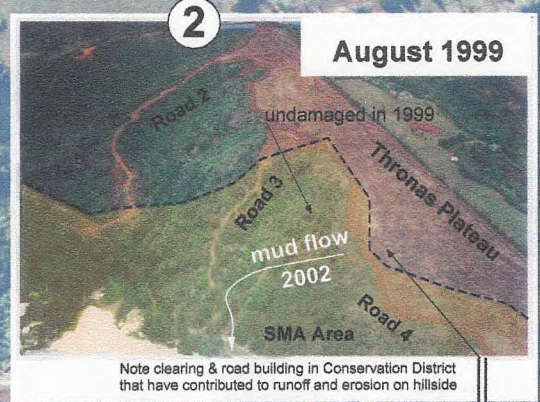
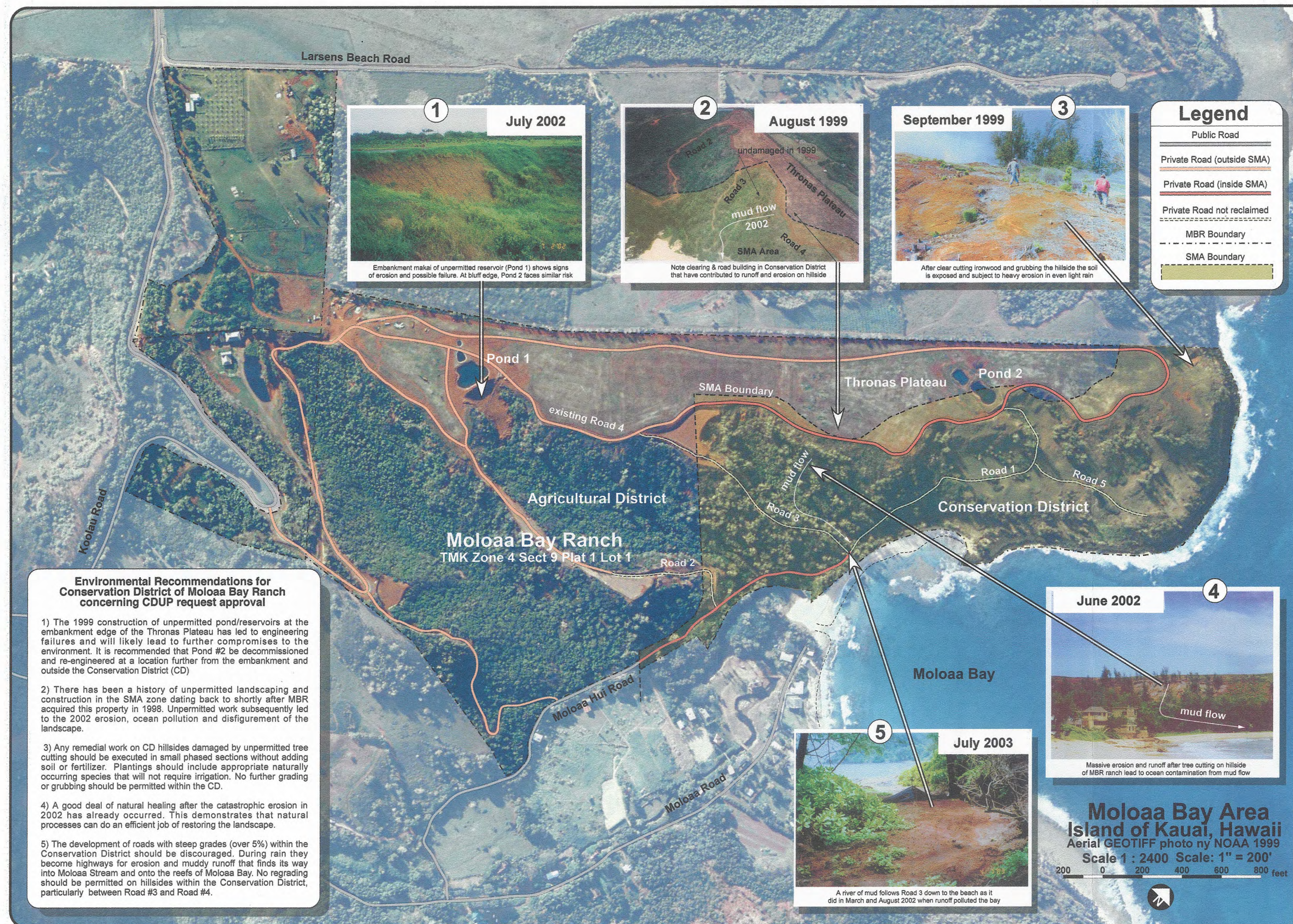
Moloaa Bay Ranch Development
Hawaii CDUP Request Analysis
Public Access Recommendations

Sierra Club
Hawaii Chapter
Kauai Group
POB 3412 Lihue HI 96766



8 OCT 2005

P-1
1 of 2



Legend

- Public Road
- Private Road (outside SMA)
- Private Road (inside SMA)
- Private Road not reclaimed
- MBR Boundary
- SMA Boundary

Environmental Recommendations for Conservation District of Moloaa Bay Ranch concerning CDUP request approval

- 1) The 1999 construction of unpermitted pond/reservoirs at the embankment edge of the Thronas Plateau has led to engineering failures and will likely lead to further compromises to the environment. It is recommended that Pond #2 be decommissioned and re-engineered at a location further from the embankment and outside the Conservation District (CD)
- 2) There has been a history of unpermitted landscaping and construction in the SMA zone dating back to shortly after MBR acquired this property in 1998. Unpermitted work subsequently led to the 2002 erosion, ocean pollution and disfigurement of the landscape.
- 3) Any remedial work on CD hillsides damaged by unpermitted tree cutting should be executed in small phased sections without adding soil or fertilizer. Plantings should include appropriate naturally occurring species that will not require irrigation. No further grading or grubbing should be permitted within the CD.
- 4) A good deal of natural healing after the catastrophic erosion in 2002 has already occurred. This demonstrates that natural processes can do an efficient job of restoring the landscape.
- 5) The development of roads with steep grades (over 5%) within the Conservation District should be discouraged. During rain they become highways for erosion and muddy runoff that finds its way into Moloaa Stream and onto the reefs of Moloaa Bay. No regrading should be permitted on hillsides within the Conservation District, particularly between Road #3 and Road #4.



Moloaa Bay Area
Island of Kauai, Hawaii
Aerial GEOTIFF photo ny NOAA 1999
Scale 1 : 2400 Scale: 1" = 200'

Juan Wilson: Architect-Planner
Post Office Box 949
Hanapepe, Kauai HI 96716
Telephone (808) 335-0733

**Moloaa Bay Ranch Development
Hawaii CDUP Request Analysis
Environmental Recommendations**

Sierra Club
Hawaii Chapter
Kauai Group
POB 3412 Lihue HI 96766



8 OCT 2005

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

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E-Mail: kkurahashi@hawaii.nr.com

November 8, 2005

Mr. Juan Wilson
Sierra Club, Kaua'i Group of the Hawai'i Chapter
P.O. Box 949
Hanapepe, Hawaii 96716

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Mr. Wilson:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letters dated October 8, 2005 and October 10, 2005, to the Office of Conservation and Coastal Lands. The following responds to your comments:

In the past, the applicant did have some work on the property without obtaining the required permits; however, in each instance this omission was unintentional, and in each instance the applicant applied for and obtained the required permits for such work. With respect to the tree removal which was done in 2001, the applicant exceeded the scope of the work and area of work approved by the County in the Special Management area and the scope of work approved by the Department of Land and Natural Resources in the Conservation District. The applicant has submitted a Special Management Area Use permit application and a Conservation District Use Application permit for the work done (removal of Ironwood trees) and for other proposed landscaping and improvements (including after-the-fact permits for a retaining wall protecting a reservoir/pond and a pump house that supports irrigation on the ranch for the nursery and landscaping.

The applicant does not have any plans and never had any plans for development within the Conservation District other than landscaping improvements, the proposed reclamation of existing roads and the proposed wooden three-rail fence.

The applicant agrees that Kauai is blessed with spectacular natural beauty and its efforts to date on the property have been to preserve that beauty, particularly along the slopes of Moloaa Bay.

The applicant has removed Ironwood trees, which are an invasive species which drop needles that cover large areas of soil and restricts growth of ground cover leading to serious erosion problems, as presented by our qualified arborist and by the National Tropical Botanical Garden (NTGB) specialist that reported on plants at Moloaa. These Ironwood trees have created eroded areas that are too steep to be grassed or for other ground cover to be established. If these areas are not regraded and grassed, the potential for erosion will remain. The applicant plans to remove most of the remaining Ironwood trees on the property, within the Special Management Area and Conservation District and to replace these trees on a one for one basis with Coconut Palms. The applicant has hydromulched exposed earth areas and irrigated to stabilize formerly exposed bare soil. Even today, although much of the hillside has grass or ground cover, areas under the Ironwood trees and where steep cuts have occurred, due to erosion, are still bare with exposed soils.

The applicant's actions to date have been to preserve and restore the beauty of the slopes of Moloaa Bay, and to protect the bay itself. These are among the primary incentives for the applicant in the Special Management Area Use permit application and a Conservation District Use Application permit.

The proposed landscaping, grading and road reclamation is directly related to the removal of Ironwood trees and regrassing of the hillside to reduce erosion.

In order to provide access to maintain the grass and landscaping planned for the slopes of the property, the applicant plans to provide for road repair and reclamation. For the most part it will be merely removing vegetation from the existing road alignment. However, for a portion of the road there will be some grading to reestablish the former grade of a portion of the road that has suffered from erosion due to the problems with the Ironwood trees.

These planned improvements are intended to help to reduce existing erosion on the slopes of Moloaa Bay and to provide support for maintaining new and existing landscaping to help minimize erosion. Grading, road reconstruction and

landscaping activities will be conducted using best management practices to minimize erosion during these activities.

The end result will be a landscaped slope that will minimize erosion and will reduce water quality impacts to the Moloaa Bay. These “improvements” will do much to enhance the natural environment and protect the landscaped slopes for future generations to enjoy.

The applicant also proposes to install a 3-rail perimeter fence with a 4-foot height to provide a delineation about 5 feet or more from the existing trail on the applicant’s property. The location of the fence will not impede the continued use of the coastal trail. The importance in providing delineation of the trail is found in the fact that when the Planning Commission and the public did a site visit to Moloaa on October 5, 2005 to walk the trail, the trail was not distinguishable after a certain point.

The existing ponds/reservoirs are not located in the State Conservation District. The reservoirs constructed on the property have been designed by the applicant’s civil engineer and approved by the County, through the issuance of required permits.

**“Public Access Recommendations for
Conservation District of Moloaa Bay Ranch”**

A) *“Coastal Trail”*

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR’s authority to establish the trail.

In an abstract attached to a letter from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part

of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant’s SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant’s discussion with staff at Na Ala Hele, the applicant recognizes DLNR, as the successor to the “Commissioner of Public Lands” and DLNR’s right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

B) *“Shoreline Certification”*

The applicant will work with the Planning Department to determine an appropriate larger shoreline setback to ensure that the proposed fence will not encroach into the 40-foot shoreline setback. This will obviate the need to provide a certified shoreline survey.

C) *“Coastal Trail, Survey and Recordation”*

D) *“Coastal Trail, Location”*

See response to Item A) above.

E) *“Archaeological Study”*

The applicant agrees to follow the recommendations of the archaeological study which stated as follows:

“C. Recommendations”

“The two sites, 50-30-04-1033 and -1034 are recommended for preservation as is. No ground disturbing activities such as bulldozing, mechanized vegetation clearing or construction activity should occur on these sites.”

“No other archaeological constraints are deemed warranted for the remaining majority of the project area. However, in the unlikely event inadvertently discovered archaeological features are encountered appropriate government agencies (e.g., SHPD/DLNR) should be notified.”

F) *“40-Foot Mauka Setback from Trail”*

The applicant (MBR) will agree that upon resolution of the Coastal Trail by DLNR in this Conservation District Use Application process, that the applicant will not place any man-made or vegetative barrier on a DLNR designated Coastal Trail or within five feet mauka of this trail. The applicant further agrees that the proposed three-rail fence will not be constructed until resolution of the Coastal Trail by DLNR.

The applicant feels that the proposal to establish a 40-foot setback from a designated Coastal Trail is excessive, unnecessary and would constitute a taking.

G) *“Moloaa Hui Road”*

Moloaa Hui Road A is clearly defined and does not extend to the shoreline. The applicant will remove an existing gate that replaced an earlier gate across Moloaa Hui Road A (this gate has been kept open). However the second gate that is located on private property beyond the end of Moloaa Hui Road A will remain.

The proposed landscaping and other improvements proposed in the Special Management Area Use permit application and Conservation District Use Application permit will reduce erosion, and will cost the applicant

approximately \$500,000. Given the narrow scope of the requested permit, and the impacts which these improvements are expected to produce, there is no justification for the taking of additional land from the applicant for a roadway or parking lot, and no justification to require the applicant to construct or maintain such improvements for the public.

H) *“Reclaiming the Roads”*

The existing application represents the MBR Master Plan for Development of the Conservation District. As such, this application is the appropriate time for review of the requested road reclamation and grading. The applicant’s plans for the Conservation District are just as stated in the “Conservation District Use Permit Application and Draft Environmental Assessment Moloaa Bay Ranch”.

**“Environmental Recommendations for
Conservation District of Moloaa Bay Ranch”**

1) *“Unpermitted Pond/Reservoirs”*

The reservoirs constructed on the property have been designed by the applicant’s civil engineer and approved by the County, through the issuance of required permits. The applicant does not plan to relocate reservoir Pond #2.

2) *“Unpermitted Landscaping and Construction”*

The applicant accepts responsibility for actions of prior ranch managers in proceeding without proper permits or exceeding the scope and area of approved permits that have occurred in the past (last incident in 2001). However, most of these activities were done in the interest of providing for the removal of invasive Ironwood trees that were the cause of erosion and soil runoff that threatened Moloaa Bay and continues to threaten the Bay and to provide new landscaping to reduce the threat of erosion. During every heavy rain period, the potential for soil erosion and soil runoff in areas under the mat of Ironwood needles remains. The applicant has made every effort to regrass bare soils on the slopes of Moloaa Bay and continues in these

efforts. Approval of this Conservation District Use Application and the Special Management Area Use permit will allow the removal of most of the Ironwood trees on the property and will eliminate the potential for erosion associated with the Ironwoods, as confirmed by a certified arborist and a NTGB specialist.

3) *“Remedial Work on Conservation Hillsides”*

The applicant plans to work the property in sections removing Ironwood trees and the mat of needles, then providing hydromulch and fertilizer as needed to ensure that the grass and groundcover will take. This has been done successfully in areas of bare soil where Ironwood trees were previously removed.

The problems with Ironwood trees are described in greater detail in the following summary of a letter prepared by Mr. Stephen M. Nimz (ISA Certified Arborist #WC-0314):

Ironwood trees (Australian Pine, *Casuarina equisetifolia* and related species) are native to Australia and several other Indo-Pacific areas. These trees were introduced to Hawaii in the late 1800's. They have been planted for windbreaks due to high tolerance for salt spray and wind, ability to grow in poor soil with minimal irrigation, quick growth regeneration, and tall, thick growth habit. In Hawaii, these trees have been successful in reducing wind damage in sugar cane fields and in coastal areas.

Ironwood trees have less desirable growth characteristics with regard to erosion control, fire control and accompanying plantings. In Hawaii, Ironwood trees have been observed to be allelopathic with respect to successful growth under the canopy of the Ironwoods. The seeds and needlelike leaves form a thick mat which decomposes slowly, making growth of other plants difficult yet allowing the juvenile Ironwood trees to germinate and prosper. The root structure is thick and spreads out close to the surface, usually within the top six to eighteen inches of the soil. The thick dry mat of leaves and seeds, along with accumulation of dead wood in the trees, creates a potential

for fire. Ironwood trees are not good at walling off decay (compartmentalization). This means that when major limbs are cut or broken off by wind, the new growth that generates from the sides of the wound has a weak structural connection, creating a greater potential for branch failure with subsequent high wind conditions. The main trunks may also decay, hollowing out to create structural stability problems. The thick mat of leaves below and downwind of the trees appears to create a protective blanket against erosion. However, when heavy rain occurs, the water runs underneath the needlelike mat, causing erosion gullies and crevasses as nothing is holding the mat in place. The tree root structure becomes undermined, causing uprooting and toppling.

Use of Ironwood trees in many areas of Hawaii has been an acceptable practice, however, as we gain more knowledge about characteristics of these trees and other tree species, grasses and plants, better alternatives can be established. Ironwood trees are now on the Hawaii invasive species list which identifies plants that interfere with native habitats as well as desirable urban landscapes and agricultural crops. In other areas of the United States, particularly in Florida, planting of Ironwood trees is no longer acceptable in landscapes, parks and reforestation.

Ironwood trees have created eroded areas that are too steep to be grassed or for other ground cover to be established. If these areas are not regraded and grassed, the potential for erosion will remain. Regrading these areas will require bringing in soil to restore the former slopes prior to erosion. The applicant has found that all plantings need regular irrigation, particularly during dry periods until they mature and can survive on natural rainfall.

4) *“Natural Healing”*

The applicant’s staff worked long hours to hydromulch, fertilize and irrigate the slopes of Moloaa Bay to restore landscaping to bare soils under the mat of Ironwood needles. The applicant’s staff continues to maintain the landscaping, including mowing and weeding as needed to eliminate invasive plants. The natural healing process was greatly assisted by the Moloaa Bay

Juan Wilson
Page 9

Ranch staff. A similar effort will be necessary upon removal of most of the remaining Ironwood trees on the upper slopes of Moloaa Bay.

5) *“Roads with Steep Grades”*

The applicant needs to reclaim and restore the existing roads to provide access to the surrounding hillside to allow maintenance of the plant growth on the hillside. By improving the landscaping along the roadways and proper preparation of the road surface through compaction, potential runoff and soil erosion will be minimized.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch LLC

Oct 23 05 07:56p

p. 1

RAYNE REGUSH
P. O. Box 510032, Kealia, Hawaii 96751
tel: 823-0122 / cell: 651-1318

October 22, 2005

John Lydgate, Vice Chairperson
Historic Preservation Review Commission
County of Kaua'i
4444 Rice Street
Lihue, HI 96765

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 OCT 24 A 7 51
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

Dear Vice Chair and Members of the Historic Preservation Review Commission:

RE: Special Management Area Use Permit SMA (U) 2006-2
Moloa'a Bay Ranch, LLC - TMK 4-9-11: por. 1 (45 acres)

The Kaua'i Historic Preservation Review Commission (HPRC) was not included in the county's departmental review process for comment on the above mentioned SMA permit currently before the Planning Commission. And, there are significant historic and culturally sensitive features that will be affected.

Concurrently, there is a Conservation District Use Permit (CDUP) Application and Draft Environment Assessment (DEA) under review by the DLNR for the same scope of work. I respectfully request that the HPRC have the opportunity to review and comment on the SMA permit which will assist the Planning Commission in their decision making.

The November 1999 Archeological Assessment and the July 2003 Limited Cultural Impact Assessment reports prepared for Moloa'a Bay Ranch recognize important historic aspects of this coastal area. They state that unrecorded burial sites are very likely present within the project area and they recommend the preservation of the historic trail that traverses between Moloa'a Bay and Larsen's Beach.

The trail is a "traditional and historic-era access route" to the *limu koku* harvesting areas, documented by historical accounts, deeds and maps. However, the trail needs to be surveyed by DLNR, as guaranteed in the 1932 Land Grant. Since the permit proposes construction of a 3-rail, 4 foot high perimeter fence along the mauka side of this trail, fencing could be an encroachment if done without a survey. Ground clearing and mechanized mowing has already disrupted the trail's path making it more difficult to discern.

Oct 23 05 07:56p

Historic Preservation Review Commission
October 22, 2005

Page 2

Please note that the SMA/Conservation District use permits are after-the-fact permits that include a broader scope of work including further removal of ironwood trees, grading, contouring of slopes, landscaping, irrigation, and road reclamation. The CDUP/DEA recommends that "any proposed impacts to the sites should be planned in consultation with the State Historic Preservation Division and the Kaua'i Island Burial Council". Oversight of this work is crucial.

Based on these criteria, it seems that the HPRC should be included in the Planning Department's standard "clearing house" review process. Other county divisions received the opportunity to comment on August 11, 2005. The next public hearing before the Planning Commission is November 22nd. I hope the Commission can participate in this important review process and promote preservation of the historic resources in this SMA District.

Sincerely,



Rayne Regush

Enclosures: map of trail
photo of trail

cc: Rick Tsuchiya, Planning Dept.
Senator Gary L. Hooser
Representative Hermina M. Morita
Curt Cottrell, Trails & Access Manager, DOFAW
Kimberly Mills, DLNR Office of Conservation & Coastal Lands
DLNR, State Historic Preservation Division
PAOSNR Commission, County of Kaua'i

KUSAO & KURAHASHI, INC.

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E-Mail: kkurahashi@hawaii.m.com

November 8, 2005

Ms. Rayne Regush
P.O. Box 510032
Kealia, Hawaii 96751

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Ms. Regush:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letter, dated October 22, 2005, to the Historic Preservation Review Commission, County of Kauai with a cc to the Office of Conservation and Coastal Lands. The following responds to your comments:

The applicant hopes that the Kauai Historic Preservation Review Commission (KHPRC) will be able to provide comments within the month between your October 22, 2005 letter and the Planning Commission hearing scheduled for November 22, 2005.

The applicant's Conservation District Use Application (CDUA) permit is under a tight schedule and requires approval of the Special Management Area Use permit prior to action on the CDUA permit. The CDUA permit will expire on February 20, 2006.

The applicant will be following the recommendations of both the Archaeological Assessment and Cultural Impact Assessment restated as follows:

Archaeological Assessment

“C. Recommendations”

“The two sites, 50-30-04-1033 and -1034 are recommended for preservation as is. No ground disturbing activities such as bulldozing, mechanized vegetation clearing or construction activity should occur on these sites.

No other archaeological constraints are deemed warranted for the remaining majority of the project area. However, in the unlikely event inadvertently discovered archaeological features are encountered appropriate government agencies (e.g., SHPD/DLNR) should be notified.”

Cultural Impact Assessment

“B. Recommendations”

“The following recommendations are suggested to mitigate cultural concerns identified during the preparation of this cultural impact assessment.

Open public access along the shoreline of the project area should be maintained at all times. Individuals should have the right to access these areas for traditional cultural practices, which include gathering of marine resources. It is important that the landowner observe and maintain the State shoreline setback for public access.

Regarding future mass grading and development activities within the project area, it is recommended that grubbing be completed during the driest months of the year and limited to very a small section at a time (as in bit-by-bit grubbing). Soil sheeting should be placed down in rareas where grubbing has occurred to prevent runoff into Moloa’a Stream and Bay. It is further recommended that any tree removals should be done in consultation with the Department of Land and Natural Resources - State Historic Preservation Division (DLNR/SHPD). Grubbing and mass grading along the coast needs to be done very carefully.

As noted in the archaeological investigation of the project area, an historic trail and a subsurface cultural layer has been recorded within the project area. As indicated in the archaeological assessment (Borthwick *et al.*, 1999), both sites were recommended for preservation. Further recommendations indicated no ground disturbing activities such as bulldozing, mechanical vegetation clearing or construction activities on these sites. Any proposed impacts to the sites should be planned in consultation with the State Historic Preservation (SHPD) and the Kaua'i Island Burial Council.

Although no burials are indicated within the project area, the sandy sediment along the beach front and slopes of the project area, as well as the presence of a subsurface cultural layer, both warrant concerns regarding human burials. Regarding the discovery of burials, state law (Chapter 6E, Hawai'i Revised Statutes) requires the following:

1. Stop all disturbing activities in the immediate area.
2. Leave all remains in place.
3. Immediately notify the State Department of Land and Natural Resources - State Historic Preservation Division (DLNR.SHPD) and the county police department.

Further procedures are in place to ensure that proper treatment of any burial finds is coordinated with appropriate agencies, including the DLNR/SHPD and the Kaua'i/Ni'ihau Island Burial Council.

Moloa'a Bay is one of the few places on Kaua'i where marine resources are still viable for locals. Damage to nearshore reefs, lateral shoreline access, and impacts to cultural and customary practices can occur without very careful land development activities. It is therefore critical that the recommendation outlined above be enforced at all times."

Neither report seems to indicate that, as you have stated "that unrecorded burial sites are very likely to be found". The Archaeological Assessment states that "in the unlikely event inadvertently discovered archaeological features are encountered". While the Cultural Impact Assessment states "Although no burials

are indicated within the project area, the sandy sediment along the beach front and slopes of the project area, as well as the presence of a subsurface cultural layer, both warrant concerns regarding human burials.”

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR’s authority to establish the trail.

In an abstract attached to a letter from the Na Ala Hele program of DLNR, the following reservation is noted in a deed executed on September 24, 1932 for the subject parcel, Tax Map Key (4) 4-9-11: 01:

“Excepting and reserving therefrom a trail over and across this land along near high-water mark, which said high-water mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. The location of the portion of said trail that crosses Grant 10095 shall be designated by the Commissioner of Public Lands.”

This or similar deed reservation in more recent deeds has been cited by various testifiers and those providing written testimony on the applicant’s SMA application as the legal basis for the trail on Moloaa Bay Ranch. Based on a consultant’s discussion with staff at Na Ala Hele, the applicant recognizes DLNR, as the successor to the “Commissioner of Public Lands” and DLNR’s right to designate the trail as noted in the deed reservation. However, the trail at the present time has not been designated by the former Commissioner of Public Lands or DLNR and has not been legally established in favor of the public.

The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

Most of the planned landscaping work, grading and road reclamation occurs on the upper slopes of Moloaa Bay and will not affect the sandy sediment along the beach front and lower slopes of the property. However, a portion of the three-rail fence

Rayne Regush
Page 5

may occur on areas with sandy sediment and this activity will be coordinated with the State Historic Preservation Division and the Kauai Island Burial Council.

Your letter and this response will be included in the Final EA.

Very truly yours,



Keith Kurahashi

cc: Moloaa Bay Ranch, LLC



RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

The Senate 2005 OCT 27 A 10: 29
State of Hawaii

STATE CAPITOL

HONOLULU, HAWAII 96813

October 25, 2005

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Mr. Steven Weinstein, Chair
Planning Commission
County of Kaua'i
4444 Rice Street
Lihu'e, HI 96766

Subject: Special Management Area Use Permit SMA (U) 2006-2, Moloa'a Bay Ranch TMK 4-9-11:Por. 1

Dear Chair Weinstein and Members of the Kaua'i Planning Commission:

Thank you for the opportunity to express my concerns regarding the above-mentioned application. The following comments are my personal and individual thoughts and opinions only, and do not reflect any official position whatsoever.

The Moloa'a coastline represents a unique and sensitive natural asset for our community, and I urge the Commission to go slowly and act with caution when considering increased permitting for development of this area. Although the installation of a perimeter fence and new interior roadways may seem unobtrusive, it is most likely that these actions are the precursor for future construction and additional development of the area.

It is also my understanding that the applicant has a history involving non-permitted activities, which resulted in severe erosion and the issuance of after-the-fact permits for activity in the immediate and/or adjacent area.

The Moloa'a public trail is a very valuable public resource that must be preserved and protected. I have walked this beautiful trail on numerous occasions. To insure the future existence and long term preservation of this unique community asset, please consider making the survey and recordation of the public trail easement a requirement of any permit approvals that are granted.

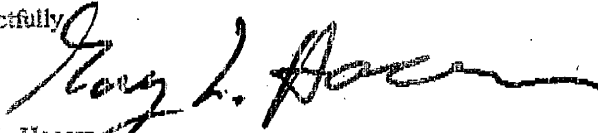
In addition, it is my understanding that a Draft Environmental Assessment (DEA) is currently being prepared for review in regards to other permits being requested with the DLNR. Please consider the information contained within this DEA report in your deliberations and if possible, also consider holding the public hearing process open until the document is finalized and accepted.

Thank you for allowing me to share these brief thoughts on this very important matter. I trust the commission will fully evaluate the current situation, past history of the area and potential future impacts of future development of this area so that the maximum public benefit will be realized.

Kaua'i County Planning Commission
October 25, 2005
Page 2

As you all are most likely aware, the Moloka'a coastline represents an increasingly rare and fragile public asset. It is critical that action be taken now to preserve this valuable asset so that many years from now future generations might also enjoy the experience of walking along a wild ocean bluff.

Respectfully



Gary L. Hooser
Hawaii State Senator
7th Senatorial District -- Kaua'i & Ni'ihau

cc: Ms. Kimberly Mills - Office of Conservation & Coastal Lands, DLNR
The Honorable Hermina M. Morita - House of Representatives, District 14
The Honorable JoAnn A. Yukimura - Planning Committee Chair, Kaua'i County Council

mtt: GLH

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November 8, 2005

Senator Gary L. Hooser
Hawaii State Senate, 7th Senatorial District
Hawaii State Capitol
415 South Beretania Street, Room 207
Honolulu, Hawaii 96813

**Subject: Conservation District Use Application (CDUA) KA-3190 and
Draft Environmental Assessment (Draft EA) for Landscaping,
Tree Removal and Other Improvements Located at Moloaa Bay
Ranch, Kawaihau, Kauai, Tax Map Key: (4) 4-9-011: 001**

Dear Senator Hooser:

Thank you for reviewing CDUA KA-3190 and the Draft EA for Moloaa Bay Ranch (for landscaping, tree removal and other improvements) and the comments provided in your letter to the Planning Commission with a cc to the Office of Conservation and Coastal Lands.

The applicant does not have any plans and never had any plans for development within the Conservation District other than landscaping improvements, the proposed reclamation of existing roads and the proposed three-rail fence. Your memorandum and this response will be included in the Final EA.

The applicant accepts responsibility for actions of prior ranch managers in proceeding without proper permits or exceeding the scope and area of approved permits that have occurred in the past (last incident in 2001). However, most of these activities were done in the interest of providing for the removal of invasive Ironwood trees that were the cause of erosion and soil runoff that threatened Moloaa Bay and continues to threaten the Bay and to provide new landscaping to reduce the threat of erosion. During every heavy rain period, the potential for soil erosion and soil runoff in areas under the mat of Ironwood needles remains. The applicant has made every effort to regrass bare soils on the slopes of Moloaa Bay and continues in these efforts. Approval of this Conservation District Use Application and the Special Management Area Use permit will allow the removal

of most of the Ironwood trees on the property and will eliminate the potential for erosion associated with the Ironwoods, as confirmed by a certified arborist and a NTGB specialist.

The applicant plans to work the property in sections removing Ironwood trees and the mat of needles, then providing hydromulch and fertilizer as needed to ensure that the grass and groundcover will take. This has been done successfully in areas of bare soil where Ironwood trees were previously removed.

The problems with Ironwood trees are described in greater detail in the following summary of a letter prepared by Mr. Stephen M. Nimz (ISA Certified Arborist #WC-0314):

Ironwood trees (Australian Pine, *Casuarina equisetifolia* and related species) are native to Australia and several other Indo-Pacific areas. These trees were introduced to Hawaii in the late 1800's. They have been planted for windbreaks due to high tolerance for salt spray and wind, ability to grow in poor soil with minimal irrigation, quick growth regeneration, and tall, thick growth habit. In Hawaii, these trees have been successful in reducing wind damage in sugar cane fields and in coastal areas.

Ironwood trees have less desirable growth characteristics with regard to erosion control, fire control and accompanying plantings. In Hawaii, Ironwood trees have been observed to be allelopathic with respect to successful growth under the canopy of the Ironwoods. The seeds and needlelike leaves form a thick mat which decomposes slowly, making growth of other plants difficult yet allowing the juvenile Ironwood trees to germinate and prosper. The root structure is thick and spreads out close to the surface, usually within the top six to eighteen inches of the soil. The thick dry mat of leaves and seeds, along with accumulation of dead wood in the trees, creates a potential for fire. Ironwood trees are not good at walling off decay (compartmentalization). This means that when major limbs are cut or broken off by wind, the new growth that generates from the sides of the wound has a weak structural connection, creating a greater potential for branch failure with subsequent high wind conditions. The main trunks may

also decay, hollowing out to create structural stability problems. The thick mat of leaves below and downwind of the trees appears to create a protective blanket against erosion. However, when heavy rain occurs, the water runs underneath the needlelike mat, causing erosion gullies and crevasses as nothing is holding the mat in place. The tree root structure becomes undermined, causing uprooting and toppling.

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Ironwood trees have created eroded areas that are too steep to be grassed or for other ground cover to be established. If these areas are not regraded and grassed, the potential for erosion will remain. Regrading these areas will require bringing in soil to restore the former slopes prior to erosion. The applicant has found that all plantings need regular irrigation, particularly during dry periods until they mature and can survive on natural rainfall.

The applicant's staff worked long hours to hydromulch, fertilize and irrigate the slopes of Moloaa Bay to restore landscaping to bare soils under the mat of Ironwood needles. The applicant's staff continues to maintain the landscaping, including mowing and weeding as needed to eliminate invasive plants.

Based upon the language in the deed from Ryan Ranch to Moloaa Bay Ranch LLC, the applicant believes it is very clear that the issue of the trail should be resolved by the Department of Land and Natural Resources (DLNR). The applicant recognizes DLNR's authority to establish the trail.

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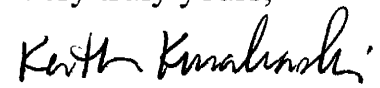
The applicant has decided in consultation with staff at the Na Ala Hele office and the Kauai Planning Department that the proposed fencing will not be placed until DLNR has resolved the issue of the trail. Should the trail be established by DLNR, the applicant will ensure that the fence will be placed at least five feet from the trail.

The applicant’s actions to date have been to preserve and restore the beauty of the slopes of Moloaa Bay. This is the major incentive for the applicant in the Special Management Area Use permit application and a Conservation District Use Application permit and Special Management Area Use permit application.

Senator Gary L. Hooser
Page 5

Your letter and this response will be included in the Final EA.

Very truly yours,

A handwritten signature in black ink that reads "Keith Kurahashi". The signature is written in a cursive style with a prominent loop at the end of the last name.

Keith Kurahashi

cc: Moloaa Bay LLC

