

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

*June 26, 2015*

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

**REGARDING:** Conservation District Use Application (CDUA) HA-3727

**APPLICANT:** Dr. Charles Love

**AGENT:** James Leonard, JM Leonard Planning, LLC

**LOCATION:** Kapoho-Kalapana Road, Puna District, Island of Hawaii

**TMKs:** (3) 1-3-002:070

**AREA OF PARCELS:** 7.34 acres

**AREA OF USE:** ~1.0 acres

**SUBZONE:** Resource

**DESCRIPTION OF AREA AND CURRENT USE:**

The roughly square 7.34 acre parcel is located between Kapoho-Kalapana Road and the shoreline at its southeastern corner, the remainder is bounded along the seaward (makai) portions by a State owned parcel and private lands to the north (**Exhibit 1, 1a**). Elevation on the parcel ranges from approximately 25-feet above sea level (asl) near the shoreline pali to 55-feet asl in the landward (mauka) portion of the parcel located near the Kapoho-Kalapana Road. The shoreline area fronting the property is characterized by steep rocky cliffs bounded by steep submarine slopes; no beaches or shallow areas are present in this area (**Exhibit 2**). This is common to shorelines of the Puna District and surrounding areas. The soils of the site are characterized as being very dark, and stony, with a thin layer or soil overlying fragmented a'ua lava deposits with slopes of 3-5%. The soils are considered to have rapid permeability, slow runoff and slight erosion hazard.

A large portion of the mauka portion of the subject parcel has been planted with a variety of palm species (i.e., "Palm Orchard") (**Exhibit 3**), as well as coconut plantings along the southern boundary and in the area fronting an existing Single Family Residence (SFR). The mauka area of the parcel, which contains the majority of the palm planting, appears to have been mechanically leveled and is bordered on the northwest and southeast sides by man-made soil and gravel "berms". While planted with several varieties of ornamental palms, a few assorted fruit trees and other ornamental vegetation is planted in this area. The orchard is intended primarily for private

use, with management including mowing, weeding, fertilizing, and watering; green waste is mulched and composted on-site. The areas of the property located makai of the palm orchard, bordering the State owned parcel, are relatively uneven, undisturbed, and are considered to be in a more "natural" condition than the majority of the property (**Exhibit 4**).

A previous Conservation District Use Permit (CDUP) was granted on *September 12, 1989* for the construction of a SFR on the subject parcel. The structures currently existing on the project parcel include a SFR, driveway, a small man-made "pond" adjacent to the existing SFR, three (3) water catchment tanks for both residential and agricultural uses, a shed/garage structure, a fenced in "dog-kennel", and a small equipment shed (**Exhibit 5**).

### ***Existing Floral and Faunal Resources***

A large majority of the project parcel was cleared in preparation for development 20+ years ago; this was followed by construction of the existing SFR and the establishment of an ornamental palm grove and accessory structures. Less than 2 acres of the 7+ acre parcel remains unaltered and is in a relatively pristine state. The majority of the flora observed throughout the property is non-native, stemming from the development of the palm grove, residential development and landscaping. While the majority of the parcel is primarily landscaped, a remnant of relatively "native" forest still remains. The area northeast of the proposed SFR site that contains the majority of the undisturbed vegetation which includes hala, ōhi'a, and lama plants; approximately 100 ōhi'a and 200 hala trees are situated around the periphery of the project parcel. The site was systematically inspected for native and endemic vegetation, including the State and federally listed endangered grass species *Ischaemum byrone* which is known to grow in the Puna District.

During pedestrian faunal surveys conducted on the project parcel, only non-native bird species were observed such as: Common Myna, Northern Cardinal, Spotted Dove, Japanese White-eye, and House Finch. No native bird species were observed or recorded during the surveys, and it was determined that their presence is unlikely due to the developed native of the parcel and predominant non-native vegetation species. As with all of East Hawai'i, several endangered native terrestrial vertebrates may be present in the general area, and may overfly, roost, nest, or utilize resources on the property. This includes the endangered Hawaiian Hawk, the endangered Hawaiian hoary bat, the endangered Hawaiian Petrel, and the threatened Newell's Shearwater. Other mammals in the project area are all introduced species, including feral cats, pigs, Indian Mongoose, and various species of Rats common to Hawaii. None are of conservation concerns and all are considered deleterious to native flora and fauna.

Due to the steep, uneven terrain and high energy wave action at the coastline, no specific coastal floral and faunal species were observed at the site. It was determined, however, that some species could be found that are typical of similar high-energy shorelines located throughout Puna District. These types of shorelines are considered "young" ecosystems with limited coral growth and beach formation, but can include a variety of algae, fish and invertebrates.

### ***Culture, Architecture and Archeology***

An Archeological Assessment (AA) and a Cultural Assessment (CA) were prepared for the project parcel to describe the extent of these resources. Research for the AA and CA included

primary field work (i.e., field reconnaissance and site observation), consultation of existing archeological and ethnographical studies, along with the review of documents such as maps, Māhele testimony, and consultation of Hawaiian informants. Separately, the Office of Hawaiian Affairs (OHA) and *Malama O Puna* were consulted to determine whether either organization had information regarding any natural or cultural resources that may be present on the property or could be potentially impacted by the proposed project.

Three archeological investigations have been conducted in nearby areas of Kaueleau Ahupua'a. A previous study (c. 1972) identified and observed the Pua'akanu Cemetery (Site #2534) which is located north east of the project site; additionally, a portion of the "Kings Trail" was noted during the survey for the existing development, although it appeared to follow the existing Kapoho-Kalapana Road course. An Archeological Inventory Survey (AIS) of the adjacent parcel (071) was completed prior to the construction of a SFR; no archeological sites or historic properties were identified in that study.

The Archeological Assessment report completed for the project site found that most of the property has been significantly impacted by ground moving activities associated with the development of the palm grove and residential uses. The disturbance of the parcel has occurred over the past 40 years, and as such, no archeological or historic sites were observed or recorded during the survey.

The cultural and historical investigation of the property did not reveal any cultural resources or practices that currently occur on the project parcel. While no specific gathering practices were determined during interviews with consulted individuals, it was mentioned that traditional fishing and gathering did occur on the shoreline makai of the project parcel. The proposed project will not impact, alter or minimize this access or cultural uses of shoreline resources. No gathering of plant material is noted from the parcel, and aside from the coastal stand of vegetation, all vegetation on the parcel is either non-native or ornamental; there are no cultural values or associations related to this vegetation.

#### **PROPOSED USE:**

The applicant (Dr. Charles Love) is proposing to construct a new Single Family Residence (SFR) and other improvements on a 7.34 acre shoreline abutting parcel located off of Kapoho-Kalapana Road, Puna District on the Island of Hawaii (**Exhibit 6**). There are a number of existing structures and land uses occurring on the project parcel, therefore the removal of existing structures and the construction of new structures are being proposed at this time.

The proposed project (i.e., SFR) is being pursued in order to permit the removal an existing 1,240 square foot (sf) SFR (**Exhibit 7**), a 325 sf residential water tank (**Exhibit 8**), and a 1,500 sf man-made "pond" and decking (**Exhibit 9**). Other existing structures will remain on the property, these include a dog-kennel (256 sf), a small equipment shed (75 sf), and a 1,370 sf garage/shed.

After the existing SFR and associated structures are removed the applicant is proposing to construct a new, two-story SFR approximately 2,844 sf in size and 24-feet high (above current grade). The proposed SFR will include: a great-room, 3 bedrooms, 2.5 bathrooms, a family room, and lanai areas. As sited the proposed SFR will be set back approximately 71-feet from the top of

the shoreline Pali, roughly in the same location as the existing SFR. An individual wastewater system, in compliance with State of Hawaii Department of Health regulations, will also be constructed. Additional proposed development includes minor landscaping around the proposed SFR, a minor expansion of the existing unimproved driveway (**Exhibit 10**) to include a turnaround area, and a new residential water catchment tank (12,000 gallons) for both water supply and Fire Department services.

The maintenance and care of the existing ornamental palm grove and fruit trees is ongoing and continuous. No new construction, grading, or modification to the orchard area or other agricultural uses is being proposed at this time. According to a submitted *Agricultural Management Plan*, only minor and occasional planting of new citrus, tropical fruit, or ornamental trees and the removal of dead or dying trees will be conducted as needed to retain the existing condition of the palm orchard area.

#### **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), Hawaii Island Land Division (HDLO), DLNR – Division of Aquatic Resources (DAR), the State Historic Preservation Division (SHPD); the Office of Hawaiian Affairs (OHA); the Commission on Water Resource Management (CWRM), and the County of Hawaii - Department of Planning, Department of Public Works, and Fire Department. The application was also provided to the Hilo Public Library and to the Hawaiian Shores 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)**

No comments received.

#### **DLNR – Hawaii District Land Office (HDLO)**

The subject parcel is part of a consolidation of grant 3232 Apana 2 and Government B, which was the result of a land exchange between the Territory of Hawaii and the owners of Grant 3232 Apana 2 as evidenced by Land Office Deed No. 15,323 and Land Patent Grant No. 13,514, recorded July 21, 1958.

The southeasterly boundary of Government remnant B became a portion of the makai boundary of Grant 3232 Apana 2. Land Patent Grant No. 13,514 reserved unto the Territory of Hawaii and “easement 20-feet wide within and parallel to the southeasterly boundary” of Government remnant B. The metes and bounds description of the southeasterly boundary is defined as following the “top of pali”.

Later subdivision of Grant 3232 Apana 2, created the subject parcel with a makai boundary that follows the top of Pali, reserving to the State of Hawaii a 20-foot easement as described in Land Patent Grant No. 13,514. Subsequent surveys have updated the makai metes and bounds description in response to the change in the top of Pali resulting from erosion as illustrated in the Coastal Erosion Study.

While it may be presumed the easement is to allow for unimpeded access to the coast, the verbiage does not limit the scope of purpose. Therefore, both the current and future alignment of the easement must be considered relative to the development of this project.

Staff from both DLNR – Land Division and the Office of Conservation and Coastal Lands conducted a site inspection of the project area. It was recommended by the DLNR – Land Division that a current boundary survey of the property line between the State owned parcel and the project parcel be conducted prior to construction.

***Applicant Response:** The applicant has conducted the appropriate land survey; this was recommended to insure that the proposed actions, including the removal of some of the planted young palm trees, do not extend into any portion of the State owned parcel. Delineating the property boundary will also define the mauka boundary of the 20-foot easement that extends along the State's property for shoreline access and other traditional and customary uses.*

#### DLNR – Division of Aquatic Resources (DAR)

In our April, 2014 Environmental Assessment Early Consultation letter, DAR expressed concerns regarding the potential impacts of development occurring in such close proximity to nearshore coastal water and coral reefs. We noted in that letter that:

“An increasing number of studies indicate rapid movement of groundwater from land to nearby coastal regions creating a substantial connectivity between land use practices, water quality and coastal health. Nutrient enrichment beyond background ocean levels can lead to potentially explosive growth of certain undesirable algae which can permanently kill coral and negatively impact coral reef fishes and other reef inhabitants. The effect of such nutrient enrichment is likely cumulative and we need to minimize additional inputs in sensitive coastal areas. There are a number of ways to dispose of residential wastewater, without the use of cesspools or septic systems. Such an alternative needs to be incorporated in the construction of this home, even if initially more expensive, because of the long-term impacts to the health of coastal regions. Protection of groundwater and coastal waters from pollution is essential if we are to maintain sustainable and resilient ecosystems and the health of our coasts and ocean food supply”.

In response to these comments the applicant stated that “the characterization of wastewater from one single-family residence as “large scale” substantially overstates the impact of the replacement of an existing single-family residence on the lot”.

There was no reference in the April, 2014 DAR letter to the project being “large scale”. Rather it was noted that nutrient enrichment from impacted groundwater is likely cumulative; both from an individual project and from other projects in similarly sensitive shoreline areas. To dismiss DAR’s concerns regarding this [SFR] project misses the point of the negative impacts of a multitude of similar projects.

It’s stated that the applicant “will construct an individual wastewater system (IWS) in conformance with DOH requirements that exceeds the current level of treatment on the property and will represent a net benefit to water quality”. No details are provided as to what type of IWS will be constructed not is there any information to support the latter assertion of a net benefit to water quality ion the area. Thus it remains unclear as to whether this project will contribute

additional nutrient inputs into sensitive coastal areas with the potential to negatively impact nearshore waters. This uncertainty needs to be addressed.

***Applicant Response:** In regard to the comment letter by the Division of Aquatic Resources, I would first like to apologize for misquoting their earlier consultation letter regarding large scale development, which came from a letter on a different project. Secondly, the fact that the IWS for the proposed project will meet with all current requirements of the Hawai'i State Department of Health is important, as this level of treatment is the exception rather than the rule for older homes in Puna, where many, if not most, homes currently use cesspools. The DOH requirements were imposed in order to assure adequate treatment of wastewater and assist with maintaining water quality. The architect, in coordination with a wastewater engineer who has been retained for the home construction, has coordinated with the Department of Health and expects to utilize a 1,000-gallon Chem-Tainer septic tank. The tank would provide primary treatment of the wastewater before distributing the treated sewage into the absorption bed. In the interest of maximum effectiveness, the architect proposes that three feet of native material beneath the leach field be removed and replaced with a sandy soil or cinder soil. With soils of this type and depth, 40-90% of total Nitrogen (N) and Phosphorous (P) can be removed from residential effluent. In addition, recognizing that plants can be efficient collectors of N and P that has been converted to available forms by soil microbes and thus prevent those nutrients from contaminating ground or surface waters, the leach field area will be maintained with low, herbaceous or grassy vegetation.*

*The reason that the septic tank will improve water quality relative to the existing situation is that currently, like many existing homes in Puna built many decades ago, there is only a cesspool for wastewater. An IWS in conformance with DOH standards will presumably remove more nutrients and pathogens from the water than a cesspool. This is the principal reason that the DOH recently proposed a rule amendment to require conversion of cesspools to septic tanks – as opposed to any alternative form of wastewater treatment – statewide. While we agree that this SFR may be just one among many that can potentially cumulatively degrade water quality, there are very few lots along this coastline, and virtually no potential to subdivide given the State Land Use District, County zoning, General Plan designation, and subdivision code infrastructure requirements. Many of the lots already contain homes, and allowing them to rebuild their homes and conditioning this upon upgrading their IWS to modern standards is one mechanism for addressing water quality issues. It should also be noted that the water off this shoreline is extremely deep and constant large waves provide an extreme high energy environment with maximum mixing. Although it is well known that there are water quality problems in Kapoho, where the housing density is at least 20 times that of this coastline and the homes are situated at or near sea level around a semi-protected bay, research for the EA was unable to uncover any evidence of water quality problems in the coastal waters off far less densely populated Kaueleau.*

County of Hawaii – Planning Department

This agency had no comments on the proposed project.

State Historic Preservation Division – (SHPD)

A review of our records confirms completion of the historic preservation review process for the parcel (Log No. 2014.01340, Doc. No. 1405SN11). The archeological Assessment identified no historic properties within the parcel. Based on the above information, SHPD determines that **no historic properties will be affected** by this project.

***Applicant Response:*** *We acknowledge and appreciate the comment from the State Historic Preservation Division providing a letter of no-effect to historic properties.*

**ANALYSIS:**

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated *January 12, 2015* that:

- The OCCL has determined that the construction of a Single Family Residence (SFR) 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;*
- Pursuant to HAR §13-5-40, Hearings, this project *will not* require a public hearing;
- In conformance with §343, Hawai'i Revised Statutes (HRS), as amended, and HAR, §11-200-8 this project will require the filing of an Environmental Assessment (EA); and
- The project is located inside the County of Hawai'i Special Management Area (SMA); therefore a SMA determination from the County will be required as part of the application process.

Additionally;

- *On March 23, 2015 a notice of a Finding of No Significant Impact (FONSI) for the Love Single Family Residence (SFR) Final Environmental Assessment (FEA) was published in the Office of Environmental Quality Control (OEQC) publication the Environmental Notice; and*
- *A Special Management Area (SMA) Use Permit Assessment Determination (No. 14-001218) was obtained from the County of Hawaii on May 6, 2015 for the proposed project.*

**§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 use of the subject parcel for a SFR is an identified land use within the Conservation District Resource Subzone; requiring a Board Permit for such use. A commitment by the applicants to the management of the site will aim to conserve, protect, and preserve the natural features and areas of remaining natural vegetation on the subject parcel. The proposed use will not impact the public's ability to access or utilize the coastal

resources in the vicinity of the proposed project. As noted, much of the coastal area fronting the parcel is within a wedge of State owned lands. The shoreline, defined by the top of the Pali, extends over only a relatively small portion of the parcel (~165 feet) along the southeast corner. In replacing the existing residence, the proposed improvements and area of disturbance would be sited approximately 71-feet from the Pali, and will have no impact on the coastal access or use of coastal resources. The area of the proposed SFR and related improvements would impact a new area less than 1/10 of an acre; therefore, due to the limited nature of the proposed development, and the existing developed nature of the parcel, the applicant contends that there will be no significant impacts to the natural or cultural resources of the project site.

- 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 design standards and requirements of HAR Ch. 13-5, will ensure that the existing character of the parcel is not altered heavily and that all proposed activities will be conducted in accordance with BMPs designated and/or proposed in the CDUA and FEA-FONSI.

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

The project lies within the County of Hawaii *Special Management Area* (SMA) and is therefore 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. Based on the analysis provided it appears the proposed use is consistent with Chapter 205A as the project has been designed not to affect/alter existing public access to recreational areas, historic resources, scenic and open space resources, coastal ecosystems, economic uses, or coastal hazards.

Shoreline recreation, such as swimming or kayaking, was not observed along the shoreline from the project site due to the high energy character of the shoreline. Similarly, the geomorphology shoreline Pali adjacent to the project site does not afford safe access to the rocky shoreline, nor are the conditions along the shoreline conducive to the above mentioned recreational activities.

The proposed improvements are not likely to result in any substantial adverse impact on the surrounding environment as the proposed SFR is in character with other parcels and land uses in this area. The proposed SFR has been designed to be set back from the shoreline ~70 feet and will not adversely impact scenic resources in any substantial way as the SFR and appurtenances will be sited at the same location as the existing structures. The project is not anticipated to adversely impact the biological or economic aspects of the coastal ecosystem, nor is it expected to adversely affect any natural drainage to the nearby coastal area. 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.*

Because of the relatively minor nature of the project and the lack of native terrestrial ecosystems and threatened or endangered plant species (in the area of proposed work) the applicant has stated that the construction and use of a SFR is not likely to cause adverse biological impacts. As noted, the existing vegetation on the site consists of primarily non-native species; native species present occur predominately within the northeast portion of the property and the of the existing (and proposed) SFR site. Due to the existing landscaped nature of the property and the limits of the area of proposed work, the applicant is proposing to implement little, if any, additional landscaping improvements.

Given the relatively flat and level morphology of the project parcel, a minimal amount of grading will be required, and will be limited to the area of the access driveway, proposed SFR site, and water catchment tank. The applicant believes that there will be "no effect" on any coastal ecosystem because of the physical separation and vegetative buffer between the project area and shoreline; planned precautions for preventing soil erosion and loss will also be implemented during all construction activities. The applicant believes that due to the minimal site preparation, existing development, and their commitment to management of the site will aim to conserve, protect and preserve the natural resource of the project site.

- 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 project parcel is located within an area that contains number of coastal parcels, of various sizes, sited makai of Kapoho-Kalapana Road. This well established, rural-residential area includes a number of parcels that include similar uses to the proposed project and existing uses on the subject parcel (i.e., SFR, landscaping, private residential uses). The proposed land use will allow the applicant to continue the existing uses of the property, and would result in no modification in the use, density, or general character of the site.

The applicant has stated that because all construction activities associated with the proposed SFR will be confined to the owners parcel, no adverse effects will impact the natural resources of the surrounding area, community, or region. The proposed SFR is consistent with the existing and proposed land uses, and is in character with the land uses currently existing adjacent to the project parcel (e.g., residential uses). The proposed SFR has been designed and sited to minimize the impact to the surrounding environment, and will be painted to blend with the surrounding area.

The proposed use is consistent, and in character with the existing single-family residential uses and the other land uses located on neighboring parcels.

- 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.*

The proposed use of the project site and concurrent management of the parcel will help to conserve, protect, and preserve the natural features of the area. The physical beauty of the existing parcel will be preserved by leaving the unaltered areas of vegetation in place, minimizing the scope of the land uses and promoting the growth of native plant species. The project site is not associated with any sites listed as examples of *Natural Beauty Sites in the Puna District in Hawaii County's General Plan*.

- 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. The proposed SFR is sited at the location of the existing SFR, with the other proposed and existing development clustered in that same area. Since there is no observed or documented cultural or historical uses of the parcel, 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.

#### **CULTURAL AND HISTORICAL IMPACT REVIEW:**

Based on the archival research and collected oral information it is recognized that the general shoreline area is, and has been, used for both recreational and subsistence purposes. The project parcel does not contain any springs, land features, or caves that may be of cultural importance, and an archeological survey of the property found no evidence of archeological resources on the site or features that might be of cultural significance. No gathering of plant material is noted from the property and no native practices are currently occurring on the project parcel. Aside from a previously undisturbed strip of forest, located along the coast (which will not be disturbed), the existing vegetation on the parcel is primarily non-native or ornamental with no apparent cultural values or associations.

The Cultural Assessment (CA) of the property and its history did not reveal any cultural resources or practices associated with the project parcel. The consulted individuals with ties to the region did not provide any information regarding the project parcel, but did discuss the traditional gathering and fishing that still occurs makai of the project parcel. Shoreline access, and the cultural activities this access provides, will not be affected by the proposed project and related improvements. The access along the State owned parcel will continue unaltered and unaffected by

this project. As noted, the proposed SFR will be set back a significant distance from the shoreline as to not impede, or alter the existing fishing or gathering access that is existing.

A CA report was submitted as part of this application process to meet applicable State and Federal requirements for the protection of cultural and historical resources in the area. Although no specific shoreline activities were identified for the parcel, archeologists who studied the region and project site assert that strict adherence to the shoreline setback will ensure that shoreline access and any potential shoreline or immediate offshore traditional practices will not be adversely impacted by the proposed SFR. Additionally, studies have found that the general shoreline area is, and has been used, for local subsistence and recreation, although these documented uses occur *makai* of the project parcel.

The State Historic Preservation Division (SHPD) has concluded via letter dated *January 29, 2015*, that “no historic properties will be affected” by this proposed SFR replacement project.

#### **DISCUSSION:**

The primary purpose of this proposed project is to replace an older, existing Single Family Residence (SFR) with a new SFR, residential water catchment tank, minor landscaping and existing driveway improvements; 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 and associated development along with minor agriculture uses in farmlands located mauka of the project area. The project area has been heavily impacted by previous agricultural activities (i.e., sugar cane cultivation) and other land uses associated with the previously approved SFR that was constructed in the 1980's. Vegetation is typically non-native, or ornamental, with some larger trees demarcating the site of the “palm orchard”.

The proposed SFR structure has been designed to minimally impact or alter the existing landscape of the project site; only minor landscaping will be conducted as need for development, and construction will only take place in the vicinity of the existing SFR, driveway, and proposed water catchment tank. Additionally, a septic system, approved via the State Department of Health will be located next to the proposed SFR.

Based on the similar residential and agricultural uses in the area, the previously permitted and constructed SFR, the minimal design of the proposed structure, the existing landscaping, and the existing palm orchard uses being implemented - 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 *Love Single Family Residence* located on Kapoho-Kalapana Rd. in the Puna District, Island of Hawaii, on *Tax Map Key: (3) 1-3-002:070*, subject to the following conditions pursuant to HAR §13-5-42:

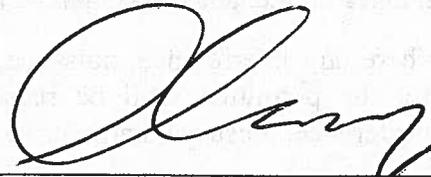
1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;

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. **All structural elements planned for removal (as described in the Conservation District Use Application: HA-3727), including the existing Single Family Residence (SFR), shall be demolished and removed prior to the start of construction of the new SFR and associated development;**
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 (1) 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 (3) 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.

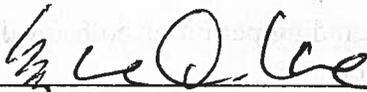
Respectfully submitted,



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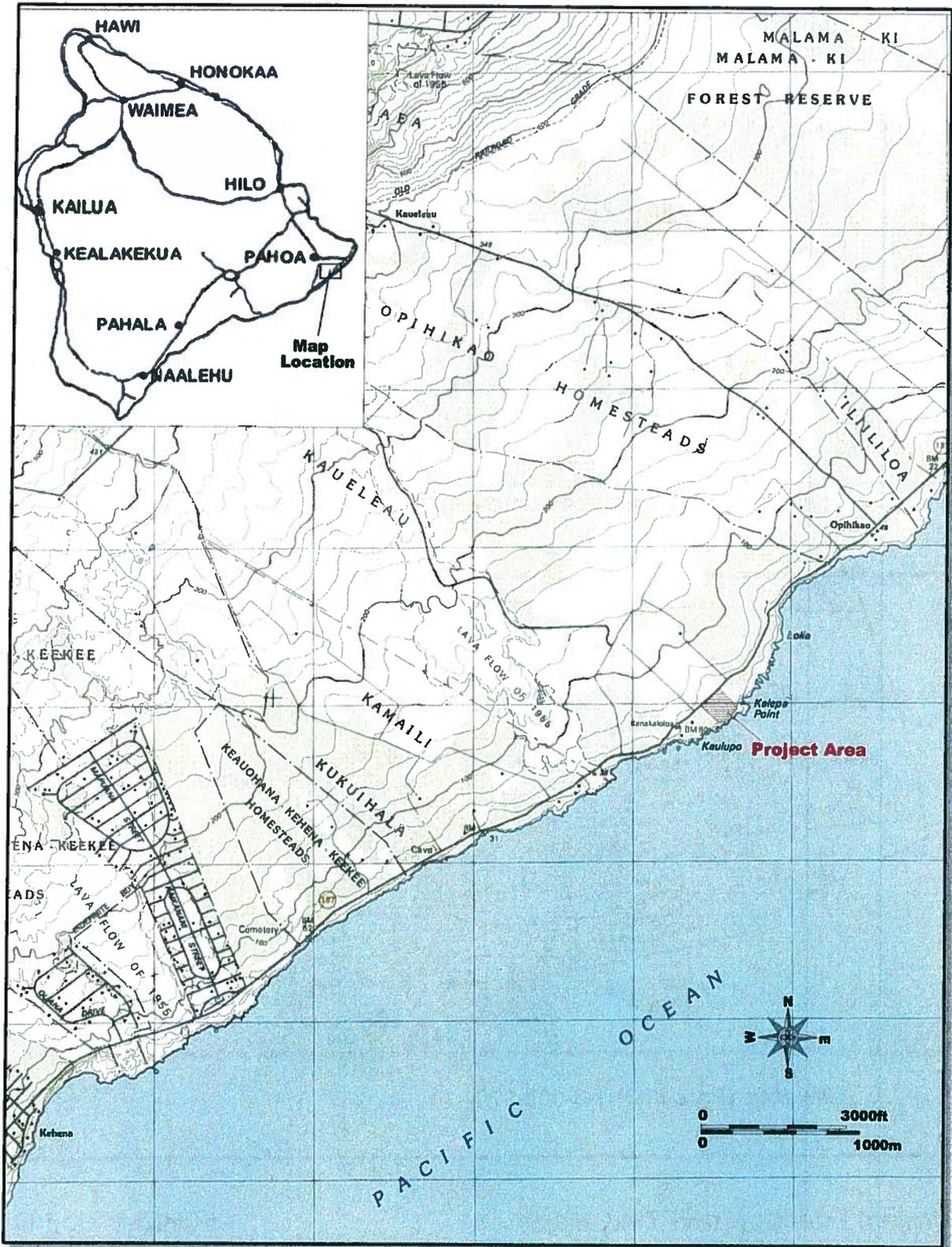
**ALEX J. ROY, M.SC., STAFF PLANNER**  
*Office of Conservation and Coastal Lands*

Approved for submittal:



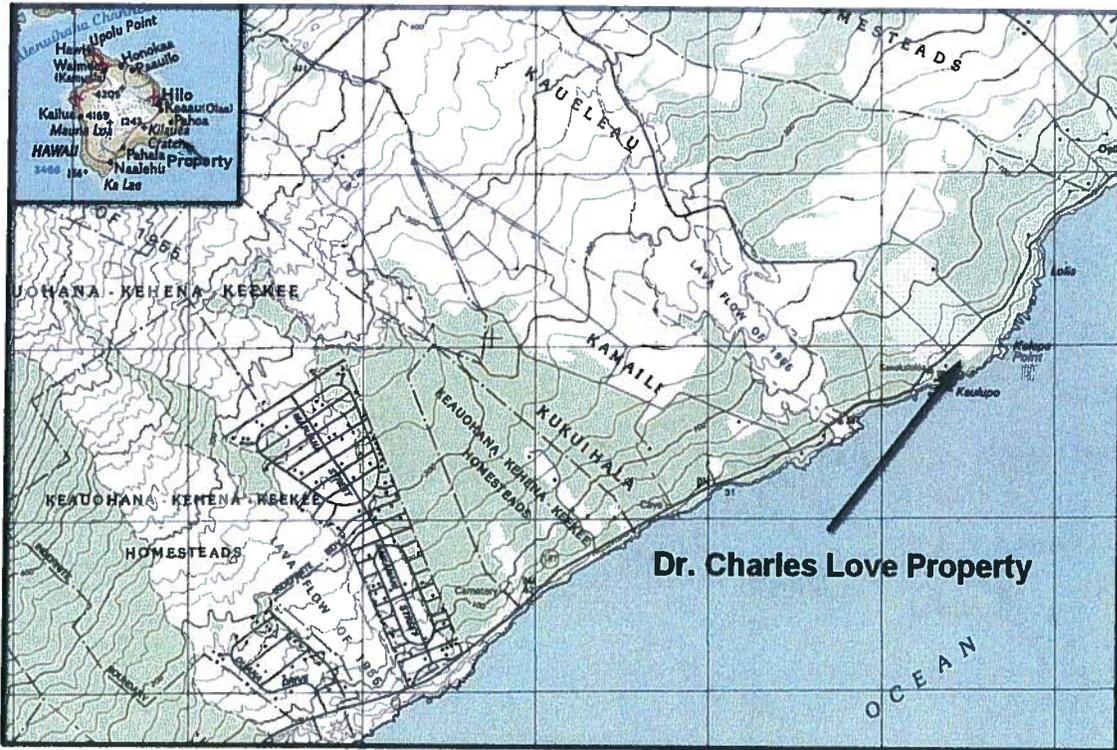
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**SUZANNE D. CASE, CHAIRPERSON**  
*Board of Land and Natural Resources*

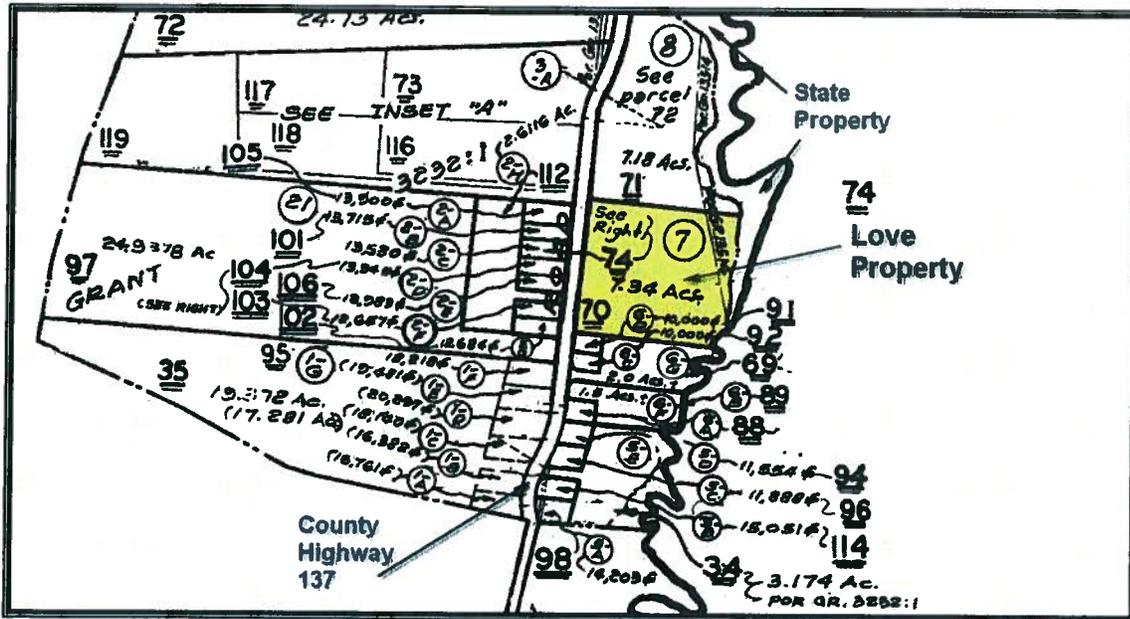


CDMA: HA-3727  
**EXHIBIT I**

LOVE NEW SINGLE FAMILY RESIDENCE – CONSERVATION DISTRICT USE PERMIT APPLICATION



Island and Regional Location Maps



TMK Map (Parcel (3) 1-3-002:070)

Project Location and TMK Maps  
Love New Single Family Residence

Conservation District  
Use Permit Application

CPUA: HA-3727  
EXHIBIT | A

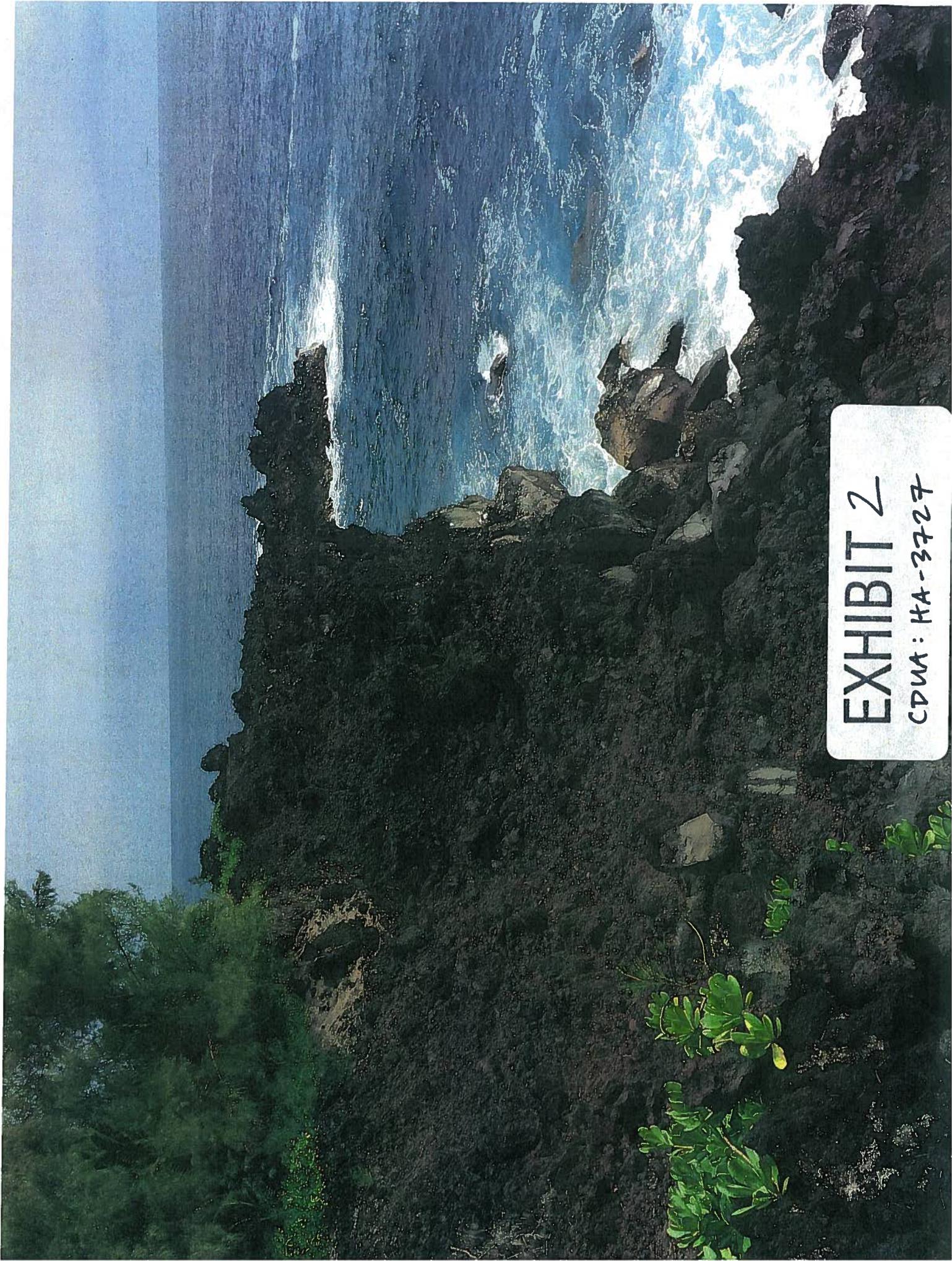


EXHIBIT 2  
CDWA: HA-3727

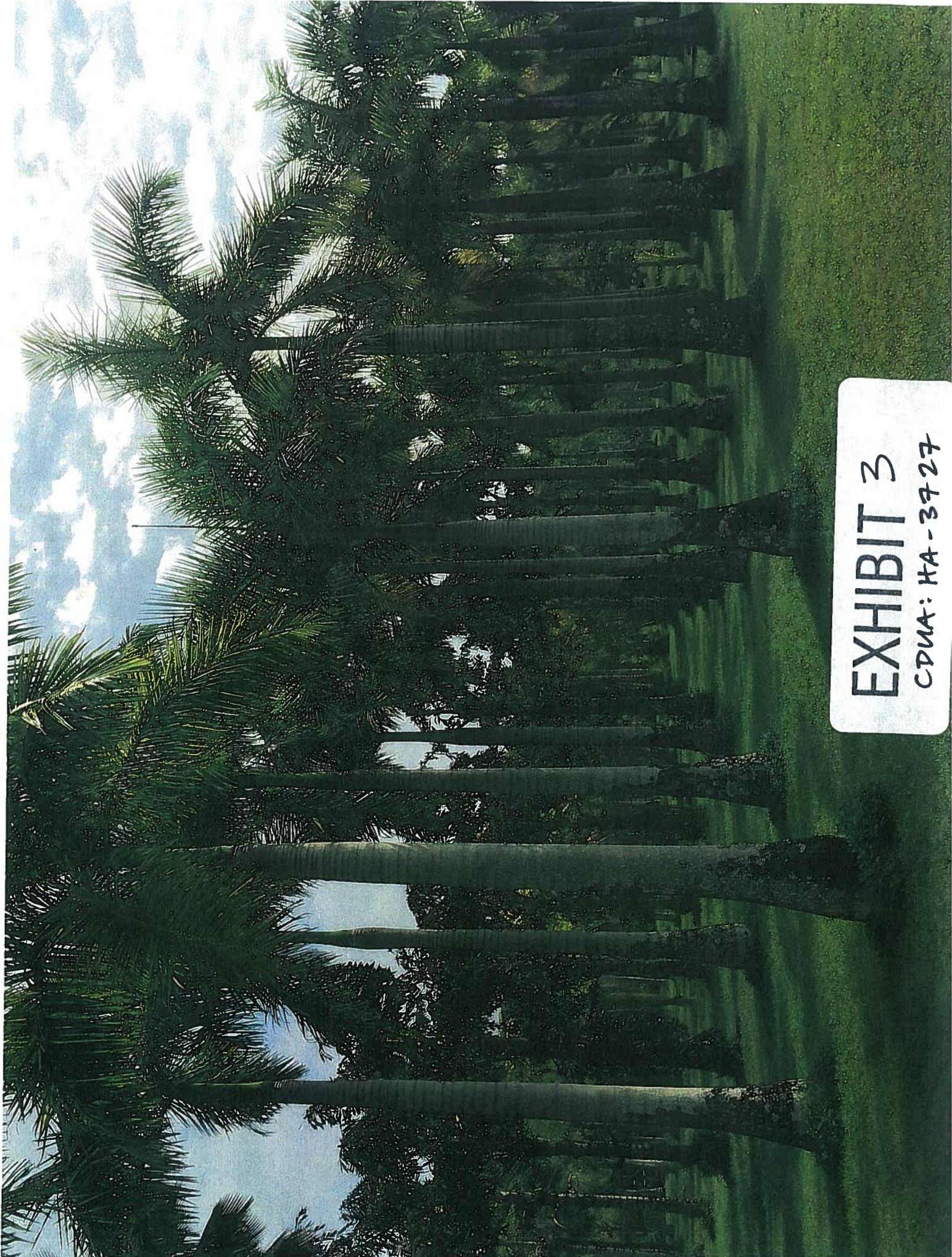


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CDMA: HA-3727

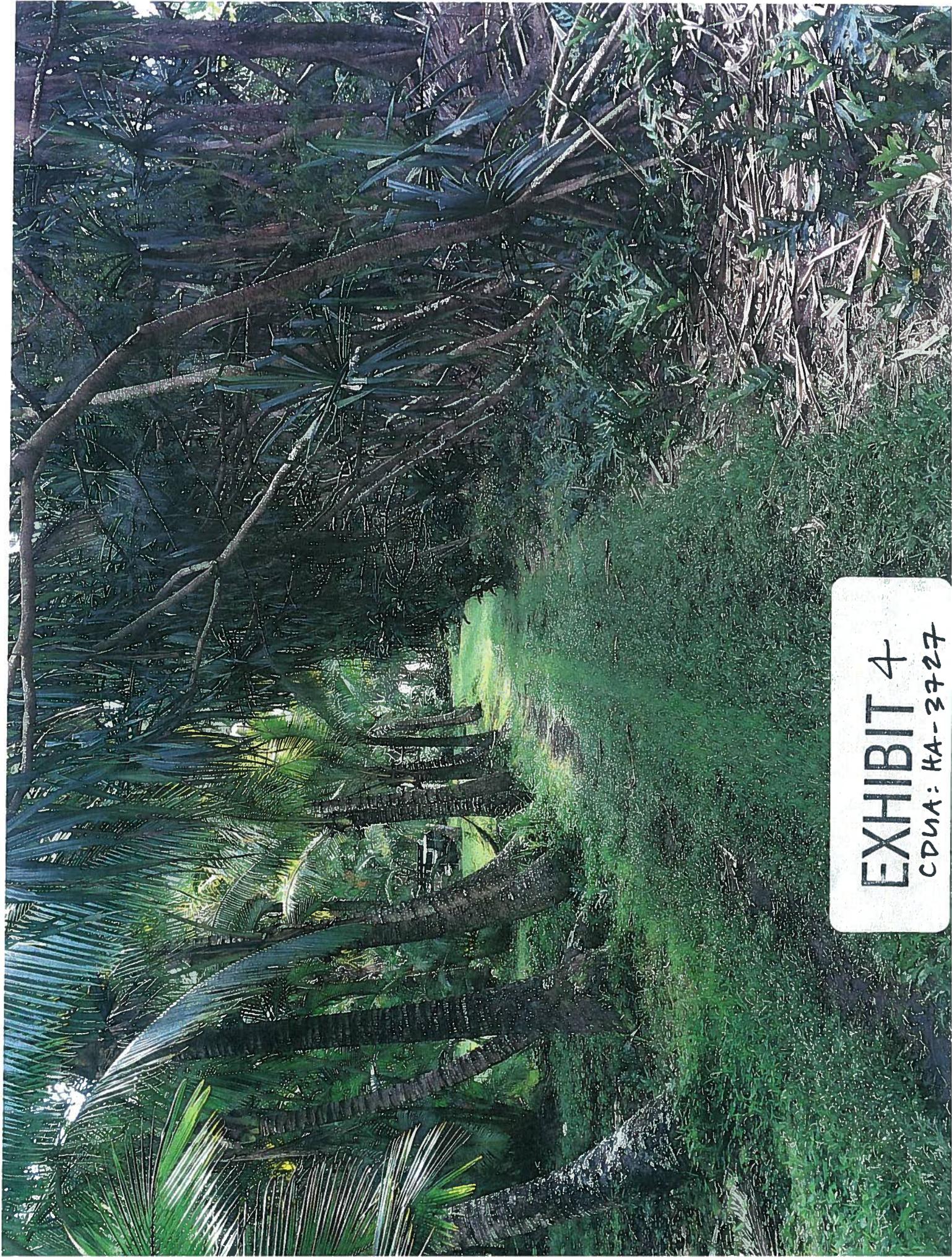


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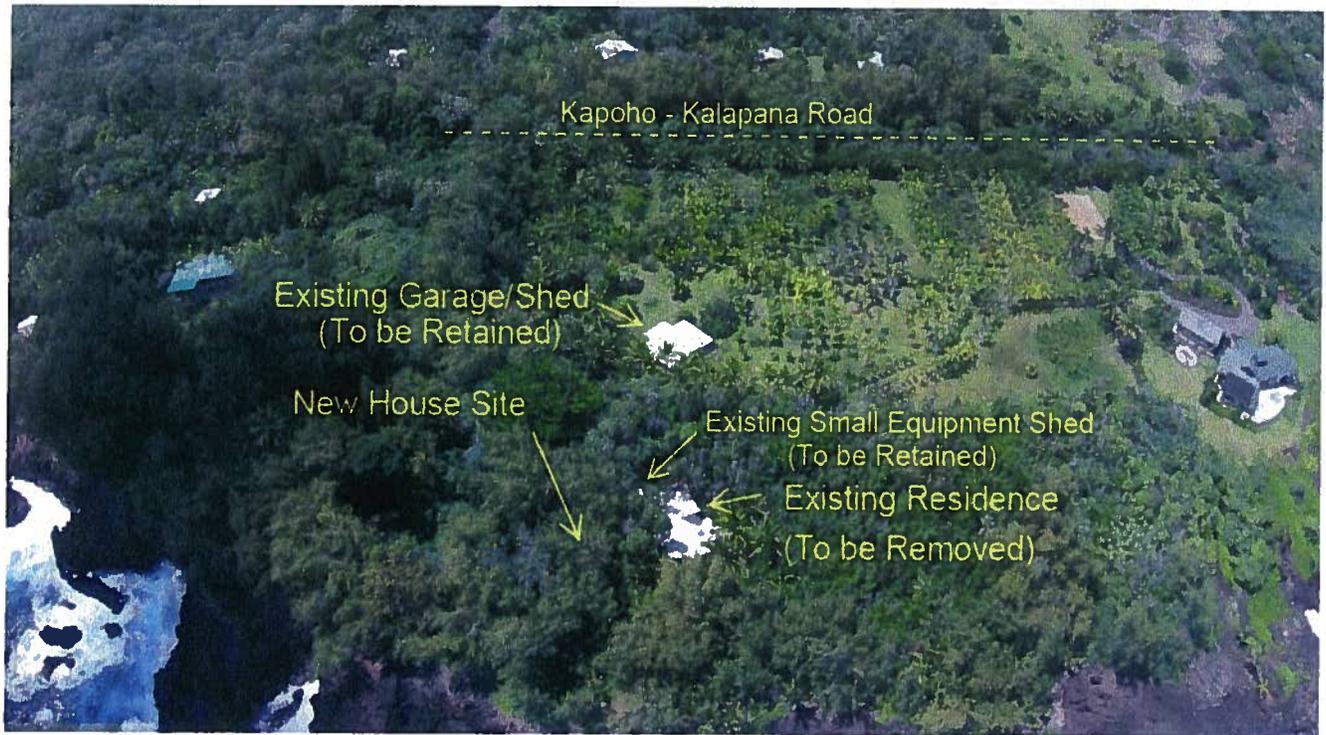
CDMA: HA-3727

LOVE NEW SINGLE FAMILY RESIDENCE - CONSERVATION DISTRICT USE PERMIT APPLICATION



CDMA: HA-3727

EXHIBIT 5



**Aerial Photos**  
**Love New Single Family Residence**  
**Conservation District**  
**Use Permit Application**

Site Plan and Plan and Elevation Drawings

Conservation District  
Use Permit Application

Love New Single Family Residence

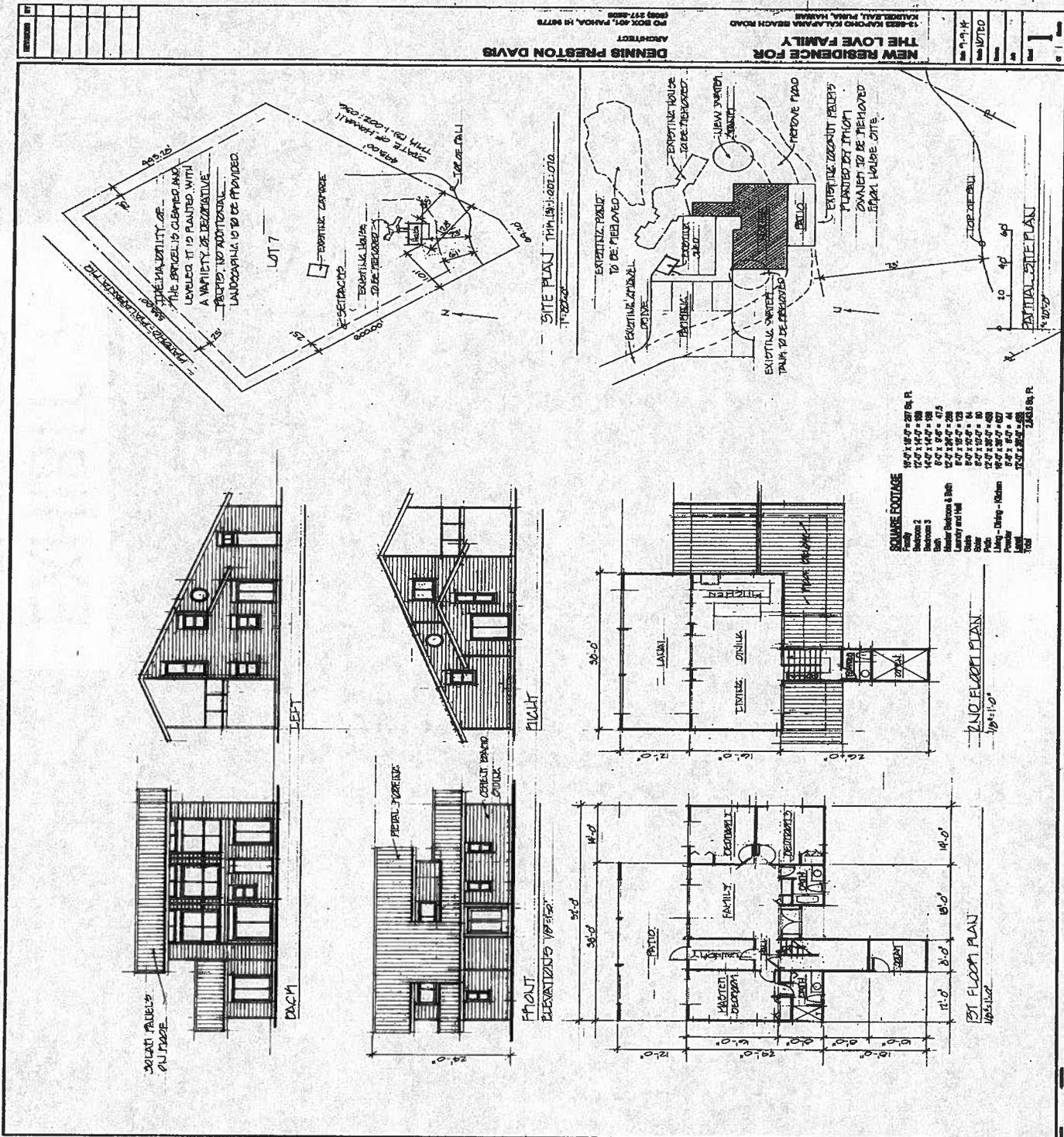


EXHIBIT 6 CDWA: HA-3727



EXHIBIT 7  
CDWA: HA-3727



EXHIBIT 8

CDMA: HA-3727



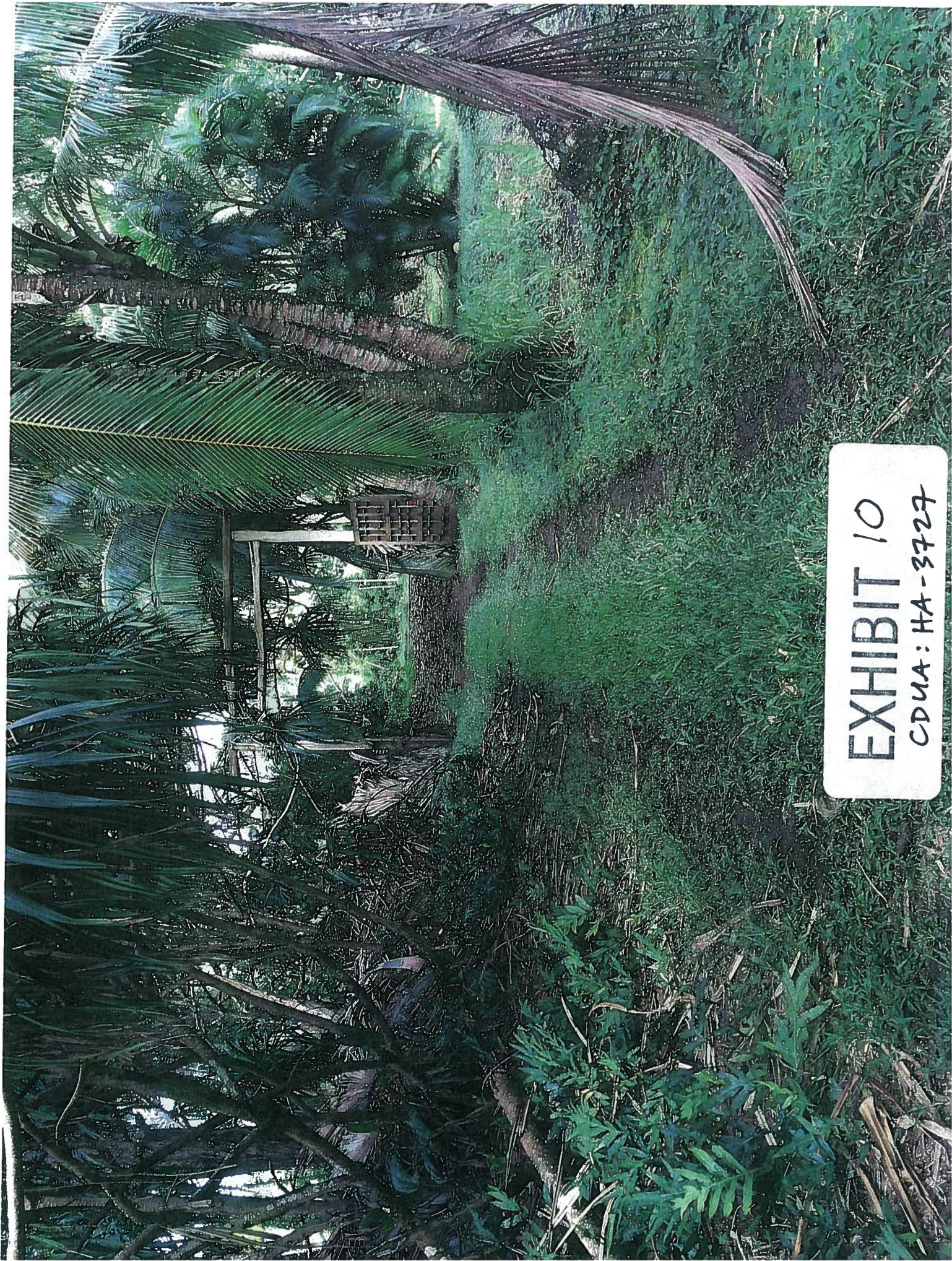


EXHIBIT 10

CDMA: HA-3727