

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawaii**

**April 26, 2013**

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** **RULE AMENDMENT KA-10-01**  
Request to Amend Title 13, Chapter 5, Hawaii  
Administrative Rules (Chap. 13-5, HAR), to Establish the  
Lawa'i Kai Special Subzone

**PETITIONER/  
LANDOWNER:** Chipper Wichman / National Tropical Botanical Garden  
(NTBG), Allerton Garden Trust

**LOCATION:** Lawa'i, Koloa District, Island of Kaua'i

**TMKs:** (4) 2-6-002:001, 004-009 & (4) Submerged Lands

**PETITION AREA:** 109.5 acres

**SUBZONE:** Limited/Resource

**BACKGROUND**

The proposed project site, named *Lawa'i Kai* (i.e., the ocean side of Lawa'i), encompasses the area known as the "Allerton Garden" and is a portion of the larger National Tropical Botanical Garden (NTBG) property located in Lawa'i Valley on the south coast of the Island of Kaua'i (**Exhibit 1**). The subject parcels, included in this proposal, are situated within the State Land Use Conservation District Limited (*Lawa'i Kai*) and Resource (Submerged lands of Lawa'i Bay) Subzones (**Exhibit 2**).

The NTBG property and the larger Lawa'i Valley have historically been utilized for residential, agricultural, and botanical uses since the mid-1800s. Historical records indicate that the *mauka* lands, not part of this petition, of the NTBG property were utilized for animal husbandry and grazing practices while the area of *Lawa'i Kai* were typically used for rice and lo'i cultivation. The agricultural development of Lawa'i Valley included the construction of a number of camps and clusters of homes for the myriad of employees that worked the numerous agricultural fields. In 1938 *Lawa'i Kai* was sold to Robert Allerton, by the trustees for Alexander McBryde, who immediately began designing and developing the "Allerton Garden" with his adopted son John Gregg Allerton.

The NTBG was founded by an act of Congress in 1964 as a not-for-profit conservation organization with a mission "to enrich life through discovery, scientific research, conservation, and education by perpetuating the survival of plants, ecosystems, and

cultural knowledge of tropical regions”. Similarly, in 1964, the Allerton’s approached the State of Hawaii Land Use Commission (LUC) to request that *Lawa’i Kai* be included in the newly formed State Land Use Conservation District as a way to preserve the cultural, archaeological and natural resources of the area. That goal was realized just prior to the passing of Robert Allerton in late 1964, as *Lawa’i Kai* was designated into the Conservation District Limited Subzone. In 1970, the NTBG entered into a management agreement with the Trustees of the *Allerton Garden Trust* for the long-term preservation and use of *Lawa’i Kai*’s natural and historical resources.

In 1986 John Gregg Allerton passed away and left *Lawa’i Kai* in trust to JP Morgan (*trustee*) which dictated that *Lawa’i Kai* was to remain a distinct entity from the larger NTBG property, with independent funding and resource management. Following the explicit conditions of the *Allerton Garden Trust*, *Lawa’i Kai* is primarily maintained as a “garden for the education of the public and for botanical research” with education, botanical preservation and tropical botanical and biological scientific research as the principal focus. As a result, since 1986, the NTBG has managed *Lawa’i Kai* under an agreement with the *Allerton Garden Trust* that requires that it be utilized as an educational and scientific research site.

In 2006, the NTBG initiated a number of scientific research studies to develop a comprehensive inventory of the archeological, historical, cultural and natural resources of the entire NTBG property along with a survey of the aquatic resources of *Lawa’i Stream* and *Lawa’i Bay*. In 2007 the NTBG created the *Lawa’i Kai Community Advisory Group* (LKCAG) who conducted multiple meetings to draft a comprehensive master plan for the future management of *Lawa’i Kai* using the information from existing studies and meetings with all interested stakeholders.

By 2009 the NTBG staff, in conjunction with the LKCAG, created and approved of the draft *Lawa’i Kai Master and Management Plan* which was presented to Mayor Carvalho, the Koloa Community Association, the Po’ipu Beach Resort Association, the County of Kaua’i Open Space Commission, and the Kaua’i Historic Preservation Review Commission for review and comments. A public informational hearing was also held in 2009 to present the draft plan to the general public to solicit comments and/or concerns regarding the future management and preservation of *Lawa’i Kai*.

In October, 2009, the NTBG submitted a petition to the Department of Land and Natural Resources (DLNR) to create the *Lawa’i Kai Special Subzone* (LKSS). A public hearing on the proposed LKSS was held in Koloa, Kaua’i on May 24, 2012 to solicit comments from the general public on the proposed subzone amendment; a number of community members and interested stakeholders attended the hearing.

### **DESCRIPTION OF AREA AND CURRENT USE**

The project area is located in *Lawa’i Valley* in the *moku* of Koloa on the south shore of Kaua’i. The *Lawa’i Valley* is a drainage system for the area below Mt. Kahili and is approximately 8,200 acres in size with the *Lawa’i Stream* descending from its headwaters at ~1800 feet above sea level (asl) in the *Lihu’e Koloa Forest Reserve* through the NTBG property to *Lawa’i Bay* and the Pacific Ocean (**Exhibit 3**).

Lawa'i Stream is one of a relatively small group of Hawaii streams that support a deep estuarine reach and associated tidal wetlands before entering the ocean. Along the lower course of the stream the valley is deep and wide, with basaltic, rocky steep cliffs framing each side. To the north of the proposed LKSS is the NTBG "McBryde Garden" and other NTBG facilities, to the east is the Kukui'ula Development Company Hawaii property which includes residential development and a golf course, to the south is Lawa'i Bay and to the west is Alexander & Baldwin property which is currently under an agricultural lease to Kaua'i Coffee (**Exhibit 4**).

Lawa'i Bay is approximately 20-acres of predominately sandy bottom with limited coral reef communities colonizing the basalt rock perimeter. Lawa'i Bay is considered to be a high wave energy environment, particularly in summer months with increased southern swells. The bay receives intermittent freshwater and terrestrial sediments/debris input from Lawa'i Stream which may influence water quality in the coastal zone and wetland areas.

The "Allerton Garden" or *Lawa'i Kai* includes approximately 860 different species and varieties of flowering plants and ferns, including cultivated, native and naturalized species with important conservation, research and educational potential. Approximately 30,000 visitors per year visit the NTBG property, although the core programs (i.e., education, conservation and research) remain the primary driver for the NTBG.

Historically, access to *Lawa'i Kai Beach* and Lawa'i Bay has been very limited, initially due to the *konohiki* fishing rights of the Allerton's but predominately due to the geomorphology of the narrow, basaltic headlands that flank the Lawa'i Bay and Lawa'i Valley making access difficult, but not impossible. Currently there are two legal access points to reach *Lawa'i Kai Beach* and Lawa'i Bay, although a number of illegal access paths have been established since the 1990's and include trespassing on the NTBG and the adjacent A&B (Kaua'i Coffee) and the Kukui'ula Development Co. properties (**Exhibit 5**).

Existing recreational uses include all forms of water sport activities, (i.e., surfing, body boarding), pole fishing, throw-net fishing, diving, snorkeling and spear fishing. Occasionally Lawa'i Bay is visited by small personal watercraft and small boats along with kayaks landing on the beach. Vessels occasionally anchor overnight in the bay, although that use is minor. Commercial activities at *Lawa'i Kai* include boat tours (e.g., sightseeing, snorkeling and/or diving) in Lawa'i Bay and a commercial kayak touring company that lands approximately 10 kayaks on the *Lawa'i Kai Beach*; currently there is only one kayak company permitted to land on the beach.

#### EXISTING LAND USE CLASSIFICATIONS

The fast lands of the proposed *Lawa'i Kai Special Subzone* lie within the Limited subzone of the State Land Use (SLU) Conservation District. Pursuant to Hawaii Administrative rules (HAR) §13-5-12, the objective of the Limited subzone is to: *limit uses where natural conditions suggest constraints on human activities*. This subzone encompasses:

1. *Lands susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the county, state, or federal governments; and*
2. *Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunamis, flooding, volcanic activity or landslides, or which have a general slope of forty percent or more.*

The submerged land of Lawa'i Bay lies within the Conservation District Resource Subzone. The objective of this subzone is to: *develop, with proper management, areas to ensure sustained use of the natural resources of those areas.* The Resource subzone encompasses:

1. *Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;*
2. *Lands suitable for growing and harvesting of commercial timber or other forest products;*
3. *Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;*
4. *Offshore islands of the State of Hawaii, unless placed in the Protective or Limited subzone; and*
5. *Lands and state marine waters seaward of the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves on shore to the extent of the State's jurisdiction, unless placed in the Protective or Limited subzone.*

#### **GEOGRAPHIC AND SOIL CHARACTERISTICS**

Due to the varied geomorphology of the valley, stream and bay the proposed LKSS project area includes a variety of soil types. Starting at *Lawa'i Kai beach* and Lawa'i Bay, Beach Sand (BS) is interspersed with stones, cobbles, coral fragments and seashells. A small amount of Loamy Fine Sand (JfB) is found in the central area of the project site while Rough Broken Land (rBB) soil is found along the steep valley walls that includes incised drainage gullies and runnels. The alluvial sediments from the Lawa'i Stream have deposited to create a layer of Kaena Clay (KavC) soil which has low porosity and low permeability. The marsh areas at the confluence of the Lawa'i Stream and Lawa'i Bay reveal Mash Soils (MZ) typical to areas that are predominately wet and flood periodically.

#### **HYDROLOGICAL CHARACTERISTICS**

Lawa'i Valley is a drainage system for a bowl-shaped geologic feature approximately 2.4 miles wide located below Mt. Kahili. Lawa'i Valley is approximately 8,200 acres in total with the Lawa'i Stream descending from its headwaters in the Lihu'e Koloa Forest

Reserve to the Lawa'i Bay and Pacific Ocean. Five unnamed tributaries drain Lawa'i Valleys upper watershed and join the stream at approximately 600 ft asl which then flows through low-density residential subdivisions and agricultural lands before entering the lowland valley feature and *Lawa'i Kai*. The lowland segment of Lawa'i Stream is surrounded by agricultural lands and residential development that are elevated high above the stream channel.

There are significant water quality issues that relate to the *mauka* development and agricultural uses which are impacting the Lawa'i Stream prior to entering the NTBG property and *Lawa'i Kai*. A majority of the negative impacts include non-point source pollution and soil erosion, although a lack of stream bank management along the entire stream corridor, inside and outside the proposed project area, have influenced water quality in the stream (**Exhibit 6, 6a**).

Historically, and prior to 1995, the existing structures within the NTBG property utilized spring water for their potable water needs until the springs dried up forcing the NTBG to connect to the County of Kaua'i potable water system.

#### **BIOLOGICAL (FLORA & FAUNA) CHARACTERISTICS**

Ecologically, the lower portions of Lawa'i Valley were once part of a significant lowland dry forest and coastal zone ecosystem. Due to agricultural land uses over the last 100+ years, the endemic, native, and terrestrial vegetation found in the NTBG property has been removed and the area is now dominated by introduced and non-native plant species. In spite of NTBG property being dominated by introduced plant species, there are still a number of native plants found growing on the steep cliffs adjacent to the project area. Plant species observed on the cliffs include 'akoko, a'alii, 'ala ala wai nui, ko'oko'olau, 'uhaloa and 'akia. There are also several endemic species growing in the *Lawa'i Kai Beach* area including naupaka, pohuehue, hunakai, 'aki'aki and mohihihi.

A botanical inventory survey of the NTBG property was conducted in 2007, in which approximately 860 different species and varieties of trees and flowering plants were recorded including cultivated, native and naturalized plant species. No threatened or endangered Hawaiian plant species were discovered during the botanical survey. The botanical resources of the NTBG property are immense and include varieties of plants from tropical regions from around the world with important conservation, research, and educational potential. Within the NTBG property the plantings are not only a vegetative feature but have important cultural and historical significance with certain plants tracing the history of past residency (i.e., migrant workers) of Lawa'i Valley.

Endemic, endangered Hawaiian birds, in the vicinity of *Lawa'i Kai* include the Hawaiian Duck, the American Coot and the Common Moorhen. According to the survey no threatened or endangered seabirds were found to nest within the project area.

*Lawa'i Kai Beach* (**Exhibit 7**) is an identified hauling-out and resting area for the endangered Hawaiian Monk Seal and is one of only two (2) primary nesting sites for threatened Green Sea Turtles (*honu*) on Kaua'i. Green sea turtle nesting and Monk seal activity is being monitored in conjunction with researchers from the DLNR Division of

Aquatic Resources (DAR) and the NOAA Pacific Island Fisheries Science Center, Marine Turtle Research Program. The sandy offshore substrate along with a foreshore relatively free of clutter and debris provide easy access to the beach for the *honu* along with providing a stable environment for nesting (**Exhibit 8**).

A marine resources survey of Lawa'i Bay was conducted in February, 2007 by the Oceanic Institute, Waimanalo, Hawaii. The survey observed that the marine waters of the bay contain a biological community of relatively healthy herbivore populations. No alien or invasive algae species were observed, and turf algae appear to be dominant in this area covering approximately 77% of the hard bottom substrate. Overall coral abundance is low (~15%) which is typical for high energy environments such as Lawa'i Bay.

Forty (40) benthic taxa and ninety (90) fish species were observed during the survey; the diversity of fish species is typical for bays which are small in size with limited habitat complexity. The non-native ta'ape (*snapper*), akule (*scad*) and weke'ula (*goatfish*) were the most important fisheries resources utilizing the bay. Uhu (*parrotfish*) and 'opihi were low in abundance and size, reflecting the high harvesting and fishing pressures on the Lawa'i Bay and near shore area.

#### **HISTORICAL, CULTURAL AND ARCHEOLOGICAL CHARACTERISTICS**

An Archeological Reconnaissance Survey (ARS) and an Archeological Inventory Survey (AIS) were conducted by Scientific Consultants Services, Inc. (SCS) in the spring and summer of 2007. The survey area included *Lawa'i Kai* which encompasses approximately 87 acres. During the surveys six (6) new sites were identified, and two (2) previously identified sites were located and documented. The eight (8) identified sites in the project area were found to be significant for their information content, under the criteria established by the Hawaii State Register of Historic Places. The report covered 100% of the *Lawa'i Kai* valley floor, but did not include the steep valley walls due to limited access and dense vegetative growth; additional survey work is recommended for those areas. Identified archeological sites include agricultural terraces, habitation sites, *lo'i* complexes, caves and a fishpond located at the mouth of *Lawa'i Kai*.

In 1992 Hurricane Iniki deposited a large amount of sediment and debris in the historic *Lawa'i Kai* fishpond leaving only the walls to demarcate the site. Restoration would require major dredging to remove the sediments, although sea level rise may complicate full restoration efforts. Additionally, two (2) Heiau sites had been previously identified during a survey in the early 1900's, although no portions of the structures remain today.

The sites surveyed by SCS were evaluated for significance criteria and it was determined that all of the observed and recorded sites were found to be significant under *Criteria D* for their informational content. At this time there are no properties listed on the State or National Register of Historic Places in *Lawa'i Kai*. However, there are structures and other botanical garden features (i.e., fountains) that are over fifty (50) years old and *could* qualify for placement on the State or National Register of Historic Places. One site in particular is Queen Emma's Cottage which is presently located adjacent to the Allerton House (**Exhibit 9**). Queen Emma visited Lawa'i Valley in 1870 during a period of mourning following the death of her husband King Kamehameha IV. While she stayed on

the property for only a few months the cottage remained after her departure. Her cottage was originally placed above the valley floor overlooking *Lawa'i Kai*; when development threatened to demolish the cottage structure the Allerton's moved the cottage from the *pali* and placed it at its current location for preservation purposes.

Historically, public access to *Lawa'i Kai Beach* and *Lawa'i Bay* has been limited over the past 70 years due to the private ownership of the surrounding area and the steep volcanic terrain that flanks *Lawa'i Kai*. A *Cultural Impact Assessment (CIS) of Allerton Garden* was prepared by SCS in February 2008 and contains archival and documentary research, as well as communication with organizations and individuals having knowledge of the project area, its cultural resources, practices and beliefs. The CIS concluded that the exercise of native Hawaiian rights, or any ethnic groups, related to gathering, access or other customary activities will be positively influenced by the NTBGS commitment to preserving cultural resources. Many cultural sites identified within the project area will be protected and preserved by the NTBGS. Those of native Hawaiian descent will continue to have access to *Lawa'i Kai* for continued cultural practices such as gathering and visiting ancestral burials. There is a need to maintain the legal rights of Land Commission Awardees and lineal descendants and to provide access to the archeological sites for traditional and cultural practices. The NTBGS will continue to provide unrestricted access to individuals and groups while promoting the preservation of native and historic sites.

## SCENIC & VISUAL RESOURCES

The scenic resources of the project area are varied depending on location and site lines to the neighboring agricultural and development properties. From the Allerton Garden the *mauka* to *makai* scenic resources include a vibrant, lush tropical garden with steep basaltic cliffs flanking the sides of the valley. The *Lawa'i Stream* is considered the "spine" of *Lawa'i Kai* which winds through a number of garden rooms and vistas that are situated between the stream banks and the steep cliff sides.

"Water features" are abundant in the garden area and provide another level of scenic resources, not only visually but by the sound of abundant flowing water in the variety of pools, waterfalls and fountains (**Exhibit 10**). Scenic vistas and view planes from the *makai* portion of *Lawa'i Kai* are considered to be unmatched as the view looks across the botanical gardens and heavily vegetated, lush valley walls. *Lawa'i Stream* meanders through the valley, garden and into the coastal area and provides a relatively pristine scenic and visual quality due in part to the absence of recent human induced impacts in *Lawa'i Kai*.

## INFRASTRUCTURE EVALUATION

### ROADWAYS AND PATHWAYS

Vehicular access to *Lawa'i Kai* is available via two (2) routes, both of which require crossing private property. The historic eastern access road begins at the end of the county "Lawa'i Road", then continues onto the private Allerton Garden roadway down the east side of the cliffs into *Lawa'i Valley*. In 1992 hurricane Iniki destroyed the cliffside portion of the eastern access road making it impassible by vehicles. The NTBGS currently

has an access agreement with the neighboring Kukui'ula Development Company which allows for vehicular access through their property along the eastern rim of the valley. The easement connects to the Allerton and McBryde Garden Tour road which enters the valley along the historical *McBryde Plantation Railway* grade. The second access point to *Lawa'i Kai* begins north of the property at Papalina Road in Kalaheo. There are lockable gates at each access point to prevent unauthorized vehicles from entering the NTBG property, however pedestrian traffic is not halted by the placement of the gates (**Exhibit 11**).

Within the garden property there are a number of single lane gravel roadways that follow the historic paths created by the Allerton's. Other narrow walking paths meander throughout the NTBG property and connect the various landscape and garden features for visitors and staff. There is one footbridge that crosses the Lawa'i Stream at the mouth and is constructed of stainless steel with wood decking. This bridge provides walking access to the western portion of the gardens and the lotus pond located at the mouth of Lawa'i Stream. A second stream crossing was located near the *Palmetum* (i.e., collection of palm trees) and could be large enough to accommodate maintenance utility vehicles, but it was recently destroyed during a major flooding event and has not been restored. Although the bridge was damaged, the reinforced columns that supported the bridge remain; the reconstruction of this access bridge would allow staff to access the western portion of the property without having to traverse the entire NTBG property to the more northerly stream crossings (**Exhibit 12**).

#### *IRRIGATION AND WATER SYSTEMS*

Irrigation systems, first installed by the McBryde Sugar Company in 1899, relied on groundwater resources that fed the Lawa'i Stream. Currently the "water features" and garden irrigation systems within the *Lawa'i Kai* are separated from the County of Kaua'i potable water system. There are three (3) current sources for water to *Lawa'i Kai*, 1) the Luawai Reservoir, 2) the Pump 6 Well, and 3) the Kaua'i County Water Department. The Luawai Reservoir is controlled by the Kaua'i Coffee Company and is not always a reliable source of water for the "water features" and irrigation purposes; NTBG is charged quarterly for using this source which is often turbid or limited. Pump 6 is located on the NTBG property just *mauka* of *Lawa'i Kai* and is dependent on an electric pump to elevate water to the aboveground storage tanks located high above *Lawa'i Kai* to be distributed to irrigation points and the various "water features". The county water system only supplies potable water to the various buildings throughout the NTBG property and is not used for irrigation or to run "water features"; Pump 6 is the primary source for these uses. When Pump 6 is not operational, water from the Luawai Reservoir is utilized for the "water features" although this is not preferred as the water from the reservoir is often muddy or cloudy.

#### *UTILITY SYSTEMS*

The source of electrical and telephone utility lines for the Allerton House and Guesthouse is above ground lines located on the Kukui'ula Development Company property which descends from the eastern side of the valley to a pole sited behind the main house. The remaining telephone and electrical lines for the various structures and Pump 6 are provided by utility lines that begin *mauka* of the NTBG property. Wastewater treatment



for Allerton House was upgraded to a septic system after Hurricane Iniki while the guest house and other structures have only cesspools.

### **PROPOSED ACTIONS OF THE PETITIONER**

The petitioner is requesting to amend the current subzone designation of *Lawa'i Kai* and the submerged lands of Lawa'i Bay from the Conservation District Limited and Resource Subzones to the Special Subzone to create the *Lawa'i Kai Special Subzone* (**Exhibit 13**). The NTBG has developed a number of management plans that outline the long-term goals, objectives and actions planned throughout the special subzone. The *Lawa'i Kai Master Plan and Management Plan 2013-2033* provides an avenue for the long term management of *Lawa'i Kai* by describing seven (7) Management Plans (MP) that cover all facets of the proposed *Lawa'i Kai Special Subzone*. The Management Plans described in the *Master Plan* include:

1. *Historic Resources;*
2. *Landscape Resources;*
3. *Infrastructure;*
4. *Archeological Resources;*
5. *Lawa'i Kai Estuary and Stream;*
6. *Coastal and Marine Resources;*
7. *Recreation and Commercial.*

As the *Lawa'i Kai Master Plan and Management Plan* has a 20-year planning horizon, the implementation of the various goals and objectives will be entirely dependent on securing adequate funding resources. Underpinning this Plan is the first-ever special subzone proposal that includes both **private lands** and **public resource areas** (estuary, stream, beach and bay). To fully implement the portion of the plan affecting Lawa'i Bay, the NTBG needs to pursue additional administrative rule amendments with the cooperation of the Department of Land and Natural Resources (DLNR). The amendments may include the DLNR Land Division, Division of Aquatic Resources (DAR), and the Division of Boating and Ocean Recreation (DOBOR).

### **REVIEW OF PROPERTY CHARACTERISTICS IN RELATION TO THE PROPOSED SUBZONE OBJECTIVES**

As described in §13-5-15, Hawaii Administrative Rules (HAR), the objective of the Special Subzone is *to provide for sustainable use of areas possessing unique developmental qualities that complement the natural resources of the area.*

Pursuant to HAR §13-5, **Exhibit 2, Special Subzones: September 6, 1994** there are currently seven (7) special subzones included in the Conservation District. The applicant is proposing to create an eighth special subzone:

- (8) Lawai Kai special subzone.  
Subzone designation for educational, recreational, and research purposes as delineated on map entitled "K-8, Koloa,"  
Kauai.

Lawa'i Valley, and more specifically *Lawa'i Kai*, has undergone a history of resource impacts related to agriculture, development and residential uses. The transformation from heavily impacted agricultural lands to the pristine, botanical garden that currently occupies *Lawa'i Kai* has required long term preservation and management by the NTBG and the *Allerton Garden Trust*. The unique characteristics of *Lawa'i Kai*, Lawa'i Stream, *Lawa'i Kai Beach* and Lawa'i Bay require special resource management objectives best served by the creation of the *Lawa'i Kai Special Subzone*. As the majority of the surrounding areas have been consumed by either agricultural uses or development of residential homes and golf courses, the preservation and protection of *Lawa'i Kai* should be a priority for the community and State.

### **STAFF ANALYSIS**

Pursuant to Hawaii Administrative Rules (HAR) §13-5, any change to Conservation District subzone boundaries must be made by amending HAR §13-5. Statutes and rules that govern the process by which amendments of HAR §13-5, may be made include:

1. §91-2 through §91-7, Hawaii Revised Statutes (HRS);
2. §2, Act 168, Session Laws of Hawaii 1998;
3. §183(c)-4, HRS;
4. §13-1, HAR; and
5. §13-5-5, HAR.

Requests to amend the administrative rules are reviewed by the Legislative Reference Bureau and the Department of the Attorney General. In general, in order to take effect, proposed rule amendments must obtain departmental and gubernatorial authorizations for both the public hearing and final approval.

### **AUTHORIZATION FOR PUBLIC HEARING**

The first major step to amend the administrative rules is to hold a public hearing. Approval from the Board of Land and Natural Resources to hold a public hearing was granted on *September 23, 2011*.

### **PUBLIC HEARING**

The Public Hearing regarding this rule amendment was held on *May 24, 2012* at the Koloa Neighborhood Center, Koloa, Island of Kaua'i. Approximately 20 persons attended the public hearing including NTBG consultants, participants in the LKCAAG and members of the general public. A presentation by Chipper Wichman, CEO of the NTBG, described the history, current management, objectives and policies of *Lawa'i Kai*.

A number of comments, both written and verbal were received during the public hearing. The proposed LKSS appears to have the support of the local community. The NTBG has worked with the community and interested stakeholders to provide an opportunity to present concerns relating to the proposed subzone amendment and to answer questions

about how the amendment will impact the community; the NTBG considered many facets of public opinion. All of the attendees appeared to support the subzone amendment, although concerns over beach and bay public access, although not part of this rule amendment, were thought to require additional debate and discussion. Most of the attendees realize the unique resources of *Lawa'i Kai* are special and desire to preserve that use, and not to alter the status quo of access or the nature of *Lawa'i Kai*. Attendees noted that some sacrifice (i.e., no easy access to beach) is necessary to protect this unique area; additionally the attendees noted that better enforcement of current regulations for areas outside the garden property (i.e., reduce agricultural impacts to *Lawa'i Stream*) via the State and County could also serve to better protect and preserve this region.

#### **APPROVAL/DISAPPROVAL**

Should the Board approve this petition then the proposed rule change will be forwarded to the Governor for approval. Upon receiving the Board's approval, both the Legislative Reference Bureau and the Department of the Attorney General would review. With the Department of the Attorney General approval 'as to form', the proposed rule amendment shall be forwarded to the Governor for the final decision.

#### **STATE POLICIES AND PROCEDURES**

Staff processed the petition in accordance to the Governors' Administrative Directive # 09-01 to guide policy and procedures for the adoption, amendment or repeal of administrative rules. The Governor directs that petitions for administrative rule changes address certain policy topic areas.

#### **§2 OF ACT 168, SESSION LAWS OF HAWAII 1998, THE HAWAII SMALL BUSINESS REGULATORY FLEXIBILITY ACT**

At the *September 23, 2011* Land Board meeting, the Board of Land and Natural Resources (BLNR) found that the proposed rule amendment would not impact or affect small business.

#### **DISCUSSION**

The National Tropical Botanical Garden (NTBG) was founded by an act of congress in 1964 as a not-for-profit organization and assumed a mandate to become a leading conservation organization for tropical regions. The NTBG has grown to encompass nearly 2,000 acres of pristine lands located here in Hawaii and in Florida that includes five different ecosystems, five (5) botanical gardens and three (3) preserves. The Allerton Garden (i.e., *Lawa'i Kai*) is owned by the *Allerton Gardens Trust* and is managed by the NTBG as one of five gardens in the NTBG network. The NTBG mission is to "enrich life through discovery, scientific research, conservation, and education by perpetuating the survival of plants, ecosystems, and cultural knowledge of tropical regions".

The NTBG is proposing to create the *Lawa'i Kai Special Subzone (LKSS)* to provide an avenue for long-term management of the property over the next 20 years via the *Lawa'i Kai Master Plan and Management Plan 2013-2033*. Having a single, comprehensive master plan and management plan approved, rather than numerous Conservation District Use Permits (CDUP) and Site Plan Approvals (SPA), appears to be a logical approach to the long term preservation and management of *Lawa'i Kai*. Additionally, by including the

submerged lands, estuary and stream in the LKSS management of *Lawa'i Kai* will more closely resemble an ahupua'a style of land management.

The NTBG will continue utilizing the privately owned portions of the proposed special subzone as a botanical garden dedicated to conservation, research and education while utilizing the public portions of the LKSS for conservation along with managed public recreational use. No new development is planned within the proposed LKSS although the existing infrastructure will require repair, replacement and or maintenance during the planning horizon of 20 years. As the NTBG is a non-profit charitable organization with limited financial resources the master plan and management plan outlines all *potential* future repairs, upgrades and maintenance for *Lawa'i Kai*.

If this special subzone is approved, the NTBG will continue to work in conjunction with the Department of Land and Natural Resources Land Division, the Division of Aquatic Resources and the Division of Boating and Ocean Recreation to manage ocean uses within Lawa'i Bay.

If the subzone amendment is not approved the land will remain in the limited subzone and would ultimately restrict the activities of the NTBG to provide long term management for *Lawa'i Kai*. The NTBG would be required to seek out an approval for each individual land use, activity and management program, which would take time, money and staff away from the primary goals and management of the garden. Instead, should this Special Subzone amendment and Master Plan and Management Plan be approved by the Board of Land and Natural Resources (BLNR), the applicant would like the flexibility to bring specific proposed improvements contained in the Master Plan and Management Plan to State of Hawai'i, Office of Conservation and Coastal Lands ("OCCL") staff for processing as the funding for these improvements becomes available in the future. The OCCL will still have the ability to review all proposed land use activities at *Lawa'i Kai* for consistency with the *Lawa'i Kai Master Plan and Management Plan 2013-2033*. If approved, this proposal will allow the NTBG to implement a unified, culturally-based and ahupua'a style of land and resource management that will ensure the long term protection and health of this area for future generations.

Staff conducted a site inspection of the subject property on *March 21, 2012* to preview *Lawa'i Kai*, to observe potential infrastructure repair and maintenance sites and to meet with NTBG staff to discuss long term goals and management activities.

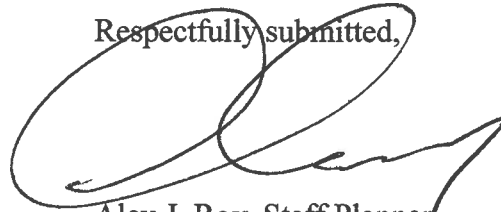
Staff is of the opinion that the proposed *Lawa'i Kai Special Subzone* is an appropriate designation for the petitioned area as this is consistent with the intent of the special subzone and the goals of the NTBG to promote education, resource preservation, conservation and scientific research relating to tropical flora and ecosystems. Similarly, this petition to create the LKSS is considered reasonable and would not be out of character to the similar special subzone created for the NTBG such as the *Limahuli Garden Special Subzone* located on the Island of Kaua'i.

**RECOMMENDATION**

Based on the preceding analysis, Staff recommends the Board of Land and Natural Resources:

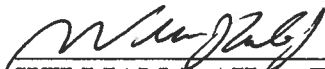
1. Grant petitioner, National Tropical Botanical Garden request to amend Chapter 13-5, Hawaii Administrative Rules to amend a portion of their private property that lies within the Conservation District Limited and Resource subzones into the Lawa'i Kai Special Subzone known as Tax Map Keys: (4) 2-6-002:001, 004-009 & (4) Submerged Lands located at Lawa'i, Koloa District, Island of Kaua'i; and
2. Authorize the forwarding of the rule amendment to the Governor, State of Hawaii for approval and enactment.

Respectfully submitted,

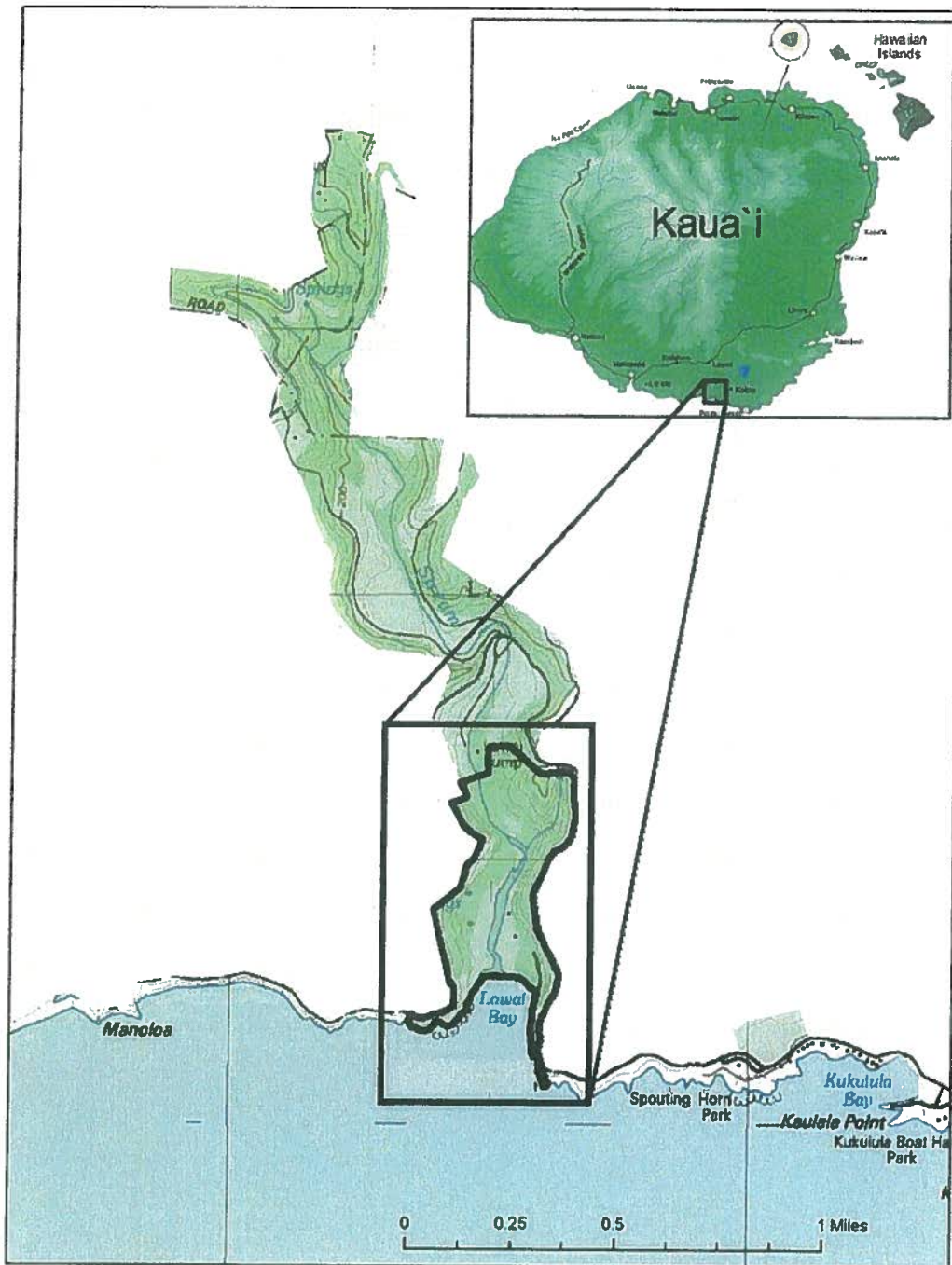


Alex J. Roy, Staff Planner  
*Office of Conservation and Coastal Lands*

Approved for Submittal:



**WILLIAM J. AILA, JR.**, Chairperson  
*Board of Land and Natural Resources*



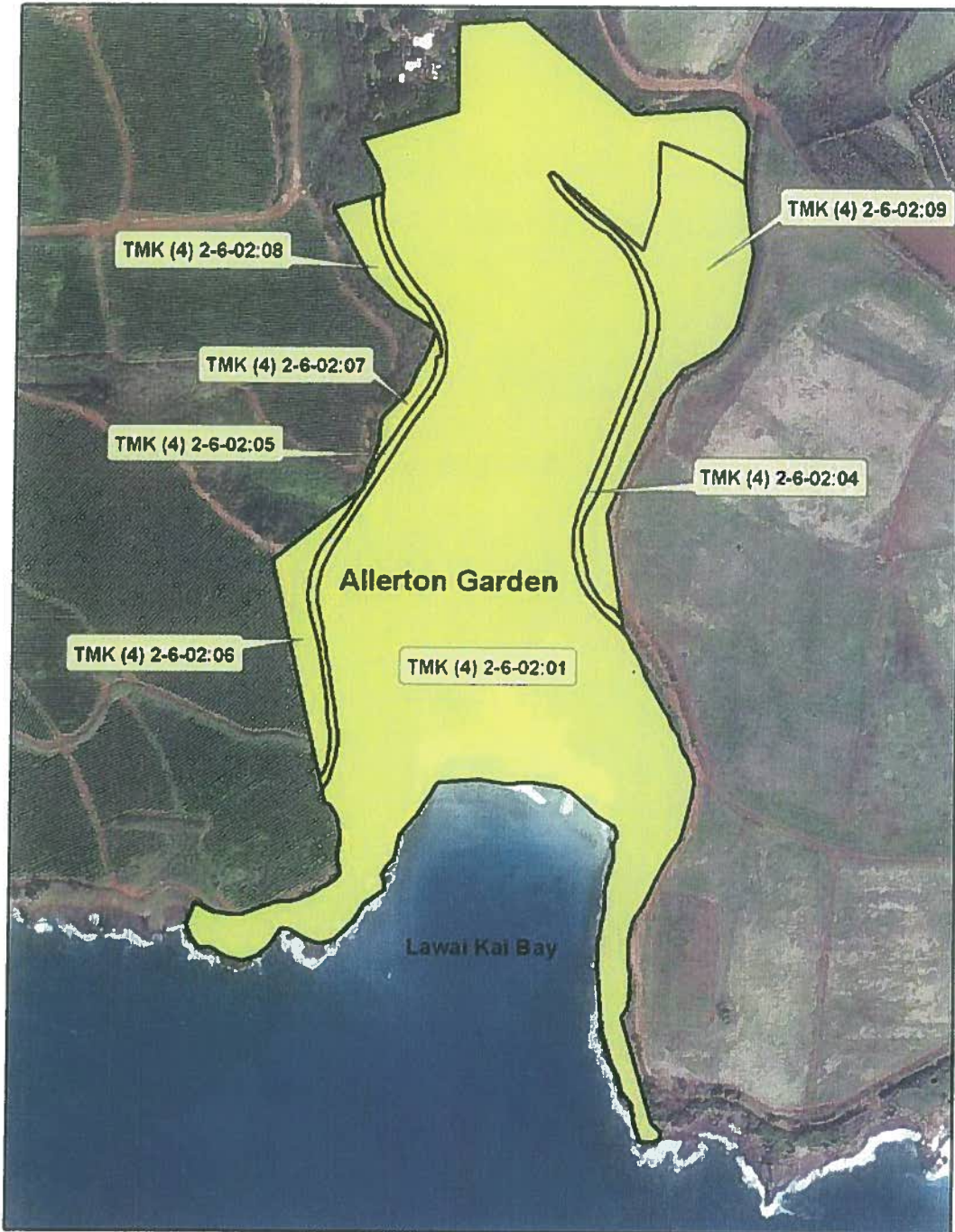
LOCATION MAP

LĀWA'I KAI SPECIAL SUBZONE  
National Tropical Botanical Garden

EXHIBIT I





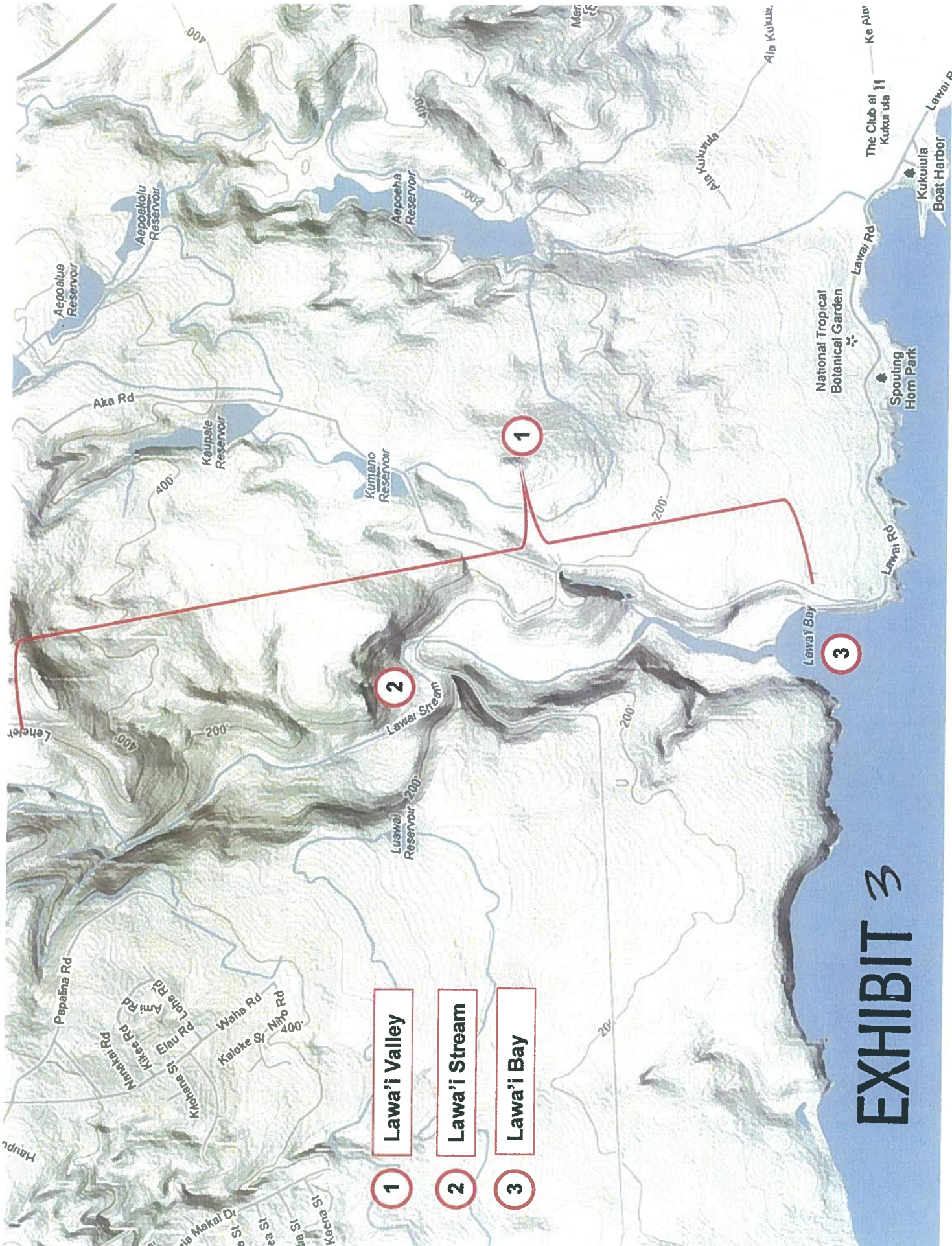


PARCEL MAP

LĀWA'I KAI SPECIAL SUBZONE  
National Tropical Botanical Garden

EXHIBIT 2



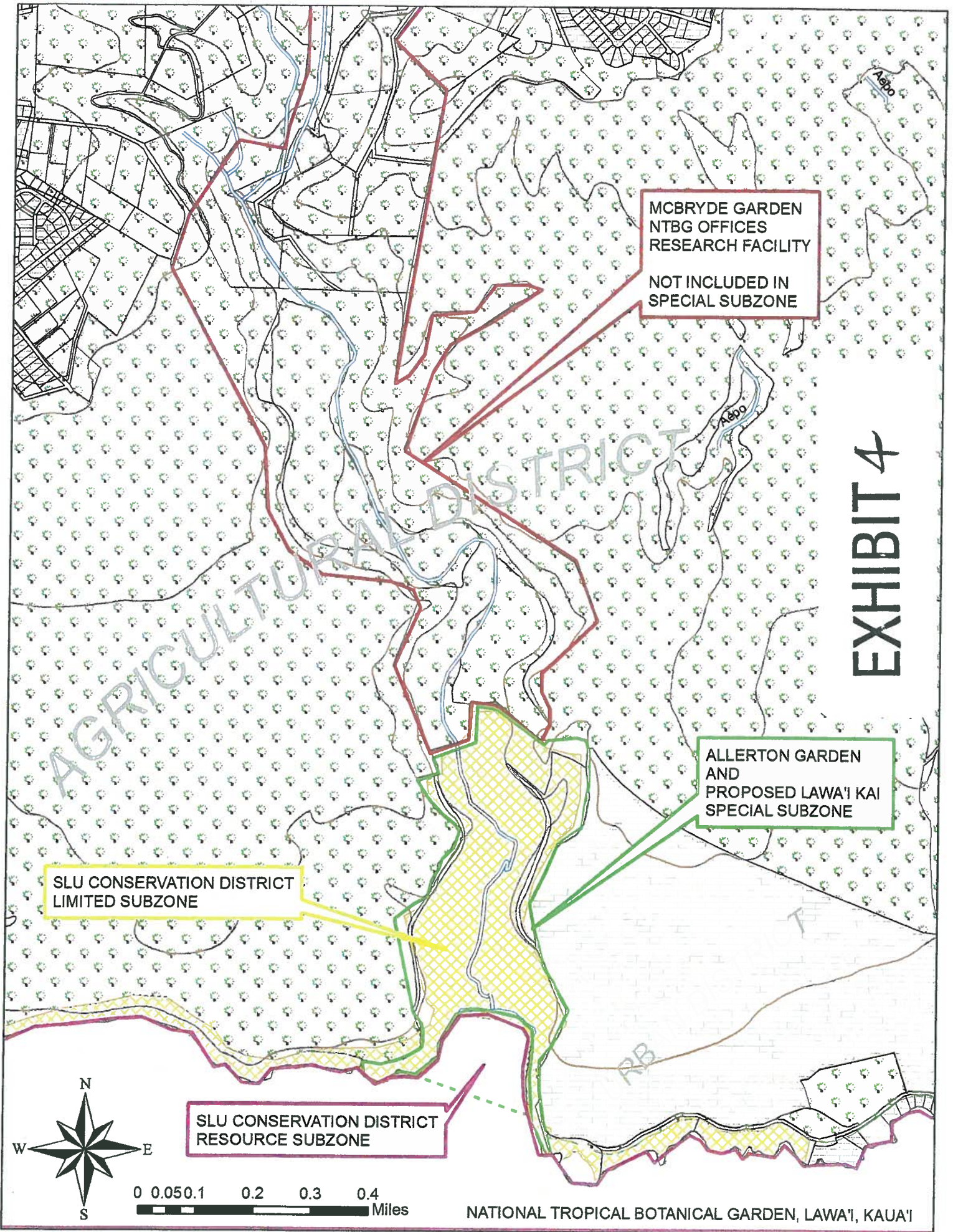


- 1 Lawa'i Valley
- 2 Lawa'i Stream
- 3 Lawa'i Bay

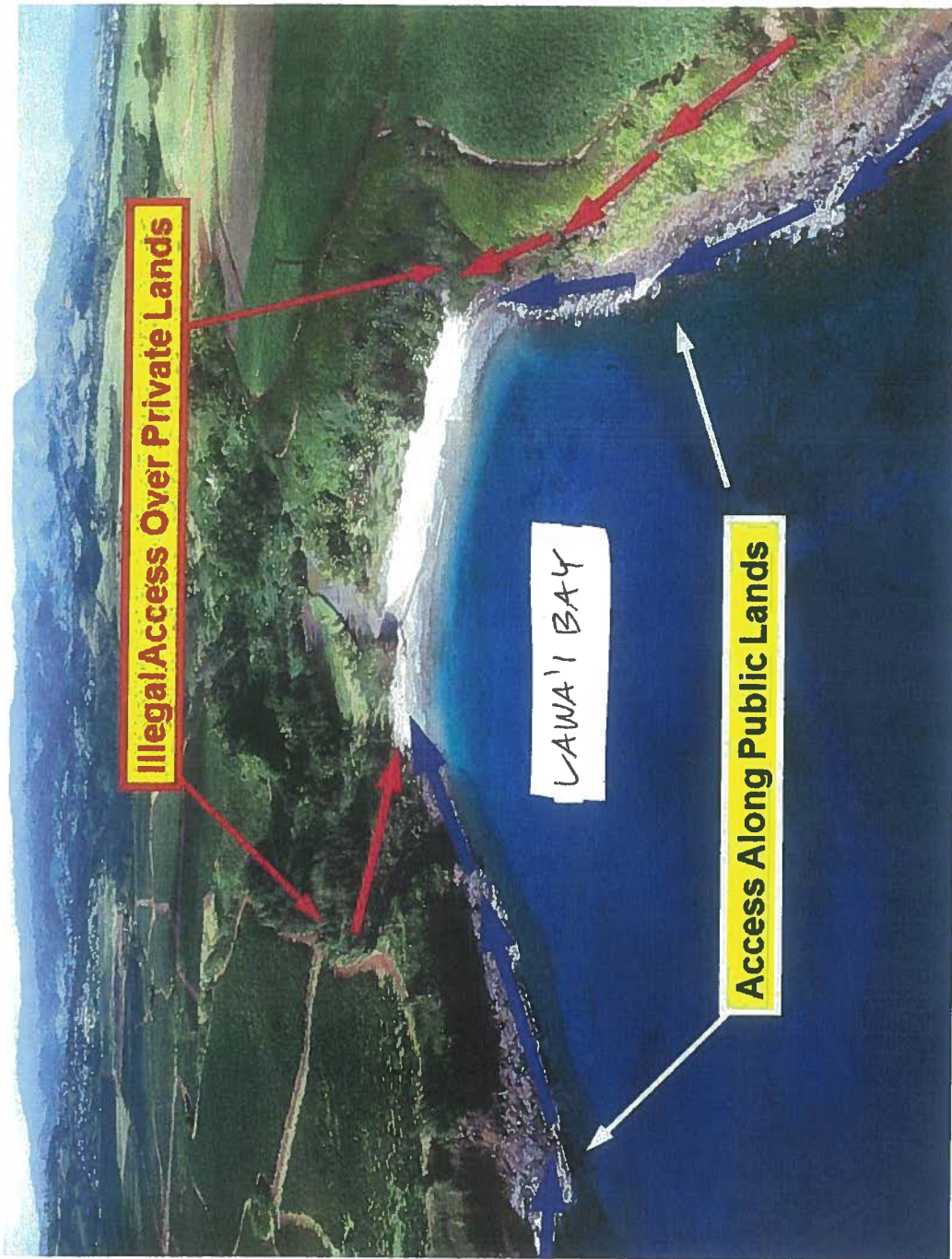
# EXHIBIT 3



# EXHIBIT 4







COASTAL ACCESS: LEGAL AND ILLEGAL

LĀWA'I KAI SPECIAL SUBZONE  
National Tropical Botanical Garden

EXHIBIT 5



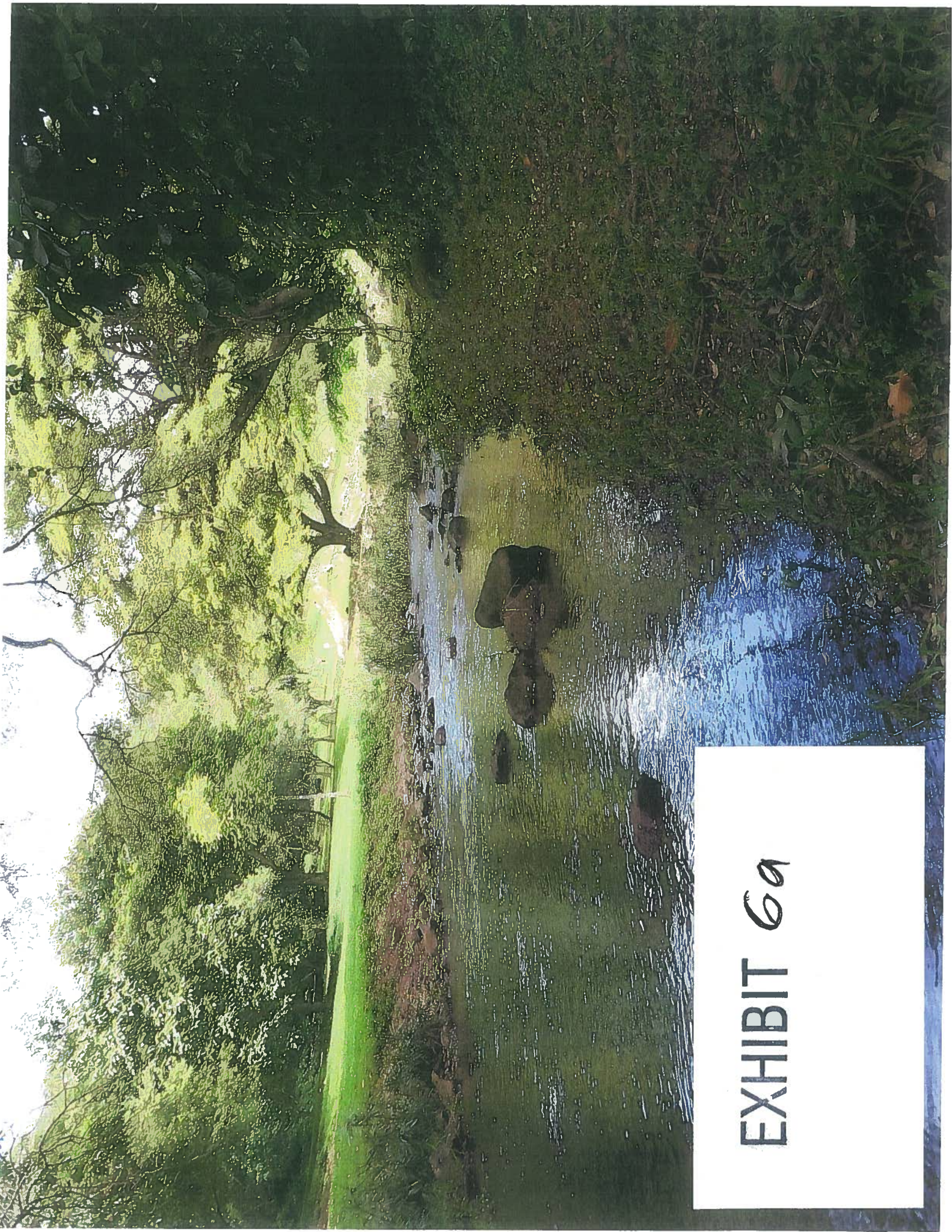
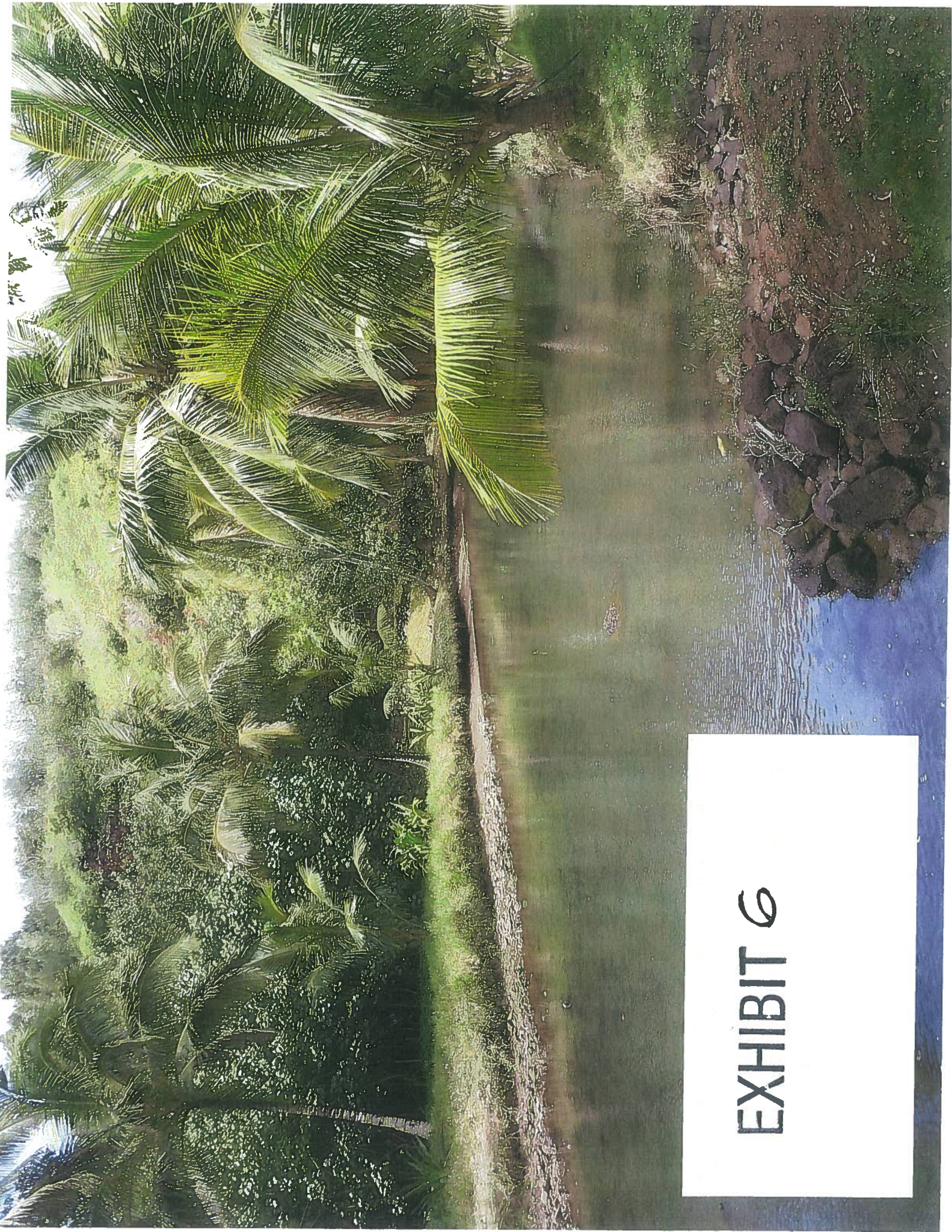


EXHIBIT 6a





**EXHIBIT 6**





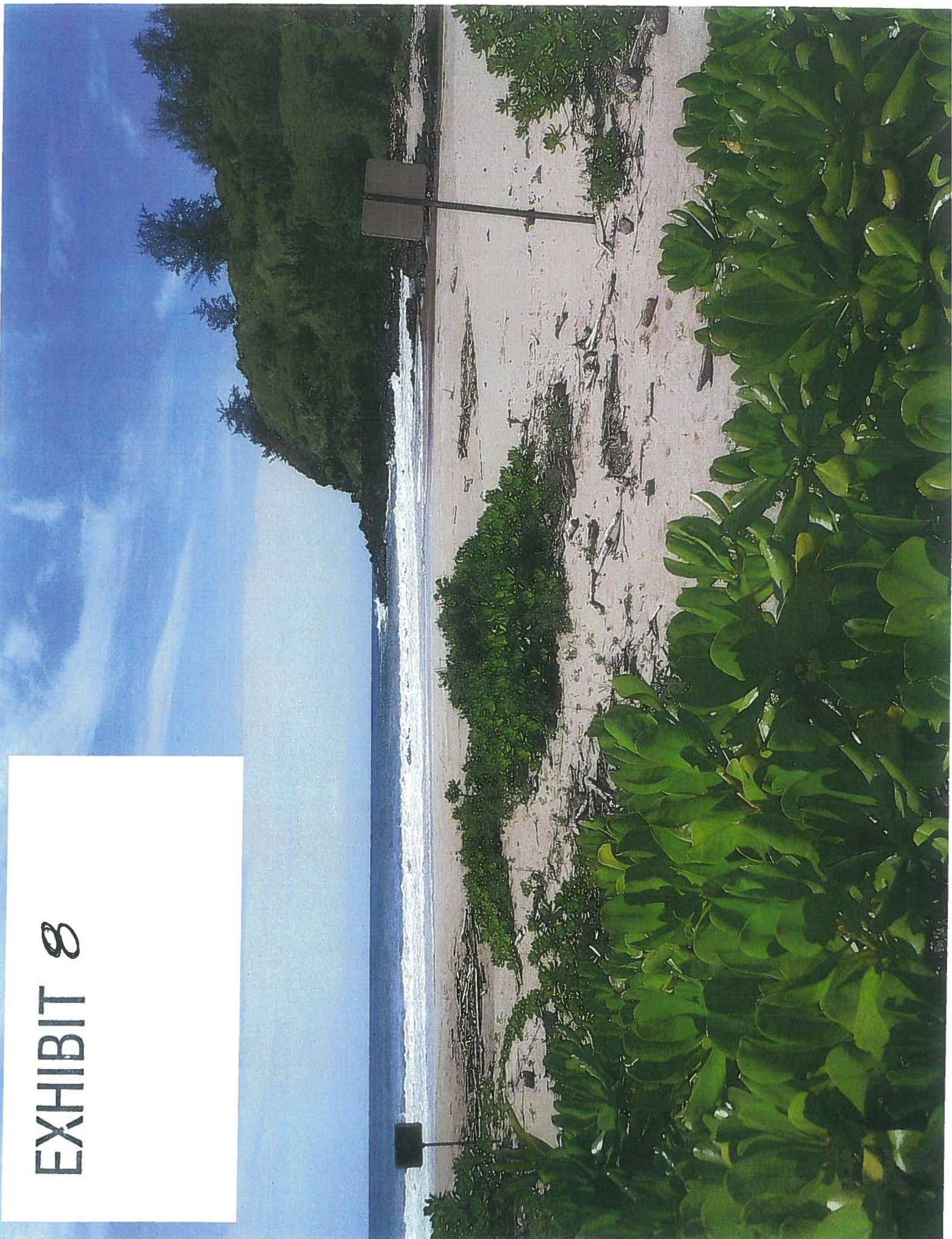
PROJECT MAP

**LĀWA'I KAI SPECIAL SUBZONE**  
National Tropical Botanical Garden

**EXHIBIT 7**



# EXHIBIT 8





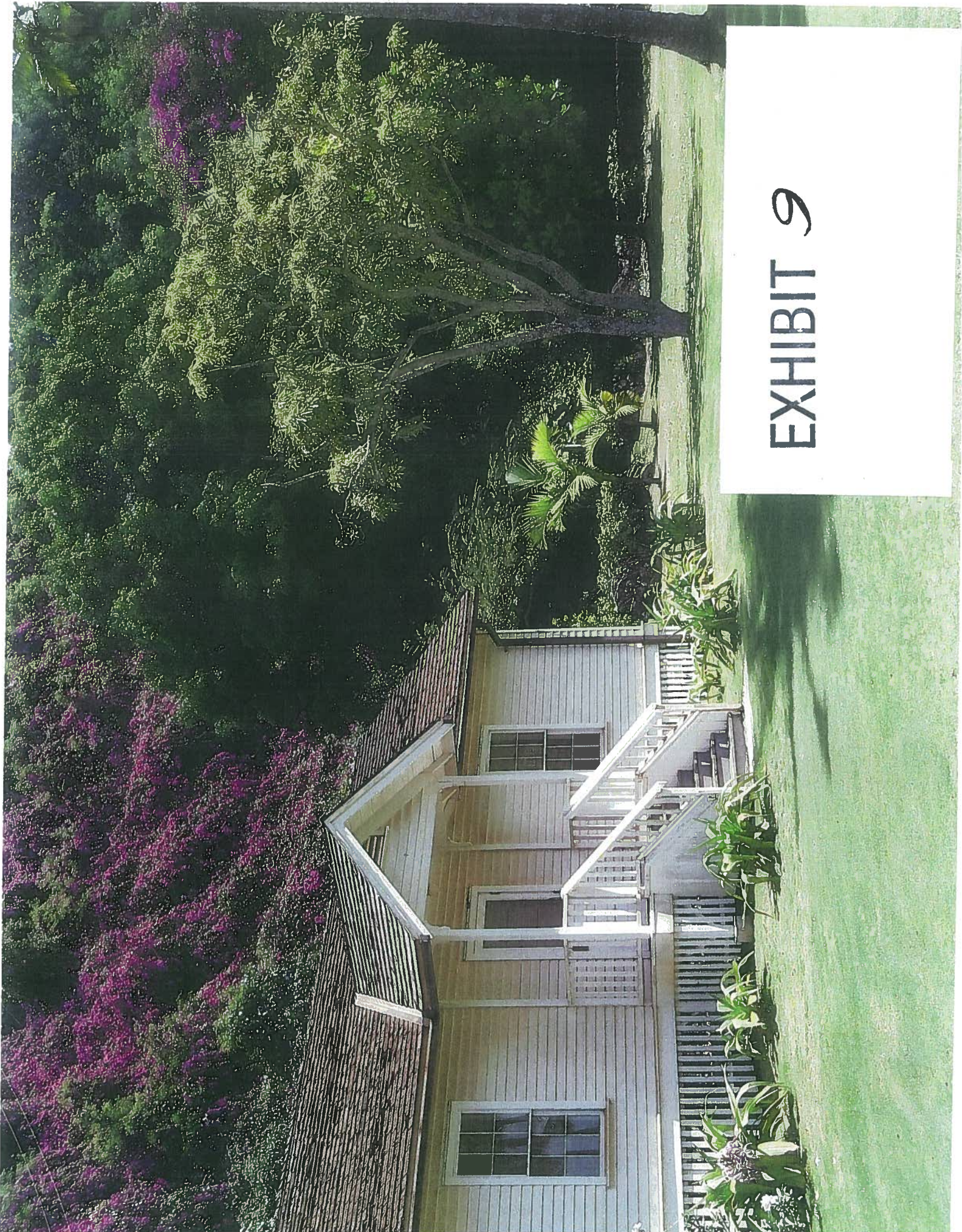


EXHIBIT 9



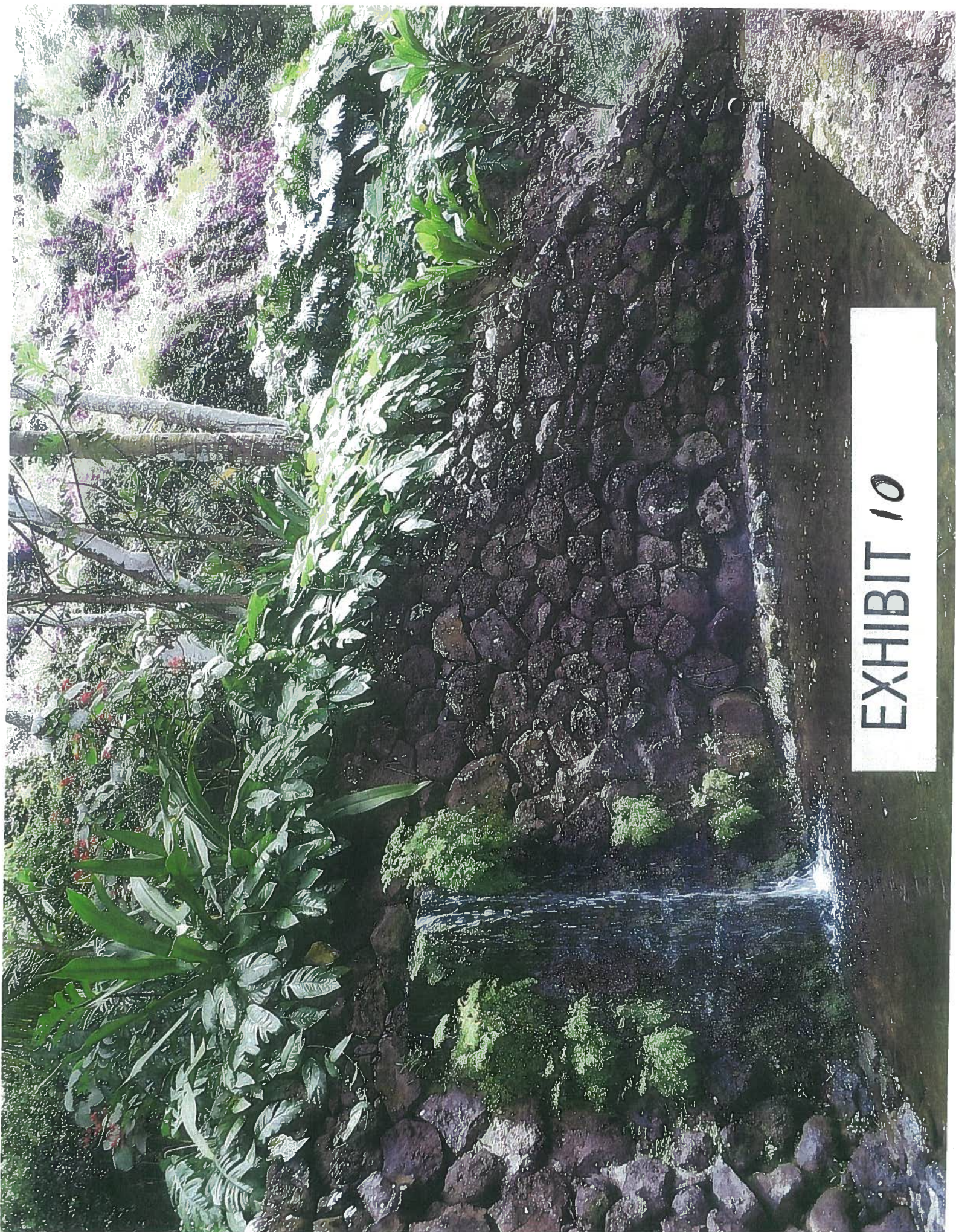
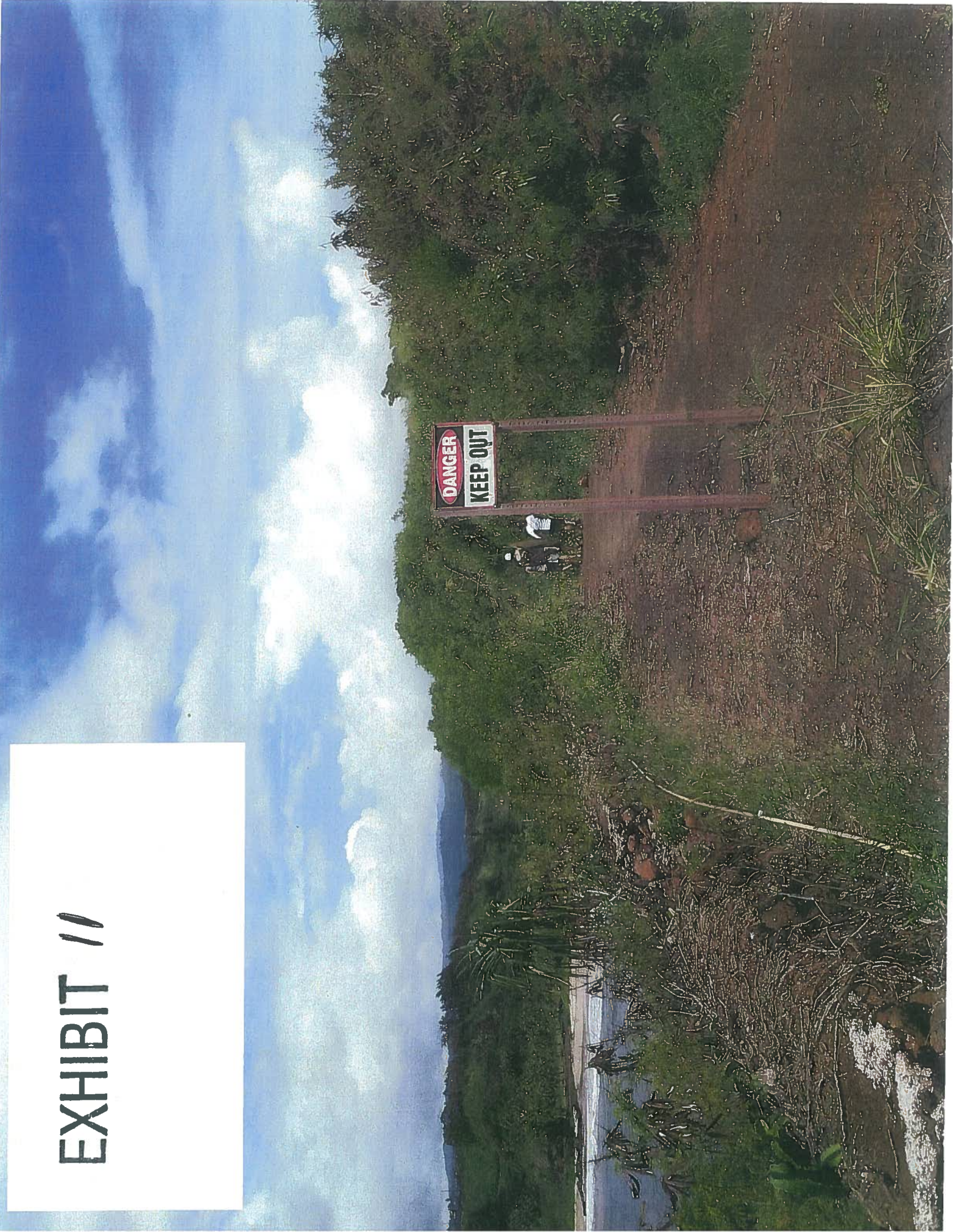


EXHIBIT 10



# EXHIBIT 11





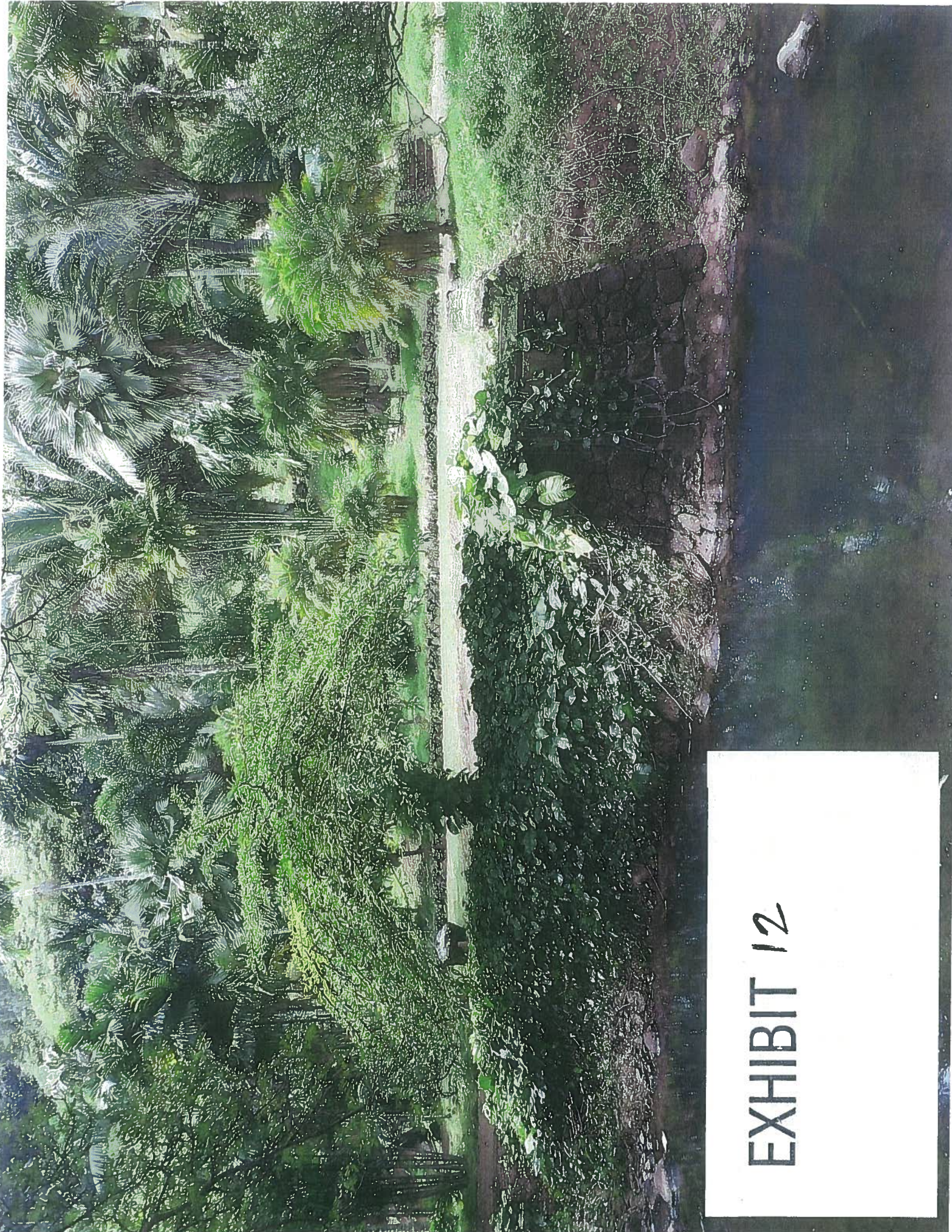
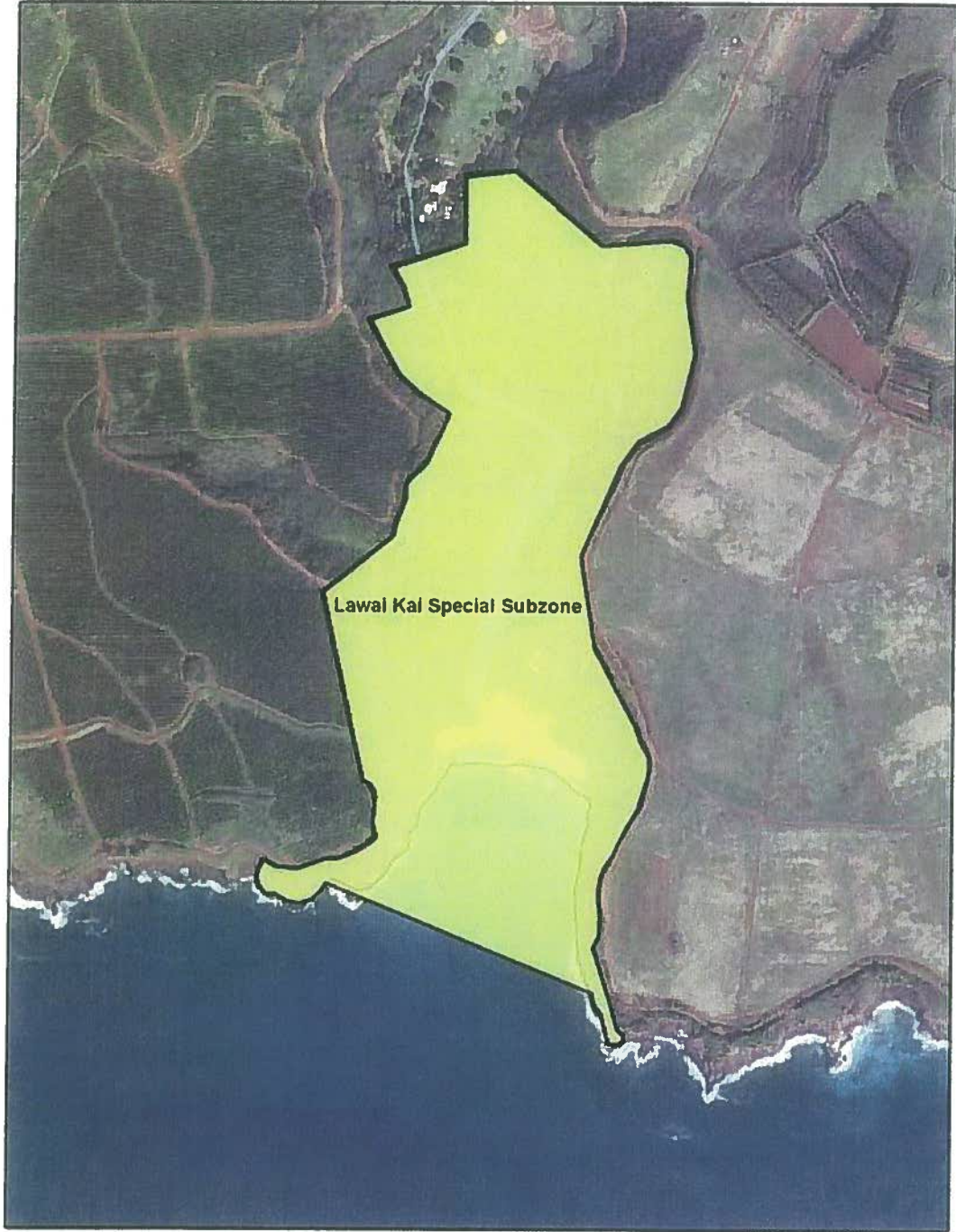


EXHIBIT 12





PROPOSED

**LĀWA'I KAI SPECIAL SUBZONE**  
National Tropical Botanical Garden

**EXHIBIT 13**