

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

November 14, 2014

**BOARD OF LAND AND
NATURAL RESOURCES
STATE OF HAWAII
HONOLULU, HAWAII**

REGARDING: Conservation District Use Application (CDUA) KA-3714

APPLICANT: Kalihiwai Investors, LLC – Jim Fields

AGENT: Jim Fields

LOCATION: Kapaka Street, Hanalei District, Island of Kaua'i

TMKs: (4) 5-3-001:016

AREA OF PARCELS: 174 acres (146 ac. *Conservation District*; 28 ac. *Agricultural District*)

AREA OF USE: ~2.5 acres

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE:

The project area is located within the northern portion of the Island of Kaua'i, south of Princeville and east of Hanalei Town and Hanalei Bay (**Exhibit 1**). The subject parcel stretches almost three (3) miles along the eastern rim of the Hanalei Valley and is bordered to the north by Kūhiō Highway, on the east by Kapaka Street (the access point for the parcel) and on the west by Hanalei Valley. Approximately 28 acres of the parcel is zoned within the State Land Use (SLU) Agricultural District while the remainder, approximately 146 acres, is zone within the SLU Conservation District Resource Subzone (**Exhibit 2**). Currently the parcel is undeveloped besides some remnant buildings and structures left by previous uses and owners. Over the last 50 years, portions of the parcel have been used for animal husbandry/pasturage and nursery operations. During the late 1980's the northern portion of the parcel was developed as a commercial nursery (**Exhibit 3**); at the height of nursery operations the area was subjected to significant planting, plowing, cultivation and construction. Numerous structures had been built to support nursery operations on the parcel including a 4,000 square foot greenhouse which was destroyed by Hurricane Iniki in 1992. Additional structures relating to the nursery operations include a 5,000 square foot warehouse to be removed by Kalihiwai Investors, LLC (KI), and a 4,000 square foot plant shade house that was removed by KI in 2013 (**Exhibit 4**). Additional non-residential uses included an AT&T cell tower facility (removed at the direction of KI in 2012), and a potable water well and facility operated by *Princeville Utilities* (a private utility).

Kauai Island Utility Cooperative (“KIUC”) owns and maintains above-ground power lines that cross the subject parcel in various places, under a 1988 recorded right-of-entry. Three sets of overhead power lines cross the parcel (across land in the Conservation and Agricultural Districts). One set crosses the Kūhiō highway at the northernmost end of the property and continues down into the Hanalei Valley. The second set also runs across Kūhiō Highway and into the parcel supplying power to the 5,000 square foot warehouse (to be removed) in the old nursery area. The third set are large scale power lines at the landward (*mauka*) end of the parcel running up from the Hanalei Valley to the “Powerline Trail”, an unpaved trail/road used to access electric transmission lines for maintenance.

There is an existing subdivision called the *Princeville Agricultural Subdivision* (**Exhibit 5**) in this area which extends along the east side of Kapaka Street (adjacent to the subject parcel) for approximately 1.5 miles. The original subdivision included 22 lots, but most have been further divided into condominium units pursuant to Hawaii Revised Statutes (HRS) Chapters 514A and B (*Hawaii’s condominium property acts*), and there are now 84 CPR units on the east side of Kapaka Street. Currently, the subdivision includes 45 parcels with dwellings on them (and four others with structures of less than 1,000 square feet). 18 of the Princeville Agricultural Subdivision dwellings are visible from Kapaka Street (**Exhibit 6**).

The project site is located about two (2) miles from the nearest coastline, and is approximately 380-feet above sea level along the eastern rim of Hanalei Valley. The valley wall below the pali (cliff) and project site is steep, at about 50% grade or higher in some areas. The project site, however, is generally level from Kapaka Street to the pali, sloping slightly to the south.

The project site does not contain any surface water bodies or wetlands, and there is no evidence of any wetland vegetation in or around the project area. The surface water body nearest to the project site is the Hanalei River, which meanders along the valley floor, punctuated by lo’i terraces and residential structures. The Hanalei River is approximately 1,000 feet from the project site at its closest point; the adjacent wetlands may extend a few hundred feet closer, but agriculture and development of the valley floor have obscured some of the non-tidal wetlands. Soil within the project site is considered to be moderately permeable with slow to moderate runoff potential; the soil erosion hazard is considered slight. As the parcel, and the Island of Kaua’i is relatively wet compared to other locales, the applicant decided to survey the project area for any potential runoff and/or soil erosion sites or indicators. Based on site observations the project area appears to drain uniformly (i.e., sheet flow) with no observable ravines, runnels, indentations or natural drainage swales. The majority of stormwater is absorbed on the property, although during heavy rainfall events stormwater may flow parallel to Kapaka Street following the mild contours of the land (**Exhibit 7**). Discharge during these high rain events was observed to flow towards both the Hanalei River and Kapaka Street, although Kapaka Street has storm drains at various points, including one at the southern end of the project site. The County of Kaua’i maintains an easement in that location for drainage purposes.

Previous Approvals/Permits:

A number of authorizations, approvals and correspondences from this office were provided to the landowner to conduct land use activities in the preparation for development, to clean and remove material from past land uses (i.e., nursery), and other land and resource management land uses

throughout the parcel and at the project site. Previous work on the parcel by the current landowner includes: conducting invasive species removal, minor landscaping of cleared areas, trash and debris removal from previous development, and general land and resource management; permits and approvals were granted by this office under Site Plan Approval (SPA) permit KA-13-30 and through our correspondence (COR) process under KA-12-50, KA-12-232, KA-13-02, and KA-13-69 for the aforementioned land uses. Additionally, staff from this office visited the site to observe the land and resource management activities, and to discuss proposed development and permitting with the landowner. It should be noted that the pali area, and old nursery site, were filled with trash (i.e., piping, plastic trash, metal, old landscape plants and materials) that was removed by the applicant and disposed of off-site.

Existing Floral and Faunal Resources

The proposed site is an abandoned pasture (**Exhibit 8**), primarily covered in grasses with invasive shrubs and trees growing along the borders and slopes of the parcel (**Exhibit 9**). Invasive species, such as albizia, are starting to colonize the remainder of the site and surrounding area. Invasive species removal, which was previously approved through this office, has temporarily controlled the growth and spread of some invasive vegetation; although more removal is warranted. Along Kapaka Street the vegetation is primarily thick stands of 1-2m high grasses, typically Buffalo Grass, and shrubs, such as Guava and Java Plum. Along the rim of the Hanalei Valley Strawberry Guava dominates the landscape, along with Java Plum, Cats Claw and Albizia Trees. There are remnant ferns in small, scattered plots along with Lau Hala specimens, although these are situated outside the project site. The interior of the project site, and main development area, is covered in primarily Buffalo Grass (80%) with other minor grasses (i.e., sleeping grass, Wedelia, and Kikuyu); some minor shrubs and bushes are also present (e.g., Guava, Java Plum and Haole Koa) with no native species observed during the site survey.

The project site is primarily cleared land or a grassy field with limited areas of suitable nesting, resting, or foraging for faunal species. During a survey of the parcel and project site the following species were observed and recorded: common *Myna Bird*, *Chestnut Munia*; *Cattle Egret*; and the *Zebra Dove*. Additionally, evidence for the presence of feral pigs and feral chickens was also observed, although no specific animals were sighted during the survey. There are native bird species that are assumed to seasonally fly over the property including the *Nene*, *Golden Plover* and *Pueo*.

It should be noted that during a site visit, staff from this office observed at least 8 Nene walking and foraging across the open fields located adjacent to the project area (**Exhibit 10**); most likely these are transient foragers and do not utilize the area for nesting. The US Fish and Wildlife Service (USFWS) indicate that various seabirds including “the federally threatened Newell’s Shearwater, endangered Hawaiian Petrel, and a candidate for listing, the band-rumped storm-petrel” may fly over the project area when traversing between the ocean and mountainous breeding colonies. Additionally, according to the USFWS the federally endangered Hawaiian Duck or *Koloa*, and Hawaiian Hoary Bat may be present in the vicinity of the site. While various species may be present in the vicinity of the project area or occasionally fly over the property, no threatened or endangered species are known to permanently reside on the project site, and there is no proposed or designated critical habitat located on the parcel.

Culture, Architecture and Archeology

The subject parcel includes the Po'oku Heiau (*State Historic Preservation Division (SHPD) Site #5-30-03-139*), an important Hawaiian historic/cultural site located on the summit of a hill overlooking Hanalei Valley. On *July 24, 2012*, the SHPD accepted the applicants Final Archeological Inventory Survey (AIS) covering the majority of the parcel, including the area of the Po'oku Heiau and project site. On *May 14, 2013* the SHPD accepted the applicants Final Preservation Plan for the Heiau site and surrounding area (**Exhibit 11**).

During cultural and historical reconnaissance and site investigation, it was found that currently there are no cultural activities, gathering practices or other indigenous uses within the project site. As the parcel had been previously developed with the construction of a large scale commercial nursery at the northern end, commercial and public utilities at the southern end, and animal grazing with minimal land management in between, evidence for additional uses or artifacts most likely has been removed or destroyed. No local Hawaiians provided any comments or concerns with regards to access or uses at the project site other than the heiau (which will be preserved in place) and the lo'i farms and other agriculture uses located 1000-feet downslope on the floor of Hanalei Valley.

PROPOSED USE:

This Conservation District Use Application (CDUA) is for the proposed construction of a Single Family Residence (SFR), and landscaping/agriculture within a small portion (2.0 acres) of the larger subject parcel (174 acres) (**Exhibit 12**).

Proposed Construction:

The proposed SFR has been sited to be constructed on a level, two-acre bluff approximately ½ mile south of Kūhiō Highway on Kapaka Street (**see Exhibit 3**). The proposed SFR has been designed as a one-story residence (**Exhibit 13, 13a, 13b**) to minimize view plane impacts associated with typical development in this area. The designed maximum height of the SFR is approximately 19' above the current grade, with lower heights along the pali portion of the project site. The SFR structure has been designed to include 3,833 sq. ft. of finished living space, a 572 sq. ft. garage; a 300 sq. ft. pool (with coping), and approximately 236 sq. ft. of "Hawaiian Rock" hardscaping applied to the exterior walls. The total "Maximum Developable Area" (MDA) is 4,491 sq. ft. which includes the total footprint of the home, pool, garage and hardscaping (which is typically not included in the MDA) (**Exhibit 14, 14a**); an access driveway will also be constructed for ingress/egress to Kapaka Street. The SFR will be sited with the western face of the structure to be approximately 60-80 feet from the edge of the pali overlooking Hanalei Valley.

Construction of a self-contained wastewater system which will process all wastewater in a below-ground tank and convert it into water suitable for agricultural/landscaping uses is also proposed. These systems eliminate the need for a leach filter or infiltration bed, and results in effluent water quality that minimizes any adverse impacts to surface and ground waters and reduce the use of potable water for irrigation. All proposed septic and reclamation systems will be coordinated with the State Department of health and the appropriate County of Kaua'i agency.

Minor excavation of the proposed two-acre site will include, (1) excavation of the area immediately beneath the proposed dwelling to accommodate a post and pier foundation (requiring approximately 406 cubic yards of earth to be removed), (2) excavation of the pool (requiring approximately 55 cubic yards of earth to be removed), and (3) addition of a two-foot high planting berm along portions of the boundary of the site with Kapaka Street using the excavated soil (**Exhibit 15**).

The only other excavation on the proposed site will be installation of a gravel leach bed for rainfall absorption and dispersal (requiring approximately 146 cubic yards of earth to be removed) and installation of the below-ground, self-contained septic system (requiring approximately 30 cubic yards of earth to be removed). After installation of this rainfall leach bed and self-contained septic system, the contours of the property will be returned to their pre-existing state. The product of this excavation will also be added to a proposed planting berm for landscaping purposes.

Proposed Landscaping:

The landscaping and management plan proposes the removal of existing invasive species throughout the project site and the replacement or planting using native or endemic species. The project site that borders Kapaka Street, approximately ½ acre, will be planted with native hibiscus, Lou Lou Palms and Kou trees, along with Ti and naupaka. A low, two-foot high planting berm will be emplaced along portions of the border with Kapaka Street to assist in the planting, and for additional screening of the proposed SFR. An approximately 60-foot wide area below the pali and bordering the project site, totaling more than ¾ of an acre will be planted with a variety of native species which will transition from low-lying shrubs and ferns to larger trees down the valley slope within the subject parcel (**Exhibit 16**).

The southern portion of the proposed site, approximately 1.25 acres, will be planted as an orchard, including approximately 75% fruit trees of varying varieties and 25% native or endemic trees. Orchard fruit trees will be grafted, semi-dwarf, tropical trees, of mixed varieties for personal use by the applicant. Each orchard tree will be pruned to be low spreading for ease of harvesting, and to minimize impacts to viewplanes.

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands (OCCL) referred the application to the following state agencies for review and comment: DLNR - Division of Forestry and Wildlife (DOFAW), Kaua'i Island Land Division (KDLO), DLNR – Division of Aquatic Resources (DAR), the State Historic Preservation Division (SHPD); the Office of Hawaiian Affairs (OHA); DLNR – State Parks and the County of Kaua'i – Planning Department and the County of Kaua'i – Department of Public Works. The application was also provided to the Princeville Public Library and to the Princeville Community Association for review and comment.

Comments received from the following agencies have been summarized by staff as follows:

DLNR – Division of Forestry and Wildlife (DOFAW)

While no comments were provided initially by DOFAW on the proposed project, OCCL staff had concerns over multiple Nene that were observed during an initial site visit. Conversations

between the applicant, DOFAW and the OCCL determined that some coordination between the applicant and DOFAW is warranted.

DOFAW stated: *The nesting and brooding season for the Hawaiian goose (Nene) is from mid-September to mid-April. Please inform the property owner that prior to the start of development project to contact DLNR-DOFAW-Kauai. We will provide technical assistance.*

Applicant Response:

The applicant will continue to work with DOFAW – Kaua'i to determine if technical assistance is necessary prior to the start of construction.

DLNR – Kaua'i District Land Office (KDLO)

Agency has no comments on the proposed project.

DLNR – Division of Aquatic Resources (DAR)

The applicant must implement Best Management Practices (BMP) during all phases of grading, excavation, earth moving and construction activities associated with the proposed project to assure that there will be no or minimal negative impacts to the surrounding natural resources (e.g., Hanalei River)

Applicant Response:

As the Hanalei River is approximately 1000 feet from the project site, there are no anticipated impacts to that valuable resource. There is a heavily vegetated pali/ steep cliff area between the proposed structure and the Hanalei River which will further reduce and potential impacts due to runoff or soil erosion. Additionally, the slope of the project site is to the south and along Kapaka Street such that the majority of stormwater and runoff will be directed away from the pali.

DLNR – State Historic Preservation Division (SHPD)

Applicant worked with the SHPD prior to submitting the application to complete an Archeological Inventory Survey (AIS) and preservation Plan for a previously located Heiau site located on the property. The SHPD accepted and approved of the AIS on *July 24, 2012* and the Preservation Plan for the heiau on *May 14, 2013*.

No written comments were received from this Division.

State of Hawaii – Office of Hawaiian Affairs

No comments were received by this office.

County of Kaua'i – Planning Department

No comments were received by this office.

County of Kaua'i – Department of Public Works

Agency has no comments on proposed project; reviewed by *DPW-Engineering Branch*

Comments received during pre-consultation only, applicant addressed in FEA:

Community members:

It should be noted that the applicant, on his own accord, sent pre-consultation letters to eighty-four (84) Princeville Community Owners/Residents with only three responses being provided to the applicant; none submitted official documentation to this office although the applicant addressed the majority concern which regarded viewplanes from the large residential subdivision located across the street from the proposed project.

US Fish and Wildlife Service:

We have reviewed the information you provided and pertinent information in our files, including data compiled by the *Hawaii Biodiversity and Mapping program*. Our data indicates that the federally endangered Hawaiian Duck and Hawaiian Hoary Bat may be present in the vicinity. Additionally, the federally threatened Newells Shearwater, Hawaiian Petrel, and the band-rumped storm petrel (i.e., seabirds) may fly over the area when traversing between the mountain and ocean habitats. There is no proposed or designated critical habitat located in the area.

Although no mountain streams or wetlands are currently found within the proposed 2-acre parcel, Hawaiian ducks may fly over the area or stop for rest. To avoid impacts to this species, the applicant should survey the area in the morning, before any ground clearing for any portion of the proposed project begins.

To minimize impacts to the endangered Hawaiian Hoary Bat, woody plants greater than 15-foot tall should not be disturbed, removed, or trimmed between June 1 and September 15 of any project year.

To reduce the potential impact to seabirds, we recommend that construction activities should only occur during daylight hours and if housing development requires lighting at night for safety or security then the lights should be positioned low to the ground, be motion triggered, and be shielded effectively.

ANALYSIS:

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated *June 16, 2014* that:

1. The proposed construction of a Single Family Residence and associated development is an identified land use in the Conservation District Resource Subzone pursuant to Hawaii Administrative Rules (HAR) §13-5-24, R-7 **SINGLE FAMILY RESIDENCE (D-1)** *A single family residence that conforms to design standards as outlined in this chapter*; and
2. The proposed development of ~1.25 acres of orchard agriculture is an identified land use in the Conservation District Resource Subzone pursuant to HAR §13-5-23, L-1 **AGRICULTURE (D-1)** *Agriculture, within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry. A management plan (pursuant to HAR §13-5, Exhibit 3) approved simultaneously with the permit, is also required. As always the decision to approve or deny these proposed land uses will rest with the Board of Land and Natural Resources (BLNR);*

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, an Environmental Assessment (EA) document will be required for this proposed use; and
4. Pursuant to HAR §13-5-40 Hearings, a public hearing is not required for this project.

A notice of the Conservation District Use Application (CDUA) and the Draft Environmental Assessment (DEA) was published in the *July 8, 2014* issue of the Office of Environmental Quality Control (OEQC) publication the *Environmental Notice*; and

A notice of a Finding of No Significant Impact (FONSI) for the proposed Single Family Residence (SFR) Final Environmental Assessment (FEA) was published in the *September 23, 2014* issue of the OEQC publication the *Environmental Notice*.

§13-5-30 CRITERIA:

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

- 1) *The proposed use is consistent with the purpose of the Conservation District.*
The objective of the Conservation District is to conserve, protect, and preserve the important natural resources' of the state through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed construction of a Single Family Residence on the conservation district portion of the subject parcel is in character with the existing residential development throughout this area. There are a number of residential structures located along Kapaka Road, across from the proposed SFR parcel, some of which are very large, with multiple stories, outbuildings, and landscaping. According to HAR Ch. 13-5, only one (1) residence is permitted to be built within the conservation district, therefore this parcel, which stretches along the pali for approximately 3 miles, will not be developed with multiple homes. Staff believes by allowing the home to be built on the parcel will actually minimize the development of the west side of Kapaka Street and protecting the ridgeline viewplanes.

Currently, the proposed site is a degraded pasture dominated by invasive species which have spread throughout the site and surrounding area. The proposed projects landscape plan and invasive species removal efforts will aim to improve the natural condition of the site thus improving the habitat potential and character of the parcel.

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

The objective of the Resource Subzone "...is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas". The proposed construction of a SFR, which conforms to the designs standards and requirements of HAR

Ch. 13-5, will ensure that the existing character of the surrounding area is not altered, and that all proposed activities will be conducted in accordance with BMPs outlined and/or proposed in the CDUA.

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

The project site is not within the County of Kaua'i *Special Management Area* (SMA) and is therefore not subject to the regulatory authority of the Coastal Zone Management (CZM) Program; the CZM program is intended to promote the protection and preservation of fragile *coastal resources* through the state of Hawaii.

Specific BMPs related to mitigating soil loss and/or soil erosion during construction activities will be in place until project completion; additionally, any exposed soil areas will be re-vegetated in accordance to the rules and regulations of the Conservation District.

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

The project site, and majority of the subject parcel, has been impacted by past agriculture and floricultural uses such as grazing, planting, grading, and construction of out-buildings for the defunct nursery once located on the parcel. Staff believes that the proposed project will not cause a substantial adverse impact to the existing physical environment and/or natural resources of the area. In fact the proposed project will only improve the natural character, natural habitats, and aesthetics of the project site and the overall subject parcel.

The proposed SFR and Landscape Plan have been designed to conform to the existing contours of the project site, and not to materially alter the existing topography. The only permanent alteration of the contours will be for the post-and-pier foundation of the SFR, the pool, and planting berm located along Kapaka Street. Since the existing contours will be primarily maintained throughout the project site, rainfall and subsequent stormwater runoff flow will not be changed from the existing conditions. Stormwater will still flow from the property to the County storm drain located on Kapaka Street. Additionally, stormwater that falls directly on the SFR will be collected and dispersed through a drip-line within the orchard site and landscaped areas.

With the introduction of native ferns, shrubs and trees, particularly in the area directly below the pali, the area may once again provide harborage and forage for native bird species. The removal of the invasive vegetation species also will contribute to repairing the natural character of the site and surrounding area.

The proposed project will not have any significant direct or indirect impacts to the Hanalei River, the adjacent valley wetlands, or the coastal waters (i.e., Hanalei Bay) due to the distance between the proposed SFR and these water features, and the 1000 feet of dense vegetation that exists buffering the site from the Hanalei River and wetlands.

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

The Kapaka Street neighborhood surrounding the proposed site is a developed residential and commercial area. Development on the eastside of the Kapaka Street (across from the subject parcel) includes 45 residences of the *Princeville Agricultural Subdivision*, where the original 22 lots have been divided to allow for 84 CPR units to be constructed. Many of the existing residences are large (i.e., multi-storied) and colorful such that they do not conform to the natural environment and are readily visible from Kapaka Street. Development in this area also includes, a *Princeville Utilities* water tank, the *Princeville Ranch Kids Adventure Center*, and the *Princeville Botanical Gardens*. Additionally, the proposed SFR has been designed specifically to minimize any viewplane impacts it may have on both the Hanalei Valley and from the subdivision itself (**Exhibit 17, 17a**). Given the location of the project site along the Hanalei Valley rim, there are only 3-4 Hanalei farmhouses at the southern end of the valley floor that could potentially see the proposed dwelling. By limiting the SFR to one (1) story, setting the SFR approximately 80-feet from the edge of the pali, and landscaping the area around the project site, staff believes that the proposed SFR viewplane impacts have been mitigated.

Princeville Utilities has confirmed current availability of potable water service to the residence. Additionally, the applicant will execute a "waiver and release" agreement with the Kaua'i County Department of Water agreeing that water service is not available from the Department of Water; the KIUC, however, has approved plans for electrical service to the proposed SFR.

The current condition of the west side of Kapaka Street is that it has been largely overtaken by invasive vegetation. As a result, the proposed Landscape Plan will constitute a significant improvement in the natural character and condition of the project area by the elimination of invasive vegetation species and the re-introduction of native species

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

If development of the SFR is approved, the remainder of the subject parcel that stretches two (2) miles south of the project site will not be used for construction or development of any structures, but will be left as open space. Potential future plans for the open space area include various public recreation areas for hiking and hunting. As the existing site characteristics are that of an abandoned pasture area dominated by invasive vegetation species, staff believes that the implementation of the Landscape Plan will aim to improve the natural character of the site by removing invasive species and re-planting with native and endemic species.

Although there has not been residential development on the west side of Kapaka Road, there has been commercial development (i.e., abandoned nursery) which severely impacted the parcel. Development on the east side of Kapaka Road includes over 40

residences such that the neighborhood is not a pristine natural area and the development of one (1) SFR on the proposed site is consistent with surrounding land uses.

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

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

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

The proposed construction of a SFR will not be out of character with the existing development of this area as the other residential development is significant along Kapaka Street. As the proposed project aims to reduce invasive species, build one low-profile SFR on the parcel (eliminating future development of the remaining Conservation District portion of the parcel), and utilizing landscaping with native or endemic species staff believes that this project will not impact the public in any way. Some minor nuisances (common to similar construction activities) may occur, but will be minimal and short lived. Disposal of wastewater and municipal refuse will conform to the State Department of Health standards and regulations. No interference to any public utilities, public access or public roadways is being proposed at this time.

CULTURAL AND HISTORICAL IMPACT REVIEW:

The project parcel includes the Po'oku Heiau, an important Hawaiian historic and cultural site located on the summit of a hill overlooking the Hanalei Valley. On July 24, 2012 the State Historic Preservation Division (SHPD) accepted the applicants final Archeological Inventory Survey (AIS) which covered a majority of the 176 acre parcel, including the project site and the Po'oku Heiau. In order to protect and preserve this significant historic site, the applicant worked with the SHPD to create a preservation plan for the Heiau site. SHPD believes that the Preservation Plan meets the standards of HAR §13-277, and was accepted as an appropriate Preservation Plan by SHPD by letter dated May 14, 2014; the plan includes the entire ~13 acre "preservation" area.

It was noted in the AIS report that:

The precise location and size of the Po'oku Heiau on the summit of the pu'u overlooking the Hanalei Valley is particularly subjective. This subjectivity results from the general absence of structural element remaining on the site and general understanding that the Heiau was not enclosed. Accordingly, prior determinations of the size and locations of the Heiau have been quite variable.

To eliminate any uncertainty and minimize future controversy, the approved AIS and Final Preservation Plan set the entire 1.8 acre summit of the pu'u overlooking the Hanalei Valley (including various *heiau* locations identified by previous research) as the sit boundary for the *heiau*, and defined the surrounding 5 acres of the hill as a "buffer zone"; the entire 7 acre site is identified as the "Heiau Preserve". In addition to the seven (7) acres approved as part of the AIS

and preservation plan, the applicant intends to make an additional 5.8 acres located on the preserves western and southern boundaries as part of the "Heiau Preserve", resulting in almost 13+ acres of total protected area. The proposed project site is approximately 1,300 feet from the nearest edge of the 13 acre preservation preserve.

The applicant also intends to transfer title of the *Po'oku Heiau Preserve* to a non-profit corporation (Ka Pua Hinalo O Po'oku) created to hold and administer the preserve. The board of the non-profit will be comprised of community members who will act as curators of this important historic property. Transfer of the preserve property is awaiting filing of IRS documents to qualify for a 501(c)(3) entity, which is anticipated in the near future.

The buffer zone, along with other measures outlined in the Final Preservation Plan, safeguards the *heiau* from future adverse activities in the surrounding area. In setting the buffer zone, the AIS and Final Preservation Plan expressly considered the proposed and future uses of the parcel, including the construction of the proposed Single Family Residence. The AIS also included a pedestrian survey of the two-acre bluff that is the project site. The AIS found no evidence of historic properties or structures on or immediately adjacent to the project site. It should be noted that significant ground disturbance had occurred in conjunction with the development and operation of the nursery that existed on the parcel during the '1980's to 1990's.

DISCUSSION:

The primary purpose of this proposed project is to develop a currently vacant project site with a Single Family Residence (SFR), landscaping, pool, minor agricultural uses, and access driveway; all proposed activities fall within the guidelines of HAR §13-5. The proposed use is in character with the surrounding region which includes other SFR structures, commercial uses and associated development, along with significant landscaping throughout the *Princeville Farmlands Subdivision* located across the street from the project site.

In addition to residential and commercial development along Kapaka Street, there has been substantial development along the Hanalei Valley rim closer to Hanalei Bay (north of the subject parcel). This development includes numerous residential structures along Hanalei Plantation Road, particularly in the *Hanalei Garden Farms development (Exhibit 18)* which includes 22 home sites. Several of these dwellings are readily visible from Hanalei Town and the Hanalei Valley floor. Based on the significant development all along the Hanalei Valley ridge, staff purports that the proposed SFR, and all its design elements, will have negligible impacts on viewplanes from the Hanalei Valley and River. The applicant has also contacted the County of Kaua'i to determine if there is a potential for a scenic overlook on the northern portion of the parcel. This area would be available to the County if needed to replace the current overlook off Kūhiō Highway which can be crowded and difficult to access.

Staff believes that the applicant has made every effort to include the neighboring residents in the proposed design/development of the property to solicit and mitigate any valid concerns. Additionally, every element of the proposed SFR, landscaping and agricultural area has been designed to mitigate potential viewplane impacts from the Hanalei Valley, the *Princeville Farmlands Subdivision*, and the Hanalei Valley public overlook off Kūhiō Highway. Similarly, staff agrees that the development of one SFR within the Conservation District portion of the

parcel will aid in maintaining the natural character and open space beauty of the remaining 2 miles of the eastern Hanalei Valley rim of the project parcel.

It should be noted that the applicant, on their own accord, approached the State Historic Preservation Division (SHPD) to design and implement the Po'oku Heiau preservation area to protect the probable location of an historic heiau; the buffer zone around the area will never be developed without strict coordination with the SHPD.

Based on the similar uses in the area, the minimal design of the proposed structure, the proposed landscaping and agriculture uses, and the preservation measures being implemented to protect a historic site, staff believes that this proposed use is consistent with the objectives of the Conservation District and is in character with the surrounding area.

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources **APPROVE** this application for the *Kalihiwai Investors Single Family Residence and Agriculture Project* located in the Hanalei District, Island of Kaua'i, on *Tax Map Key: (4) 5-3-001:016*, subject to the following conditions pursuant to HAR §13-5-42:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
4. The permittee shall comply with all applicable department of health administrative rules;
5. The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. **The single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;**
7. **The applicant will implement the approved *Preservation Plan for Po'oku Heiau* as described in this document and will record the *Preservation Plan* with the State of Hawaii Bureau of Conveyances;**
8. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be

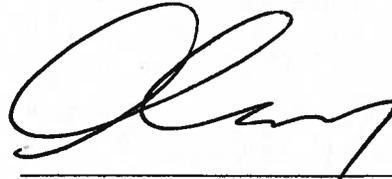
- returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
9. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
 10. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
 11. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
 12. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
 13. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
 14. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
 15. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
 16. Obstruction of **public roads**, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
 17. Cleared areas shall be re-vegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;
 18. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
 19. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
 20. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
 21. Artificial light from exterior lighting fixtures, including but not limited to floodlights, up-lights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the

light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

22. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and
23. Other terms and conditions as prescribed by the chairperson.

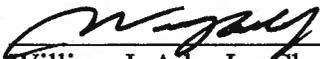
Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board

Respectfully submitted,



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

Approved for submittal:



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

KAUAI

PROJECT AREA

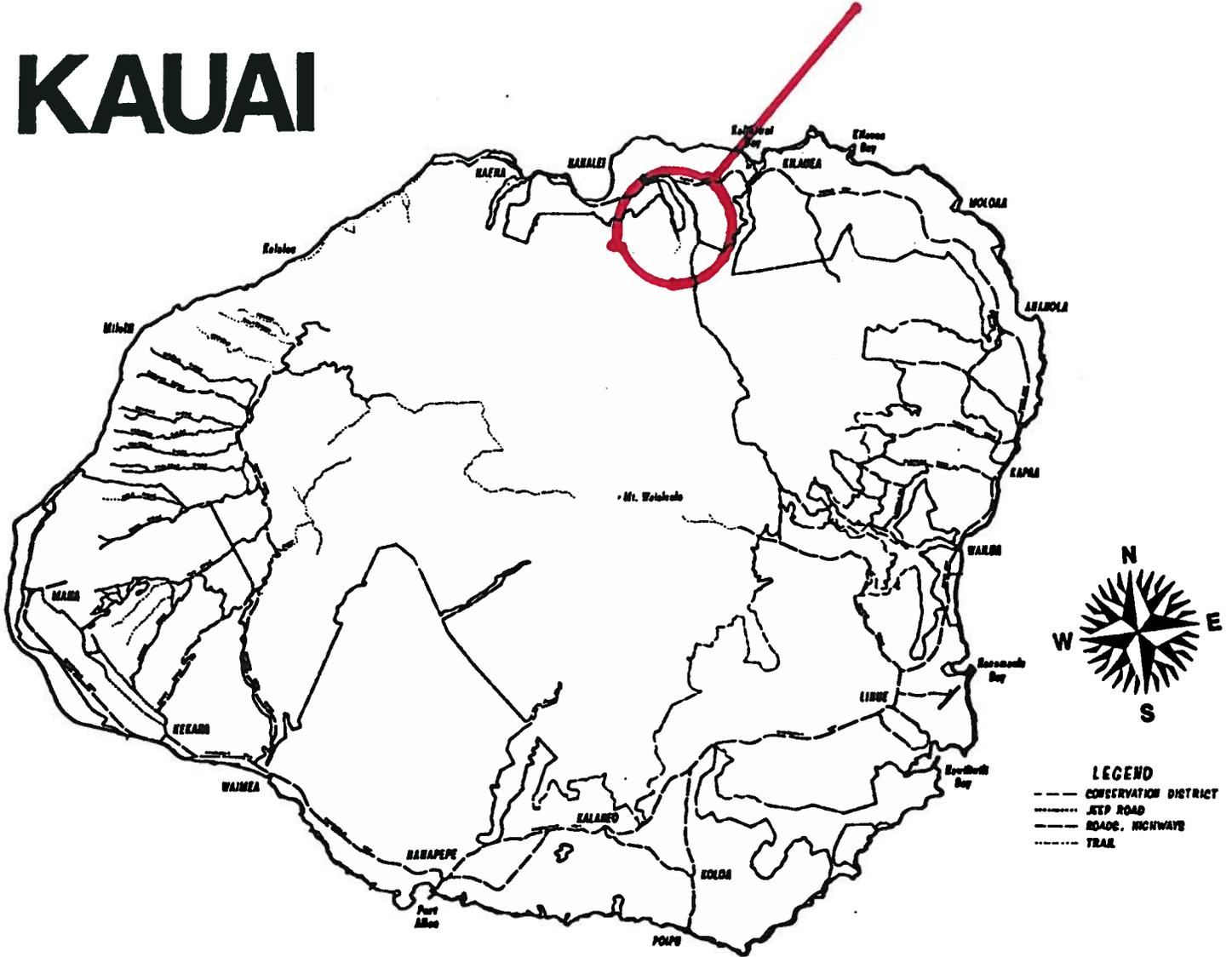
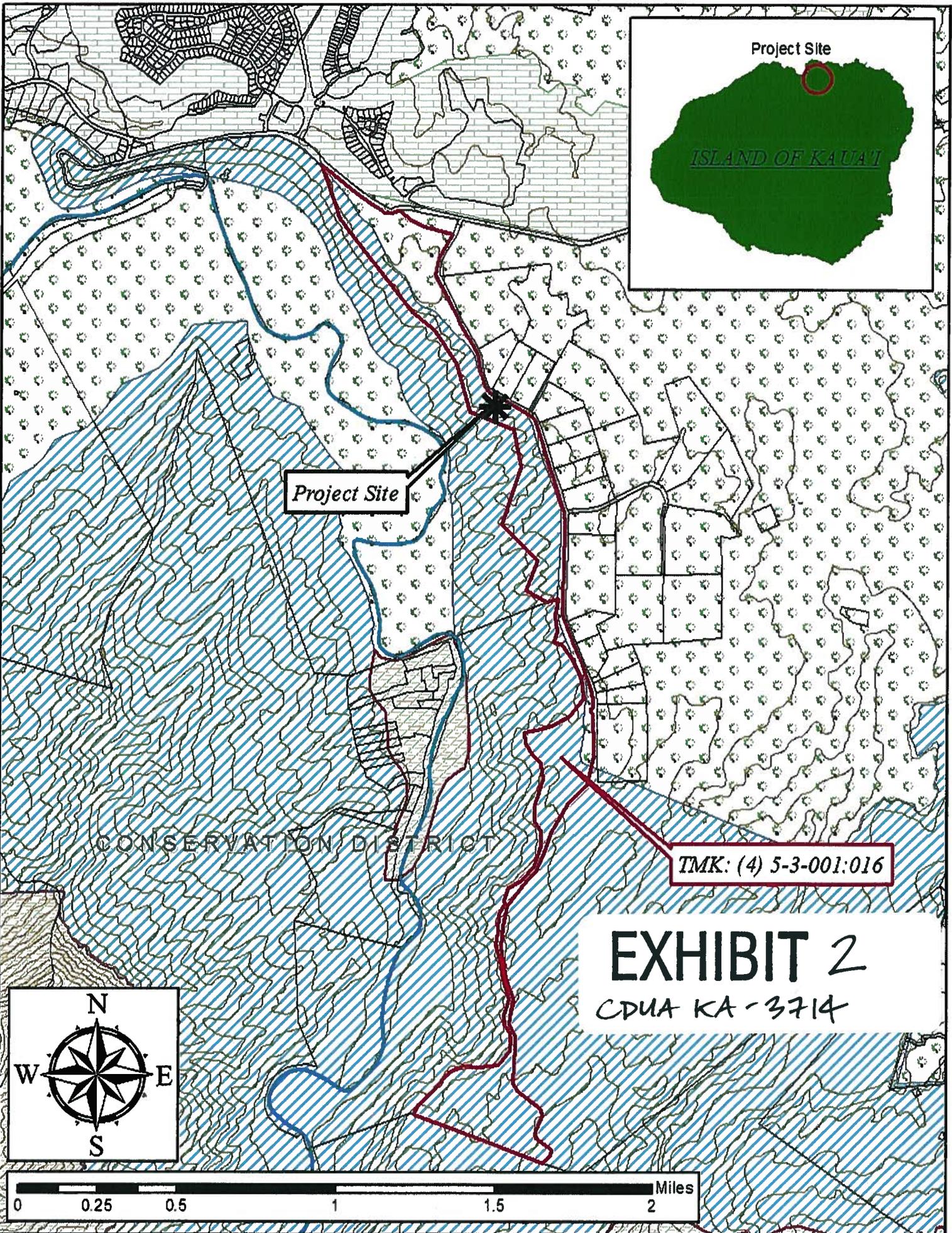


EXHIBIT 1
CDUA KA-3714



Project Site

ISLAND OF KAUAI

Project Site

CONSERVATION DISTRICT

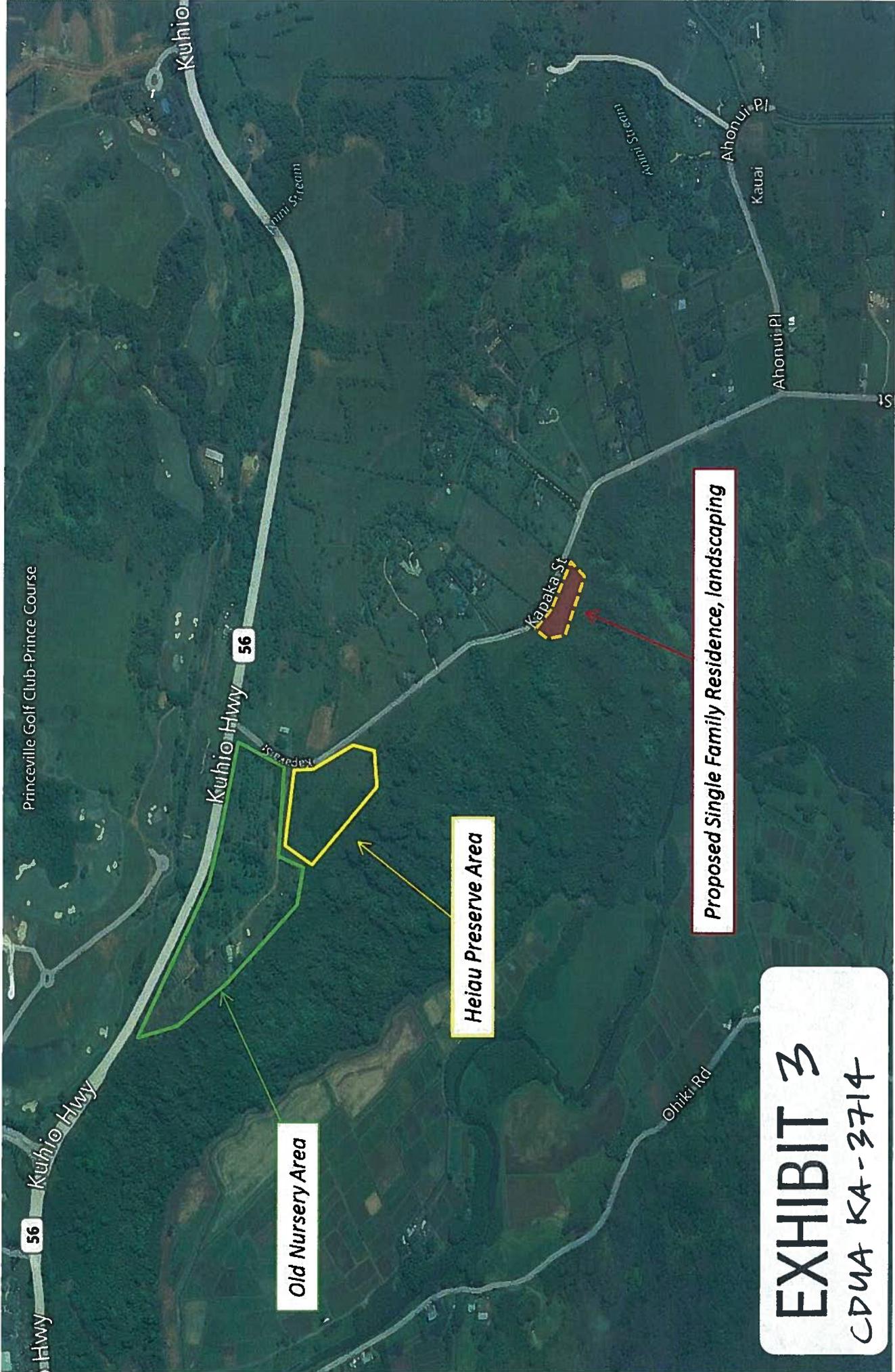
TMK: (4) 5-3-001:016

EXHIBIT 2

CDUA KA-3714



0 0.25 0.5 1 1.5 2 Miles



Princeville Golf Club-Prince Course

56

Kuhio Hwy

Hwy

56

Kuhio Hwy

Old Nursery Area

Heiau Preserve Area

Kapaka St

Proposed Single Family Residence, landscaping

EXHIBIT 3
CDWA KA-3714

Kapihi Stream

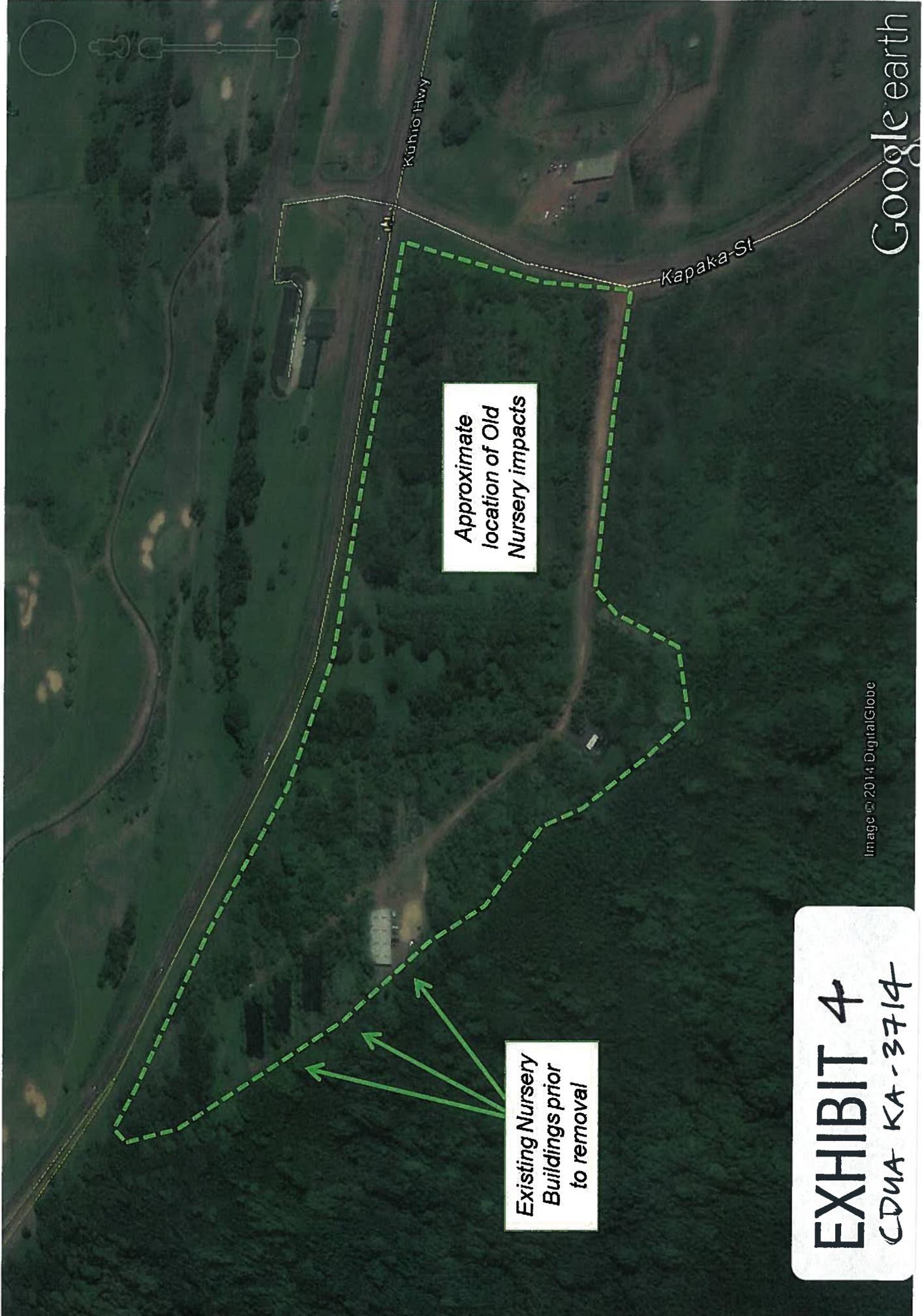
Ahonui Pl

Kauai

Ahonui Pl

IS

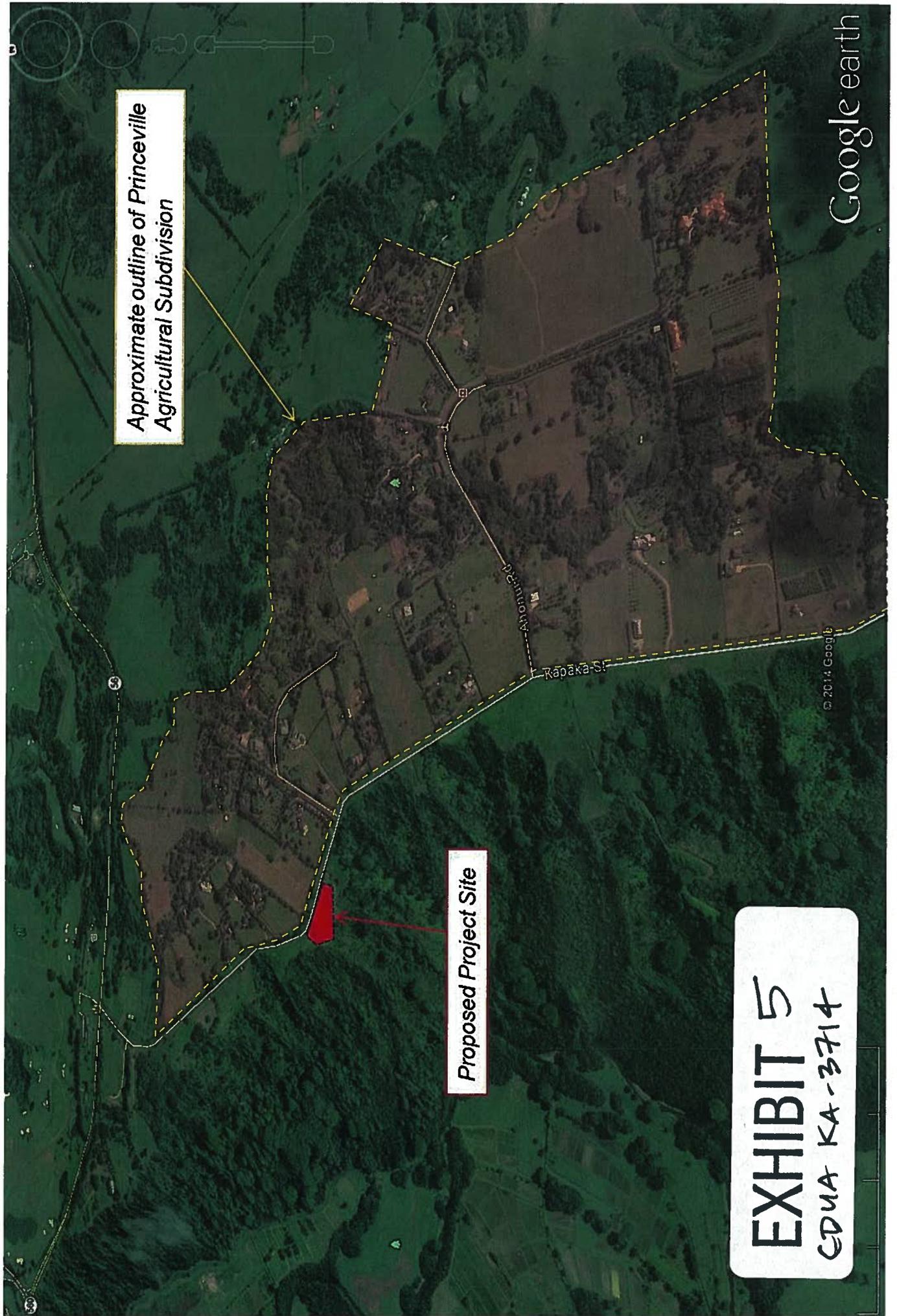
Ohiki Rd



Approximate
location of Old
Nursery impacts

Existing Nursery
Buildings prior
to removal

EXHIBIT 4
CDUA KA-3714



Approximate outline of Princeville
Agricultural Subdivision

Proposed Project Site

EXHIBIT 5
EDUA KA-3714

Google earth

© 2014 Google

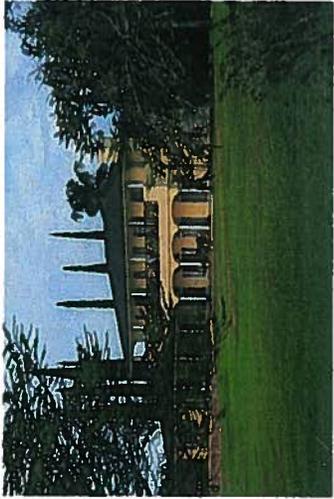
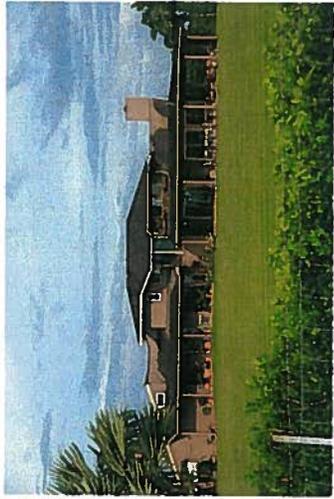
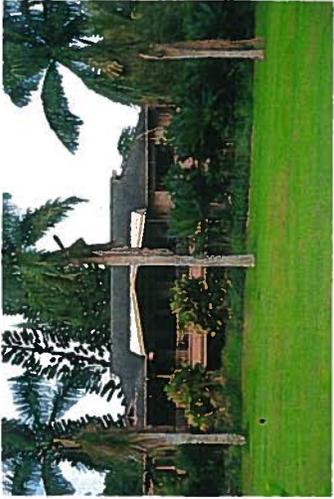


EXHIBIT 6
CDUA KA-3714

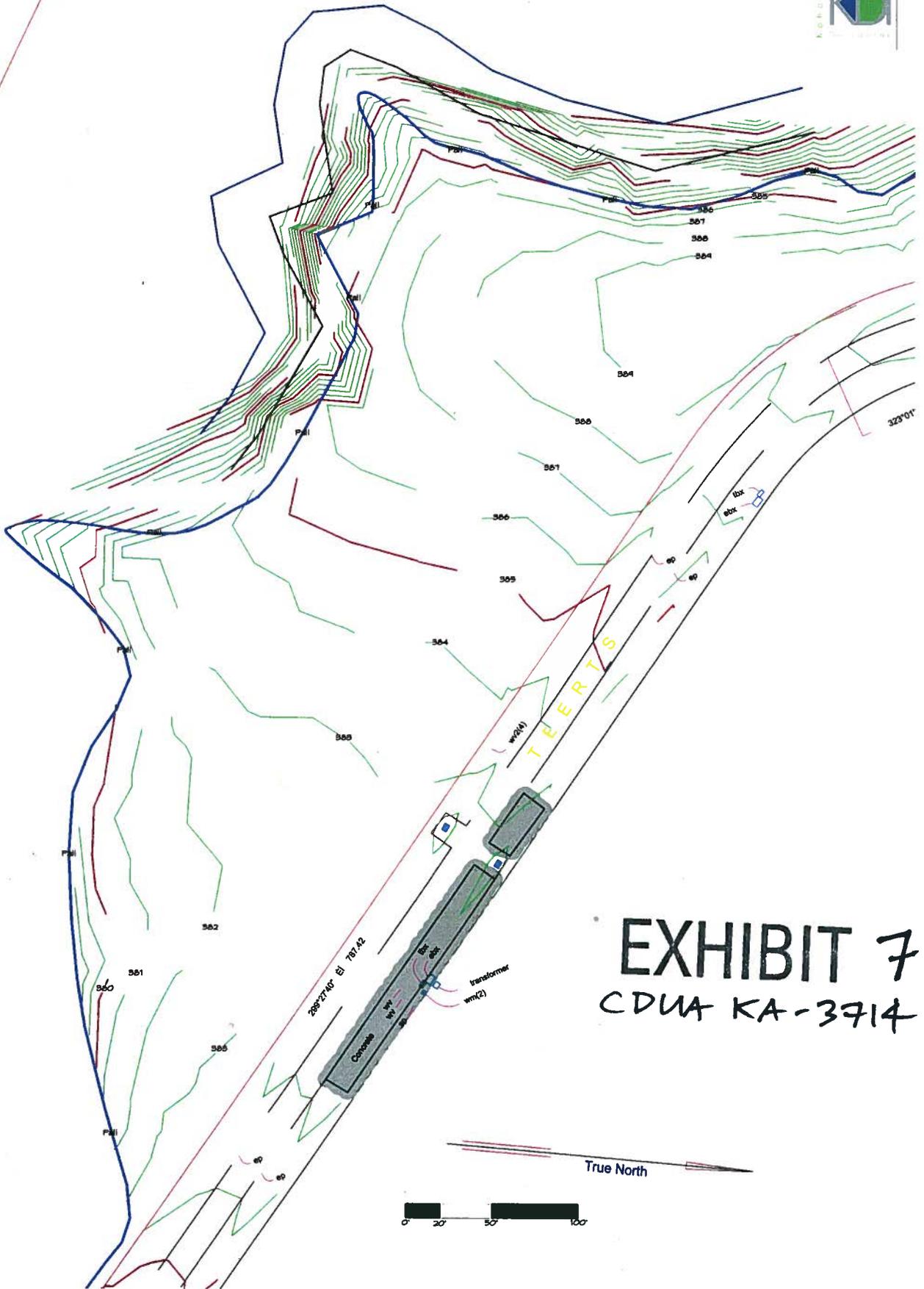
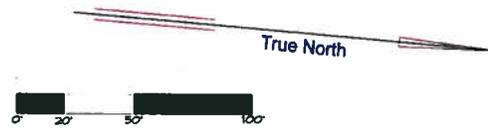


EXHIBIT 7

CDUA KA-3714





HI • Kaula Co. • Hanalei Ahupua'a

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Approximate project area

EXHIBIT 8

CDUA KA-3714



EXHIBIT 9

CDUA KA-3714



EXHIBIT 10 CDMA KA-3714

Aerial View of

Heiau Preserve



EXHIBIT II
CDUA KA-3714

TMK (4) 5-3-001:016



EXHIBIT 12
CDUA KA-3714

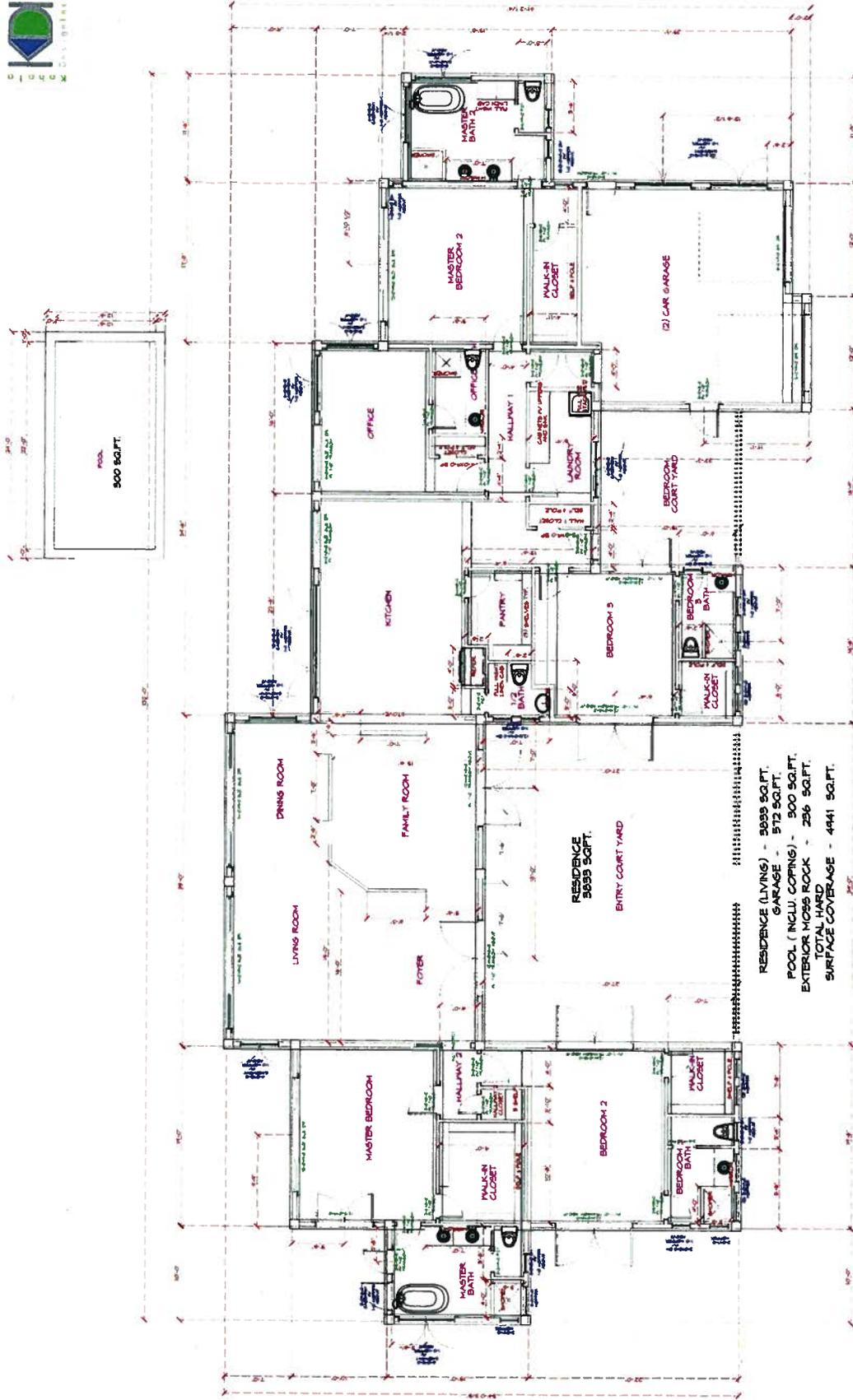


EXHIBIT 13

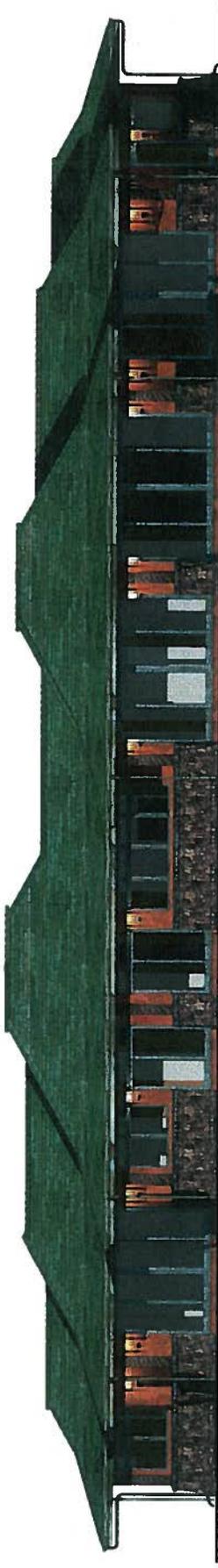
CDUA KA-3714



COPPER FENCING

EAST ELEVATION 1/8" = 1' SCALE

ENTRY COURTYARD

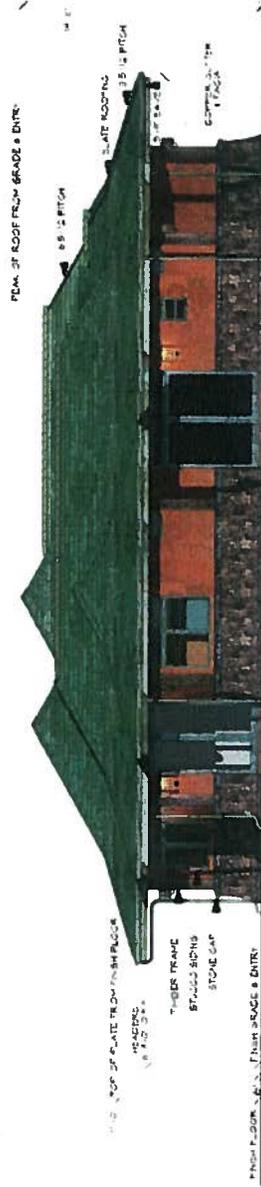


WEST ELEVATION 1/8" = 1' SCALE

EXHIBIT 13A
CDMA KA-3714



NORTH ELEVATION 1/8" = 1' SCALE



SOUTH ELEVATION 1/8" = 1' SCALE

EXHIBIT 13B
CDUA KA-3714

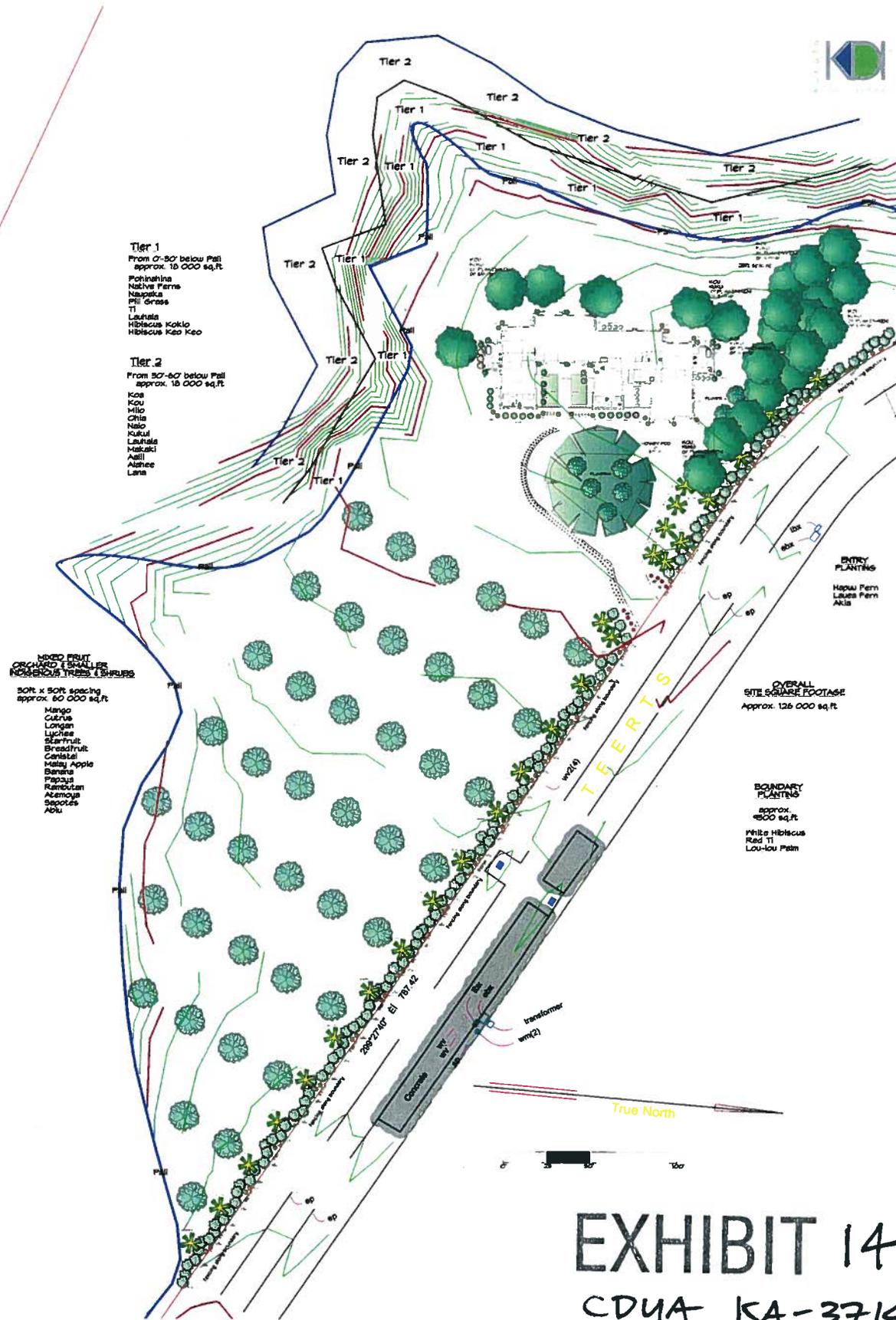
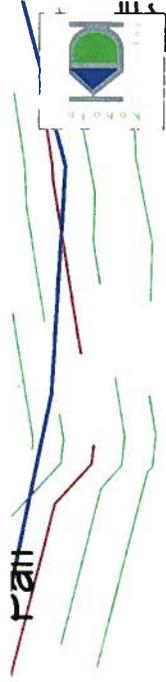


EXHIBIT 14

CDUA KA-3714

PAU I



KOU,
KUKU
or PUAKENIKENI
or similar

KOU,
KUKU
or PUAKENIKENI
or similar

KOU,
KUKU
or PUAKENIKENI
or similar

PLUMERIA

KOU,
KUKU
or PUAKENIKENI
or similar

MONKEY POD
or similar

STREET

EXHIBIT 14A

CDMA KA-3714

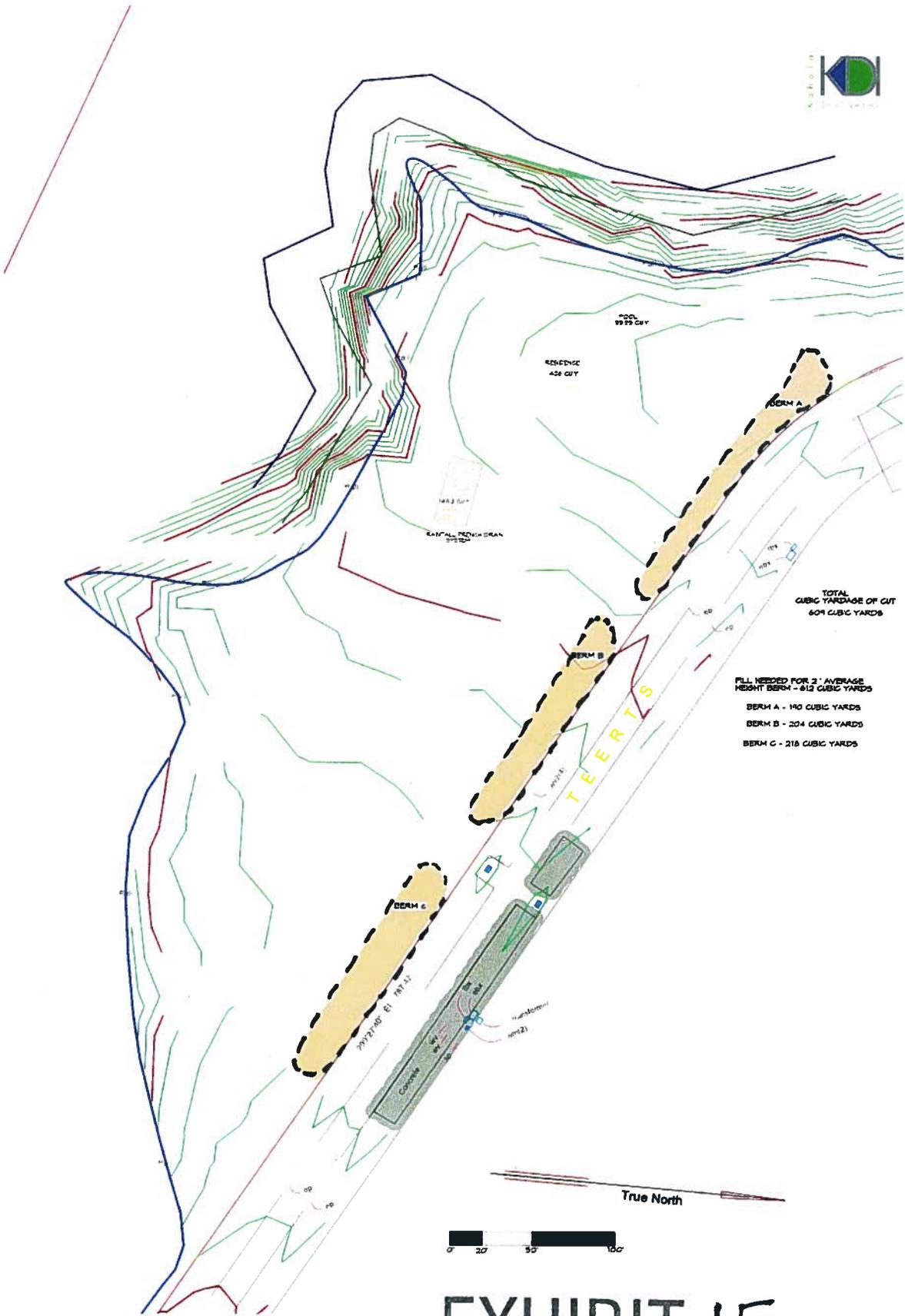


EXHIBIT 15

CDUA KA-3714

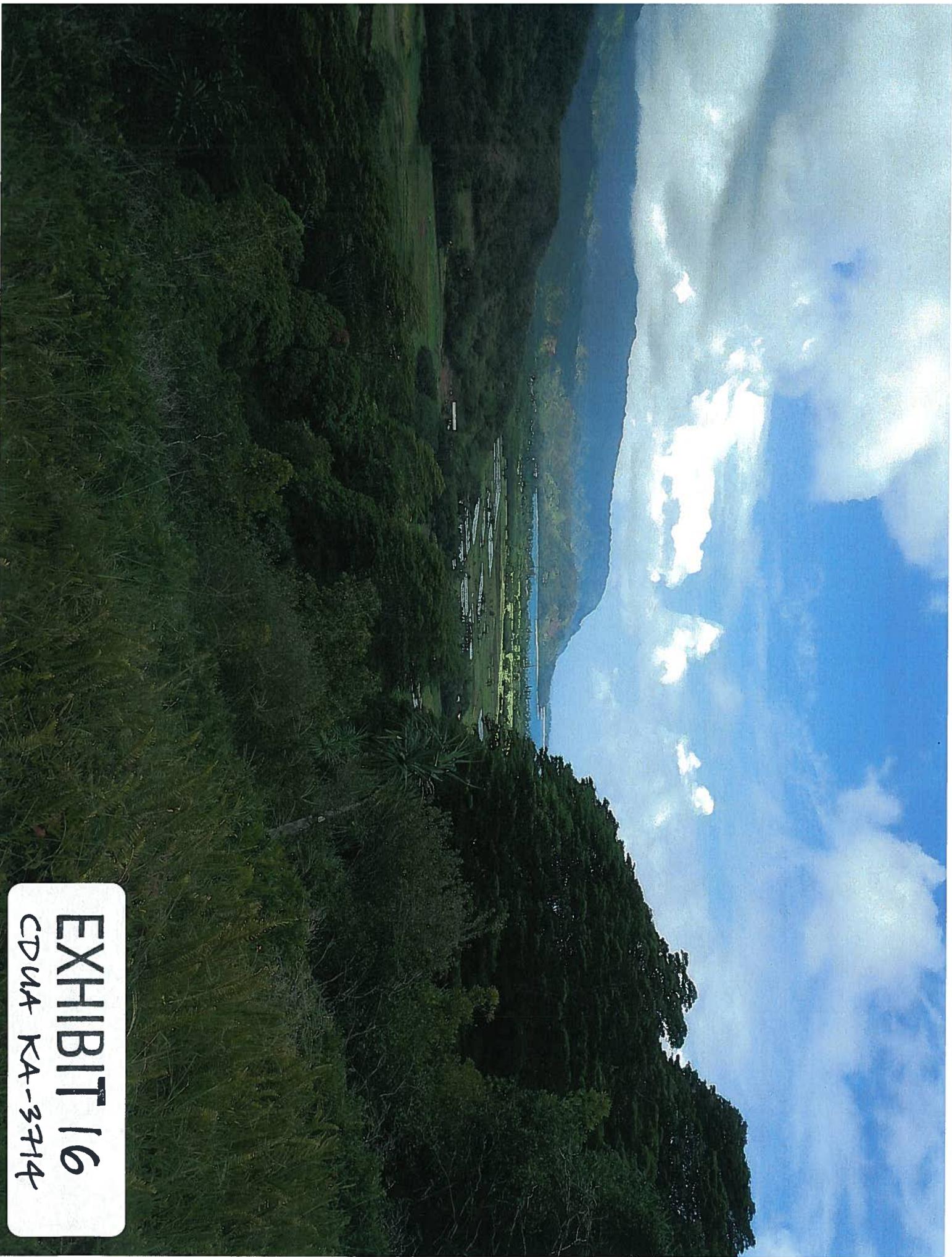
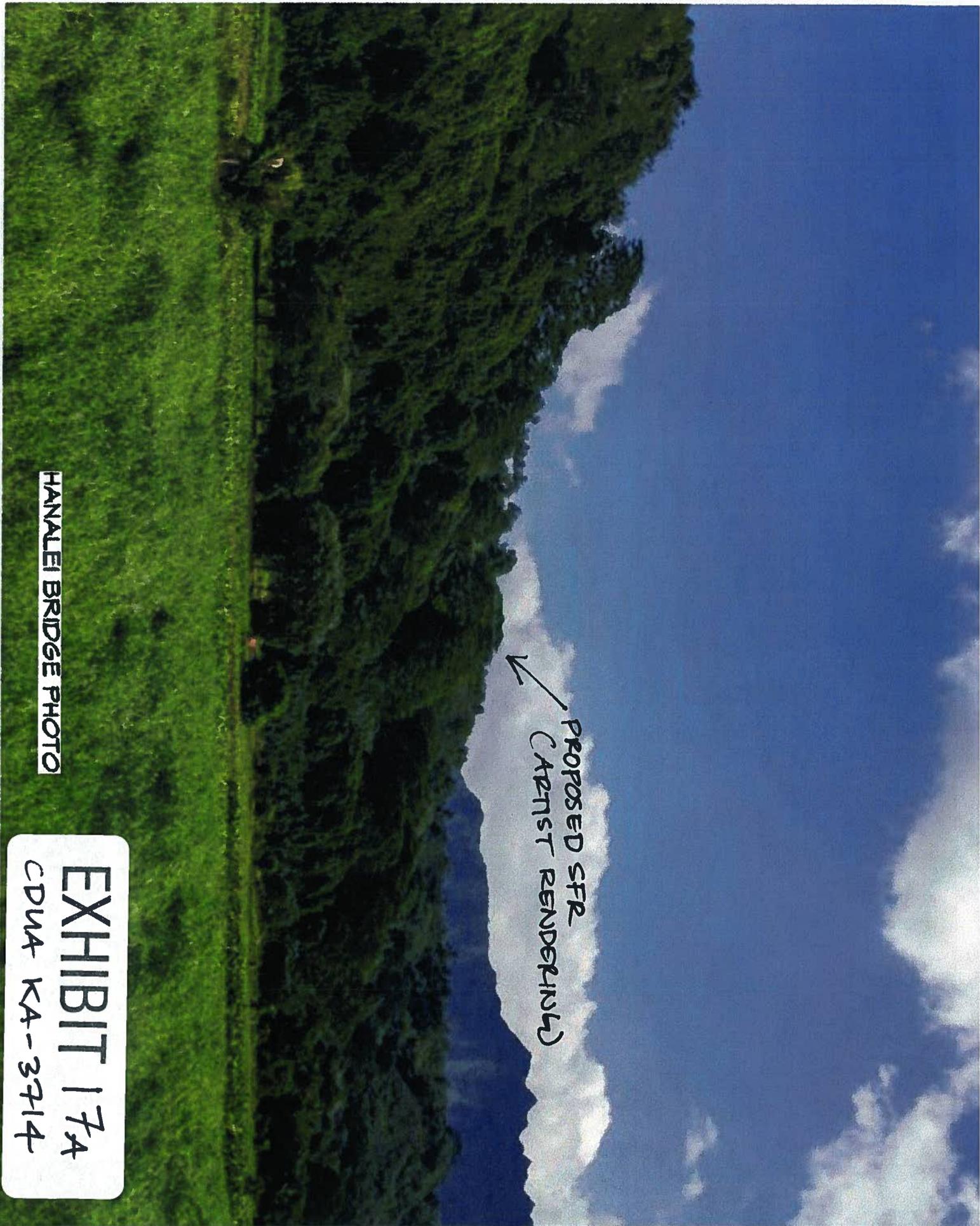


EXHIBIT 16
CDUA KA-3714



EXHIBIT 17

CDWA KA-3714



PROPOSED SFR
(AGAINST RENDERING)

HANAIEI BRIDGE PHOTO

EXHIBIT 17A
CDMA KA-3714



--- Dwellings along the Hanalei Valley Rim in Hanalei Garden Farms Development

EXHIBIT 18
CDUA KA-3714