

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

File No: SPA HA 16-4

August 28, 2015

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

REGARDING: Site Plan Approval HA 16-4 for a 1,200 Square Foot
Accessory Structure

APPLICANT: Ken Church

AGENT: N/A

LANDOWNER: Ken Church

LOCATION: South Hilo, Hawai'i

TAX MAP KEY: (3) 2-9-003:029

AREA OF PARCEL 1.1163 Acres

USE: 1,200 Square Feet

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE:

The subject parcel is situated along the Hilo-Hāmākua Coast in the ahupua'a of Kaiwiki in the South Hilo District on the island of Hawai'i. This parcel is one of three contiguous parcels owned by the landowner (Tax Map Keys (TMKs) (3) 2-9-003: 013, 029, and 060). The subject parcel is located in the Resource Subzone of the State Land Use Conservation District (see Exhibit 1). Access to the area is provided by a 30-foot wide road and utility easement which runs a distance of approximately 360 feet east from Hawai'i Belt Road.

The subject area is bounded on the south and makai (east) side by the edge of a high pali (ranging between 100 to 140 feet above mean sea level) which is characteristic of the Hilo-Hāmākua Coastline. The area is bounded on the north and south side by the landowners other two (2) parcels and is bounded on the west side by two (2) other properties.

The area consists of undeveloped lands formerly used for sugar cane cultivation. The area remained fallow until 1992, after which it was maintained in grass with a few areas of landscape plantings. The site currently has eight (8) fruit trees consisting of two (2) lychee, three (3) mangosteen, one (1) avocado, one (1) mango, and one (1) Rambo tan as well as two (2) squash patches.

The topography of the area gently slopes to the eastern end of the property with the exception of the steep pali on the makai side, as well as a steep gulch slopping down to Puahanui Stream. Soils in the project area are classified as Hilo silty clay loam with 0 to 10 percent slopes (HoC) by the U.S Department of Agriculture Soil Conservation Services Soil Survey. The Hilo series consists of well drained silty clay loams formed in a series of volcanic ash layers.

Under the Agricultural Lands of Importance to the State of Hawai'i (ALISH) classification system, the subject area is designated prime agricultural lands, consistent with the fact that the area was formerly utilized for sugar cane production.

According to the Flood Insurance Rate Map (FIRM), the subject area is situated in Zone X; areas determined to be outside the 500 year flood plain. The project area is not located within a tsunami evacuation area.

A General Botanical Survey and Vertebrate Fauna Assessment was conducted for the site. The survey found that of the 94+ species detected, four species were indigenous and none were endemic. No threatened or endangered plant species as listed by the U.S. Fish and Wildlife Service appear to be present on the property, nor are there any critical habitats.

The avifaunal survey found that out of the ten bird species observed during the survey, all of them were non-native. However, it is expected that the migratory Golden Plover (*Pluvialis fulva*) may be occasionally present during its residence in Hawai'i from August to April. The area is also utilized by the endemic Hawaiian Hawk (*Buteo solitaries*). Additionally, it is possible that small numbers of the endangered endemic Hawaiian Petrel (*Pterodroma sandwichensis*) and the threatened Newell's Shearwater (*Puffinus auricularis newelli*) over-fly the property between the months of May and November. Although not detected in the survey, the Hawaiian Hoary Bay (*Lasiurus cinereus semothus*) may be present in the general area.

An Archaeological Inventory Survey (AIS) and Limited Cultural Assessment was prepared for the parcel and found no evidence of traditional Hawaiian remains or evidence that the area is currently being accessed for the exercise of traditional and customary practices. One historic era site was recorded. The site contains two features associated with the Hāmākua Division of the Hilo Railroad – Hawai'i Consolidated Railway and were recorded in the northwestern portion of the subject area. One is a possible section of railroad grade and the other is a railroad trestle abutment. No further work is recommended as the site was documented in detail.

There is currently an existing municipal water line located along the existing paved access road. There is no electricity or municipal wastewater service provided to the property.

HISTORY

The subject parcel, as well as Parcels 13 and 60, were previously owned by James and Francine McCully. In 2007, the McCullys applied for a Conservation District Use Permit (CDUP) for a single family residence (SFR) on Parcel 29 (CDUP HA-3445) which was approved on March 28, 2008. The SFR was never built. In 2014, Mr. Ken Church (landowner) bought the property from the McCullys. The landowner then requested permission to plant eight (8) fruit trees on Parcel 29 along with eight (8) blueberry bushes on Parcel 13. A Site Plan Approval (SPA) was granted to the landowner on August 28, 2014. Subsequently, on October 21, 2014, the landowner wrote to OCCL requesting that the previously approved blueberry trees be changed to eight (8) fruit trees as the blueberry bushes did not thrive, as well as the addition of a garden to be kept under 2,000 square feet on Parcel 13. An SPA was issued on October 31, 2014 for the new trees and garden. On April 24, 2015, Mr. Church was also granted a CDUP Department Permit (HA-3735) for the consolidation and resubdivision of his three (3) parcels with a restriction on Parcel 29 limiting the maximum developable area to 3,500 square feet.

On April 6, 2015, Staff received an e-mail from the landowner requesting permit determination for the construction of a 'structure accessory to a land use' on his middle lot (Lot 29) to be used for storage and as a processing shelter (see Exhibit 2). He stated that the structure would have a concrete floor with windows and doors, and solar panels on the roof. The structure would be greater than 1,000 square feet, but less than 1,600 square feet. Staff responded to the landowner's initial inquiry on April 13, 2015, which stated that as the project site currently did not have any structures present, OCCL believed that a Conservation District Use Board Permit would be required pursuant to Hawai'i Administrative Rules (HAR) §13-5-22 P-8 STRUCTURES AND LAND USES, EXISTING (D-1) *Major alteration of existing structures, facilities, uses, and equipment* (see Exhibit 3). This determination was made based on the fact that the only uses currently approved on the three parcels were for eight (8) fruit trees on Parcel 29 and a less than 2,000 square foot garden and eight (8) additional fruit trees on Parcel 13. These were approved via Site Plan Approvals (SPA HA 15-04 and HA 15-19) on August 28, 2014 and October 31, 2014 (see Exhibit 4 and 5). OCCL also stated that an Environmental Assessment (EA) pursuant to Hawai'i Revised Statutes (HRS), Chapter 343 would be required.

On June 9, 2015, the landowner wrote to OCCL with a Site Plan Approval (SPA) request for his proposed storage and processing structure (see Exhibit 6). The structure proposed was a 1,200 square foot structure that included a restroom (toilet facility). In his request, he listed the various equipment that he wished to store, which included a large Kubota tractor, a small truck, a tractor type tow behind trailer, a roto tiller, a tractor mounted weed sprayer, garbage bins, a composting bin, a riding mower, miscellaneous tools and gardening implements, tree pruning equipment, a chain saw, a chipper shredder, a wheelbarrow, tools, oil, gasoline and diesel fuel containers, herbicide and pesticide chemicals, fold up chairs and table, a drinking

water supply, work boots and work clothing, and an extension ladder. The reason given for the structure is that the landowner would need to move this equipment over eight (8) miles to this property in order for him to conduct maintenance of his three (3) parcels. The landowner requested an SPA as he believed that his proposed shelter was consistent with HAR, §13-5-22 STRUCTURES, ACCESSORY (B-1) *Construction or placement of structures accessory to existing facilities or uses*. Staff responded to his request on July 2, 2015 stating that the OCCL continues to stand by our original determination that a CDUP Board Permit and an EA (see Exhibit 7) would be required for his proposed use. In addition, as the landowner used terminology often associated with agricultural uses (“farming activities,” “harvesting,” “processing,” “large Kubota tractor,” etc.), OCCL also stated that the landowner could consider applying for his proposed use under 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 approved simultaneously with the permit, is also required.*

The landowner then sent Staff three (3) consecutive letters dated July 10, 2015, July 13, 2015, and July 14, 2015 (see Exhibit 8, 9, & 10) titled “Notice of Appeal,” “Supplemental Notice of Appeal,” and “Second (2nd) Supplemental to Reverenced Notice of Appeal.” These letters expressed the landowner’s concern that a permit determination regarding his proposed structure was never properly given and that his request for a SPA for his proposed shed was not unreasonable in comparison to other “similar” projects previously approved. Staff wishes to note that the project used in comparison was a much smaller storage shed (approximately 156 square feet in size) which is part of an ongoing violation/enforcement action. He also claimed that he believes that his proposed structure should be exempt from an EA as HAR, §11-200-8 **Exempt classes of action**. (a) (3) *construction and location of single, new small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including but not limited to: (a) single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units; (b) Multi-unit structures designed for not more than four dwelling units...; (c) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure...; and (d) water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities...* While HAR, §11-200-8 does state these exemptions, it also states that the requirement of the preparation of an EA is at the discretion of the proposing agency or approving agency and that “*all exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive action in the same place, over time, is significant or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.*” The Department has taken the position that Conservation areas, by their nature, are sensitive and therefore, takes a precautionary approach when reviewing uses proposed in the Conservation District. The environmental review process allows for the disclosure of any potential impacts so that the Department and/or Board can make an informed decision regarding proposed uses and that those uses uphold and maintain the purpose and intent of the Conservation District. In addition, HRS, 343-5 states: (a) *Except as otherwise provided, an environmental assessment shall be required for actions that...* (2) *Propose any use within any land classified as conservation district by the state land use commission under chapter 205.*

After consulting with the Attorney General's Office, OCCL responded to the landowner on July 21, 2015 (see Exhibit 11). OCCL stated that an "accessory structure" is defined as "a land use that is conducted *on the same property* as the principal land use, and is *incidental to, subordinate to, and customarily found in connection with* the principal land use," pursuant to HAR, §13-5-2. The only approvals thus far granted for parcel 29 is for the planting of eight (8) fruit trees as a landscaping use (refer back to Exhibit 4). Therefore, a 1,200 square foot structure with a restroom facility did not appear to be "subordinate to, and customarily found in connection with" the principal land use, which would be eight (8) fruit trees. It appears that a small shed structure might be "customarily found" in connection with the propagation and management of eight (8) fruit trees, but not a 1,200 square foot, slab on grade building with a bathroom. For the purposes of comparison, the OCCL Administrative Rules (HAR, Chapter 13-5) requires major permits for structures half the size of the landowner's proposed structure. A cabin, which is defined as "a permanent structure not more than six hundred square feet under roof..." is an identified land use that would require a CDUP Board Permit pursuant to HAR, §13-5-22, P-13 (D-1). In addition, a shelter, which is defined as a "structure used for sheltering from the elements, with a maximum floor area of six hundred square feet" is an identified land use that would require a CDUP Departmental Permit pursuant to HAR, §13-5-22, P-13 (C-1). As the proposed structure is double in size compared to both of the above mentioned identified land uses, OCCL stated that the landowner may wish to apply for CDUP under the Agriculture use category as it would be the most reasonable since the landowner has stated that it will be used to store a large tractor and other equipment that are often associated with an agriculture use.

On July 22, 2015, OCCL received two (2) additional letters from the landowner again appealing the decision that his proposed project required a CDUP Board Permit and EA (see Exhibits 12 and 13). He expressed confusion with the definition of "property" as he believes that several TMKs collectively may be identified as a single property. This would be contradictory of OCCL's view that "property" refers to individual lots of record. In addition, he expressed that his project should be viewed in a similar light as large water tanks associated with single family residences being approved by OCCL as an "accessory use".

Further, in response to OCCL's most recent letter and despite their continued determination that he would need to submit a CDUP Board Permit application and an EA for his proposed project, the landowner has formally submitted a SPA on July 23, 2015, for a 1,200 square foot storage/processing shed with a restroom facility, **which is what is being brought before the Board for resolution.**

After notifying the landowner that his SPA request would be brought before the Board for final determination, OCCL received a letter dated August 6, 2015 requesting that additional alternatives be presented to the Board for consideration (see Exhibit 14). These alternatives are included in the proposed use section. Further the landowner continues to state that his project should be exempt from an EA and that his proposed shelter is accessory to his approved uses comprised of eight (8) fruit trees and squash patches on Parcel 29 as well as eight (8) trees on Parcel 13 along with his garden to be kept under 2,000 square feet. Staff

wishes to note that the landowner has stated that he has not yet implemented the garden that was approved for Parcel 13.

PROPOSED USE:

The landowner is proposing to construct a 1,200 square foot (30 ft. x 40 ft.), slab on grade, storage and processing shed with a washroom facility on the northwest corner of the subject parcel (see Exhibit 15). The structure is meant to support his existing landscaping and "farming" activities currently ongoing at his property which is comprised of the subject parcel as well as his two (2) other adjacent parcels (Parcel 013 and 060) for a total area of approximately 4.6 acres. The storage area of the structure will be approximately 1,000 square feet and be used to store various pieces of equipment including a small 20 horsepower Kubota tractor, a small truck, a tractor type tow behind trailer, a roto tiller, a tractor mounted weed sprayer, garbage bins, a composting bin, a riding mower, miscellaneous tools and gardening implements, tree pruning equipment, a chain saw, a chipper shredder, a gas powered weed whacker, a wheelbarrow, an extension ladder, oil, small gasoline and diesel fuel containers, herbicide and pesticide chemicals, fold up chairs and table, drinking water supply, and work boots and work clothes. The processing area of the structure will be approximately 100 square feet and will comprise a sink used for the cleaning of produce and fruit. The washroom facility portion of the structure will be approximately 100 square feet and will be comprised of a toilet, a shower, and a sink. The washroom will also function as a changing area as well as a work clothing storage area (see Exhibit 16).

The structure will be approximately 16 feet high and be built on a concrete slab. Windows will be installed on north, south, and east sides of the structure (6 windows total) as well as a total of three (3) pedestrian doors on the north, east and west sides of the structure. Two (2) eight (8) feet wide garage doors will be installed on the west side of the structure. The exterior of the structure, including the roof will be in neutral earth tones to blend in with the surrounding area. Limited site leveling will be required as the project area is relatively flat. Soil disturbance is anticipated to be approximately four (4) to six (6) feet greater than the actual footprint of the structure. Any disturbed areas will be regressed once construction is completed. Best management practices (BMPs) will be employed during construction and will include construction a soil retaining barrier below the disturbed soil area.

There is no municipal wastewater service to the property. A septic tank and leech field, in accordance with the Department of Health and County of Hawai'i specifications, will be applied for and installed for sanitary waste disposal, including the sink water from the fruit and vegetable processing sink (refer back to Exhibit 15). Municipal water will be provided via the existing waterline that runs along the existing paved access road. Electricity will be provided via a small generator that will be used to charge a battery bank from which electricity will be drawn. No outside lighting is planned.

ALTERNATIVES FOR THE BOARD TO CONSIDER

In his most recent correspondence to OCCL (dated August 6, 2016), the landowner has requested that Board review and take into consideration several alternatives to his project. They are as follows:

Alternative 1: If it is properly determined by the Board that the proposed structure can only be placed on the same lot as the 2,000 square foot garden (approved under SPA HA 15-19), then the landowner requests that the garden be placed on Lot 29, rather than Lot 13.

This alternative would not be feasible as the SPA was granted for Lot 13 and not Lot 29. Should the landowner wish to move the garden to Lot 29, he would need to apply for an SPA for this use.

Alternative 2: If the existing garden uses on Lot 29 (as approved in Correspondence HA 15-119) comprising of approximately 4,000 square feet in area are insufficient to quality for a structure accessory to a use according to HAR §13-5-22, P-9, the landowner would consider placing the approved garden area for Lot 13 on Lot 29, to replace one of the squash gardens already in existence. The landowner would also consider maintaining/replacing one of the existing squash gardens as mowed lawn and replacing the other squash garden with the garden previously approved for Lot 13.

Again, this alternative would not be feasible as the SPA was granted for Lot 13 and not Lot 29. Should the landowner wish to move the garden to Lot 29, he would need to apply for an SPA for this use.

In addition, Staff wishes to note that the squash gardens were not “approved” of via a correspondence issued on January 28, 2015. Rather the letter stated that as the landowner had discovered squash, sweet potato, and taro growing on his property from the previous owner, the Department had no concerns as what the landowner had described appeared to be more appropriately portrayed as a garden than an agricultural use (see Exhibit 17). In the landowner’s original correspondence to the Department, it was not disclosed as to which lots the squash were located on nor the size of the squash patches. Staff was only made aware that there were two (2) 2,000 square foot “squash gardens” via this most recent correspondence from the landowner.

Alternative 3: If in order to qualify as an accessory structure pursuant to HAR 13-5-22, P-9, the landowner is willing to reduce the structure from 1,200 square feet to a 1,000 square feet. However, this would be the least favorable option to the landowner.

This alternative would also not be feasible because the size of the structure is still considerably larger than other structures allowed under HAR, Chapter 13-5 which requires either a Departmental or a Board CDUP.

ANALYSIS

Following review of the application, the Applicant was notified via e-mail that his application would be brought before the Board for decision.

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

1. *The proposed land 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 and cultural 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 does not fit the definition of an “accessory structure” which is defined as “ a land use that is conducted *on the same property* as the principal land use, and is *incidental to, subordinate to, and customarily found in connection with* the principal land use,” pursuant to HAR, §13-5-2.

In this case, the principle land use on Parcel 29 is currently landscaping (8 fruit trees and 2 squash patches) and lawn maintenance. Therefore, a 1,200 square foot structure with a restroom facility does not appear to be “subordinate to, and customarily found in connection with” the principal land use. It appears that a small shed structure might be “customarily found” in connection with the propagation and management of eight (8) fruit trees and squash patches, but not a 1,200 square foot, slab on grade building with a bathroom. For the purposes of comparison, the OCCL Administrative Rules (HAR, Chapter 13-5) requires major permits for structures half the size of the landowner’s proposed structure. A cabin, which is defined as “a permanent structure not more than six hundred square feet under roof...” is an identified land use that would require a CDUP Board Permit pursuant to HAR, §13-5-22, P-13 (D-1). In addition, a shelter, which is defined as a “structure used for sheltering from the elements, with a maximum floor area of six hundred square feet” is an identified land use that would require a CDUP Departmental Permit pursuant to HAR, §13-5-22, P-13 (C-1).

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

The project site is located in the Resource subzone. The objective of this subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas.

As stated earlier, the proposed use, which is meant to support the current on-going landscaping and maintenance use at the site, is not consistent with the definition of an “accessory structure” which is defined as “a land use that is conducted *on the same property* as the principal land use, and is *incidental to, subordinate to, and*

customarily found in connection with the principal land use," pursuant to HAR, §13-5-2.

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

The proposed use is located within the Special Management Area (SMA). The landowner is responsible to comply with the provisions of Hawai'i's Coastal Zone Management Law (HRS, 205A) that pertain to the SMA requirements administered by the various counties. This would include obtaining either an official determination that the proposed development is exempt from the provisions of the county rules relating to the SMA or an SMA permit for the proposed development.

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

Staff believes that a major CDUP permit and an EA would need to be prepared for the proposed project. Therefore, we reserve comments on this matter until more information has been provided for review and consideration.

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

Staff believes that a major CDUP permit and an EA would need to be prepared for the proposed project. Therefore, we reserve comments on this matter until more information has been provided for review and consideration.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

Staff believes that a major CDUP permit and an EA would need to be prepared for the proposed project. Therefore, we reserve comments on this matter until more information has been provided for review and consideration.

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

No subdivision of land is proposed.

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

Staff believes that a major CDUP permit and an EA would need to be prepared for the proposed project. Therefore, we reserve comments on this matter until more information has been provided for review and consideration.

DISCUSSION

Based on the description provided in the SPA application for the proposed storage/processing shed with a washroom facility, Staff continues to stand by the correspondence sent to the landowner on July 21, 2015. A proposed 1,200 square foot building, including a washroom facility, does not appear to be “subordinate to, and customarily found in connection with” the principal land use, which according to OCCL records, consists of landscaping (eight (8) fruit trees and two (2) squash patches) and lawn maintenance. Rather it would appear that a small shed structure might be “customarily found” in connection with the propagation of eight (8) fruit trees and two (2) squash patches, but not a 1,200 square foot, slab on grade building with a washroom.

For the purposes of comparison, OCCL’s Administrative Rules (HAR, Chapter 13-5) requires major permits for structures half the size of the structure the landowner is proposing. For example, a cabin, which is defined as *“a permanent structure not more than six hundred square feet under roof, intended for use in managing large or remote land areas or both,”* is an identified land use that would require a Conservation District Use Board Permit pursuant to HAR §13-5-22 P-13 (D-1). Also, a shelter, which is defined as *“structure used for sheltering from the elements, with a maximum floor area of six hundred square feet”* is an identified land use that would require a Conservation District Use Department Permit pursuant to HAR §13-5-22 P-13 (C-1). The proposed structure is double in size compared to both of these identified land uses. Approval of a structure of the size proposed pursuant to a Site Plan Approval is not consistent with the other example uses in the Conservation District as indicated above. Staff believes that if the landowner wishes to pursue his request to construct a 1,200 square foot structure on Parcel 29, then he would need to apply for a Conservation District Use Board Permit under the Agriculture use category. This would be the most reasonable use category as the proposed shed will be used to store a large tractor and other equipment that are often associated with an agriculture use as well as the fact that the landowner has stated that he will use the structure as a processing facility for garden produce as well as fruit.

OCCL does not view the proposed 1,200 square foot structure as a “minor structure” and would require an Environmental Assessment pursuant to HRS, §343-5 which states that (a) *Except as otherwise provided, an environmental assessment shall be required for actions that... (2) Propose any use within any land classified as conservation district by the state land use commission under chapter 205.* In addition, the project would not be considered exempt under HAR, §11-200-8, as it is stated that *“all exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive action in the same place, over time, is significant or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.* The Department has taken the position that Conservation areas, by their nature, are sensitive and therefore, takes a

precautionary approach when reviewing uses proposed in the Conservation District. The environmental review process allows for the disclosure of any potential impacts so that the Department and/or Board can make an informed decision regarding proposed uses and that those uses uphold and maintain the purpose and intent of the Conservation District.

Staff, therefore, recommends the following:

RECOMMENDATION

That the Board of Land and Natural Resources DENY the Site Plan Approval for a 1,200 square foot storage/processing shed located at Kaiwiki, South Hilo, Hawai'i, (3) 2-9-003: 029, due to the following reasons:

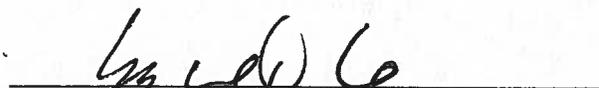
1. The proposed storage/processing shed with a washroom facility does not appear to be "subordinate to, and customarily found in connection with" the principal land use; and
2. Pursuant to HRS, §343-5, *Except as otherwise provided, an environmental assessment shall be required for actions that... (2) Propose any use within any land classified as conservation district by the state land use commission under chapter 205.*

Respectfully submitted,

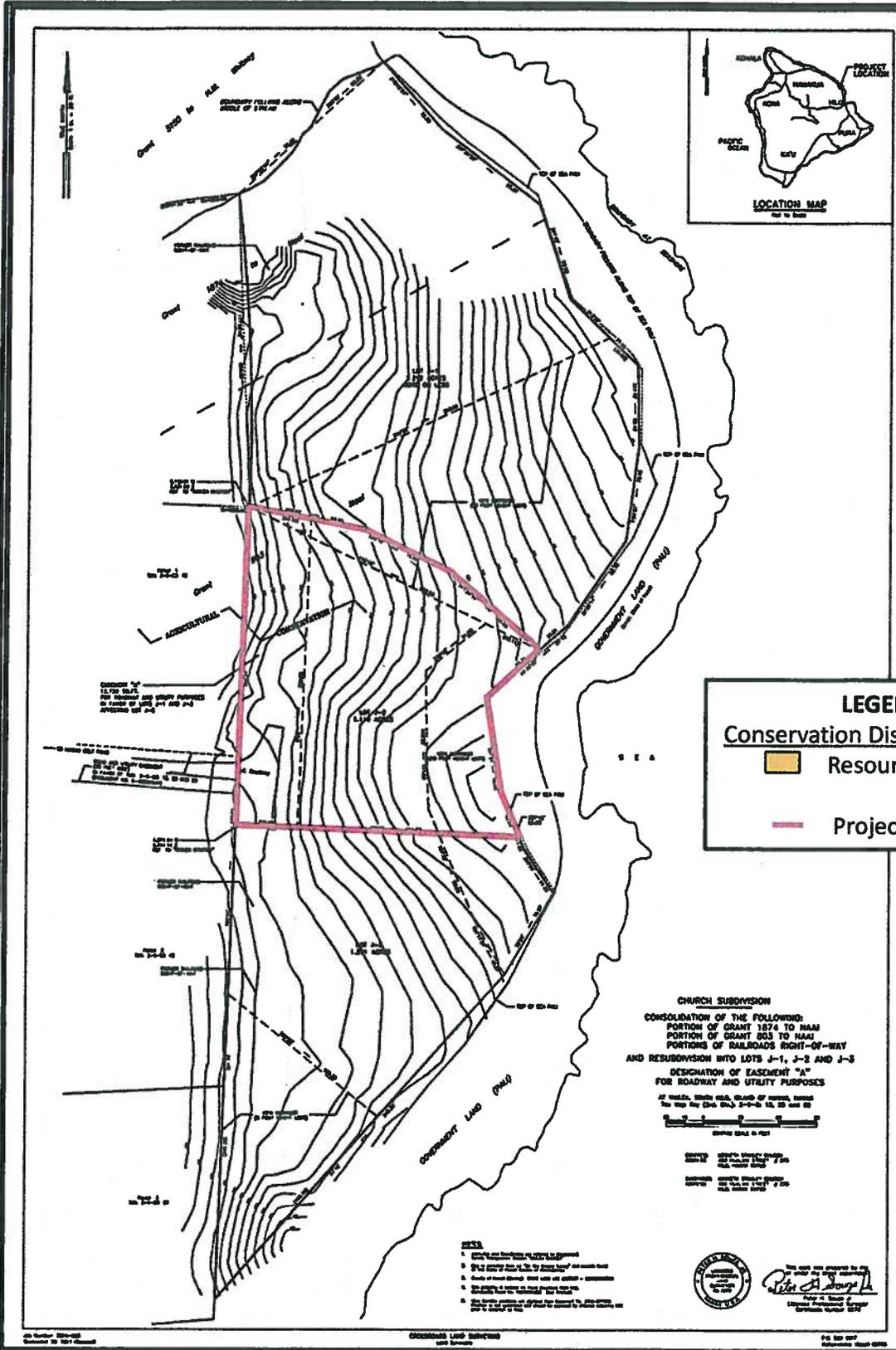


Lauren Yasaka, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



SUZANNE D. CASE., Chairperson
Board of Land and Natural Resources



LEGEND

Conservation District Subzone:

Resource Subzone

Project Site

CHURCH SUBDIVISION

CONSOLIDATION OF THE FOLLOWING:
 PORTION OF GRANT 1876 TO MAIN
 PORTION OF GRANT 823 TO MAIN
 PORTIONS OF RAILROADS RIGHT-OF-WAY
 AND RESUBDIVISION INTO LOTS J-1, J-2 AND J-3
 DESIGNATION OF EASEMENT "A"
 FOR ROADWAY AND UTILITY PURPOSES

AS WELLS, BEING ONE, SEASD OF SEASD, BEING
 THE MAP BY (SHE. 2-1-10, 10, 20 AND 30)

SOURCE SCALE IN FEET

- NOTES**
1. ALL LOTS ARE SUBJECT TO THE EASEMENT "A" SHOWN ON THIS MAP.
 2. ALL LOTS ARE SUBJECT TO THE EASEMENT "B" SHOWN ON THIS MAP.
 3. ALL LOTS ARE SUBJECT TO THE EASEMENT "C" SHOWN ON THIS MAP.
 4. ALL LOTS ARE SUBJECT TO THE EASEMENT "D" SHOWN ON THIS MAP.
 5. ALL LOTS ARE SUBJECT TO THE EASEMENT "E" SHOWN ON THIS MAP.



 The work was prepared by me
Robert A. Jones, Jr.
 Registered Professional Engineer
 License No. 12345
 State of California



PROJECT SITE & CONSERVATION DISTRICT SUBZONE MAP



accessory structure
Ken Church
to:
Lauren.E.Yasaka
04/04/2015 08:08 PM
Hide Details
From: Ken Church
To:

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2015 APR -6 A 8 34

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Please respond to Ken Church

Hello Lauren,
I trust everything is going OK with our pending CDUP?

I am writing this letter as I would like to construct a 'structure accessory to a land use' on the middle lot (Lot 029). In short I want to put up a storage and processing shelter for various pieces of equipment that I own that I intend to use for gardening and harvesting/processing of garden produce, fruit tree maintenance and harvesting/processing of fruit, property maintenance, access road maintenance etc. All uses are for personal use and not commercial.....

HAR 13-5-30 instructs that I may write to the department to seek a determination on the type of permit (site plan approval) needed for a particular action. While the Act seems clear to me that such a structure is described in the Act as a 'structure accessory to a land use' I am seeking your guidance in this regard as provided for in the act.

§13-5-30 Permits, generally.Site plans are processed by the department and approved by the chairperson or a designated representative. If there is any question regarding the type of permit required for a land use, an applicant may write to the department to seek a determination on the type of permit needed for a particular action.

§13-5-38 Site plan approvals. (a) Where required, an applicant shall submit site plans, including construction, grading, site restoration, landscaping, fire protection, or any other plans to the department for its review and approval. All plans shall be approved by the department before they are submitted for approval by the pertinent state and county agencies.

(b) An application for a site plan approval shall be accompanied by an application fee of \$50. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

HAR 13-5 also states.....

"Accessory use" means a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use.

(2) Identified land uses beginning with letter (B) require a site plan approval by the department;

P-9 STRUCTURES, ACCESSORY

(B-1) Construction or placement of structures accessory to existing facilities or uses.

The storage and processing structure would be greater than 1,000 sq. ft. but less than 1,600 sq. ft. (size has yet to be determined). In our current CDUA to combine and subdivide the 3 lots a condition of the CDUA requires that any development of area on Lot 029 be restricted to under 3,500 sq. ft. The proposed structure would be less than the allowable MDA for Lot 029.

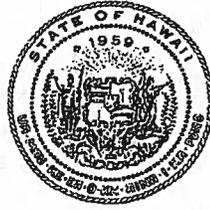
The structure would have a concrete floor, windows and doors, solar panels on the roof. The structure would remain 'off the electrical grid' and rely on solar power and battery storage for its only source of electricity. Formal structure plans may be submitted once I receive your guidance according to the questions raised in this letter of inquiry.

I would propose that subsequent to your determination and site plan approval we would file applicable applications with County for the necessary permits. The structure would be along the Western boundary of Lot 029 on a flat hill top that currently exists there. The location would be on Lot 29 in its current configuraion and also in the proposed new configuration that is the subject of the current CDUA to combine and subdivide the 3 lots. It would be also spaced appropriately from the present and future boundary lines (set backs) as per HAR guidelines. Only minimal leveling of the site will be required. No soil disturbance would be beyond a 10 ft. perimeter around the structure. The site is located around 150 ft. West (inward)

from the top of the pali.
Thank you in advance for your assistance in this matter.

Respectfully Yours,
Ken Church

DAVID Y. IGE
GOVERNOR OF HAWAII



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

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

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

Ref: OCCL:LY

CORR: HA 15-157

Mr. Ken Church
400 Hualani Street, Suite 275
Hilo, Hawai'i 96720

APR 13 2015

SUBJECT: Inquiry Regarding an Accessory Structure at Wailea, South Hilo, Hawai'i
Tax Map Key (TMK): (3) 2-9-003: 029

Dear Mr. Church:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your inquiry regarding the type of permitting needed to construct an "accessory" structure at the subject property.

According to the information you have provided, you are proposing to build a storage and processing structure in support for your existing landscaping activities currently ongoing at your property. The proposed structure would be greater than 1,000 square feet, but smaller than 1,600 square feet and used to store various pieces of equipment to be used for the gardening/harvesting of garden produce, fruit tree maintenance and harvesting/processing of fruit, general property maintenance, access road maintenance, etc. The storage/processing structure would be for personal use and not in support of any commercial activity. The structure would have a concrete floor, windows, doors, and solar panels on the roof to provide electricity to the structure. The structure would be located along the western boundary of the property. Only minimal leveling of the site will be required and soil disturbance would not extend beyond a 10 foot perimeter around the structure. The structure would also be set back approximately 150 feet mauka from the top of pali.

As the project area currently does not have any structures present, we believe that a Conservation District Use Application (CDUA) Board Permit will be required pursuant to Hawai'i Administrative Rules (HAR) §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (D-1) *Major alteration of existing structures, facilities, uses, and equipment*. Pursuant to HAR §13-5-2 "Major alteration" is defined as *work done to an existing structure, facility, or use that results in more than fifty percent increase in the size of the structure, facility, or use*. In addition, we believe an Environmental Assessment will also be required pursuant to Hawai'i Revised Statutes (HRS), §343-5 (a) *Except as otherwise provided, an environmental assessment shall be required for actions that...*(2) *Propose any use within any land classified as conservation district by the state land use commission under chapter 205.*

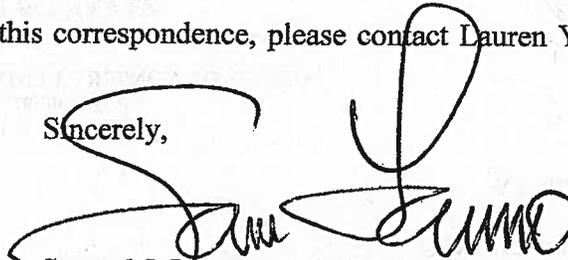
Mr. Ken Church

Corr: HA 15-157

When you are ready to submit an EA and CDUA for your proposed structure, please remember to be as detailed as possible and provide site plans including, but not limited to, construction, grading, site restoration, landscaping, fire protection, or any other plans with your application for the Board's review and approval.

If you have any questions in regards to this correspondence, please contact Lauren Yasaka of our Office at (808) 587-0386.

Sincerely,



Samuel I Lemmo, Administrator
Office of Conservation and Coastal Lands

c: HDLO
County of Hawai'i, Dept. of Planning

August 22, 2014

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

2014 AUG 25 A 9:55

NAT
STATE OF HAWAII

Attn: Lauren Yasaka
Re: Land TMKs: (3) 2-9-003:013, 29 and 60
Subject: Site plan approval for planting of fruit trees

Dear Ms. Yasaka,

As discussed earlier today on the telephone please accept this as my "Site Plan Approval" request for permission to plant fruit trees and berry bushes on two of the subject TMK's. You will find enclosed with this letter a survey map (titled #1) and 2 blow up scans from that map of TMK 13 (titled #3) and TMK 29 (titled #2) and a cheque for the required \$50 filing fee.

I am advancing two plans. One is for actual fruit trees on TMK 29 (the Middle lot shown on survey map #3) which we discussed and the other (which we did not discuss) is for berry bushes on TMK 13 (South lot).

This application is intended to be requested as a Site Plan Approval, according to the Act, and the additional request on map #3 is intended to further supplement this application at the Site Plan Approval level. If the expanded application to include the berry bushes on Map #3 pushes this application beyond the Site Plan Approval level with your department please disregard the additional request for the berry bushes.

The areas for both the fruit trees and the berry bushes are presently grassed areas that are mowed regularly and maintained as lawn areas. There are no trees or bushes within 40 ft. of any of the planned planting areas on either map and the lands in both areas are gently sloping on Map #2 and substantially flat on Map #3.

Regarding site #2 (middle lot) this would be the intended planting site for the fruit trees. The intended fruit trees would be (2) Lychee, (3) Mangosteen, (1) Avocado, (1) Mango, (1) Rambo tan. Their planting locations are shown on map #2. They would be planted on approx. 30 ft. spacing. None would be closer than 40 ft. from the top of the Pali. If a greater distance from the Pali is specified in the Site Plan Approval I would propose to locate sufficient plants Northward from the area and reduce the plants in the specified restricted area in the Site Plan Approval.

The only ground disturbance proposed would be a 30" diameter planting hole where the

grass would be removed and an amended soil mixture applied in the planting hole. The soil amendments in the planting holes would be compost and dolomite and crushed lava rock. The grass area between the trees would be maintained as lawn as it has been for the past several years. The trees would be purchased from a local nursery and inspected to be weed and pest free. It is our intention to isolate the plants off site in a quarantine area for one week with fire ant bait traps in order to insure that no fire ants are mistakenly transplanted on to the property.

None of the ground disturbance (the planting holes) will result in diverted run off on the property site. If any ground disturbance results in the discovery of any artifacts that may be of a historical interest we will notify your Dept. and cease further plantings until advised otherwise.

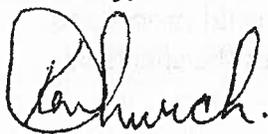
Regarding Map #3, the proposed site for the berry bushes. This area is restricted in a view plane restriction of 4 ft. ht. to the benefit of the adjacent lots to the West in this sub-division. We propose to plant Blue Berry bushes in this area. They would be maintained below a 4 ft. height and have a mature size foot print (the horizontal size of the tree) not to exceed a 2 ft. radius around the trunk of the bush.

The only ground disturbance proposed would be a 30" diameter planting hole where the grass would be removed and an amended soil mixture applied in the planting hole. The soil amendments in the planting holes would be compost and dolomite and crushed lava rock. The grass area between the trees would be maintained as lawn as it has been for the past several years. The trees would be purchased from a local nursery and inspected to be weed and pest free. It is our intention to isolate the plants off site in a quarantine area for one week with fire ant bait traps in order to insure that no fire ants are mistakenly transplanted on to the property.

None of the ground disturbance (the planting holes) will result in diverted run off on the property site. If any ground disturbance results in the discovery of any artifacts that may be of a historical interest we will notify your Dept. and cease further plantings until advised otherwise. We propose in the order of 13 plants. Each would have a foot print of no more than 13 sq. ft. (a 4 ft. dia. Plant) = 52 sq. ft. total planting area.

Please review this application(s).

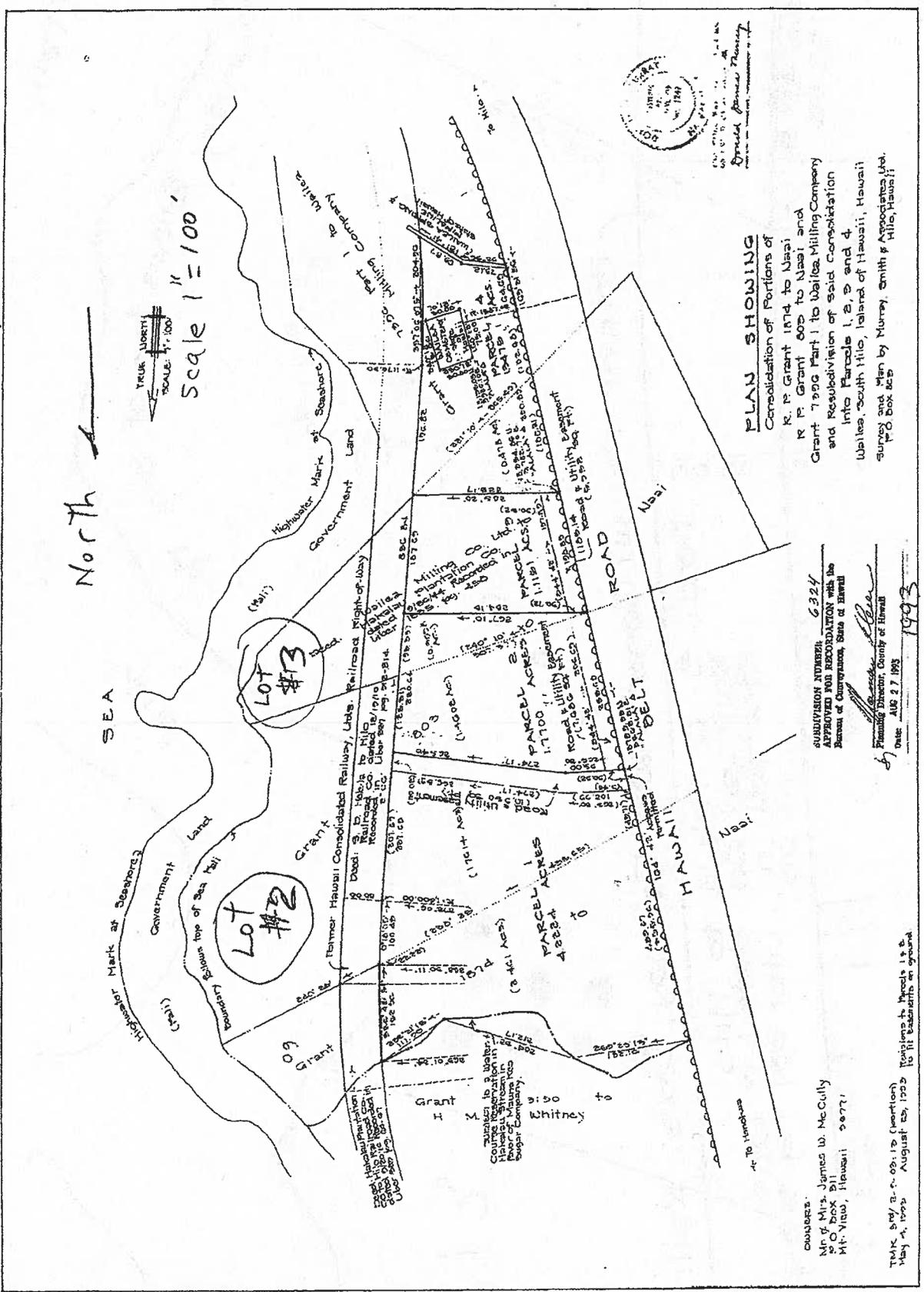
Sincerely,

A handwritten signature in black ink, appearing to read "Ken Church". The signature is written in a cursive, somewhat stylized font.

Ken Church

1

overview of 6 lots.



PLAN SHOWING

Consolidation of Portions of

R. P. Grant 1874 to Nabai and
 Grant 7906 Part 1 to Wailes Milling Company
 and Resubdivision of said Consolidation
 into Parcels 1, 2, 3 and 4
 Wailes, South Hill, Island of Hawaii, Hawaii
 Survey and Plan by Murray, Smith & Associates Ltd.
 P.O. Box 808

SUBDIVISION NUMBER: 6324
 APPROVED FOR RECORDATION with the
 Bureau of Conveyance, State of Hawaii

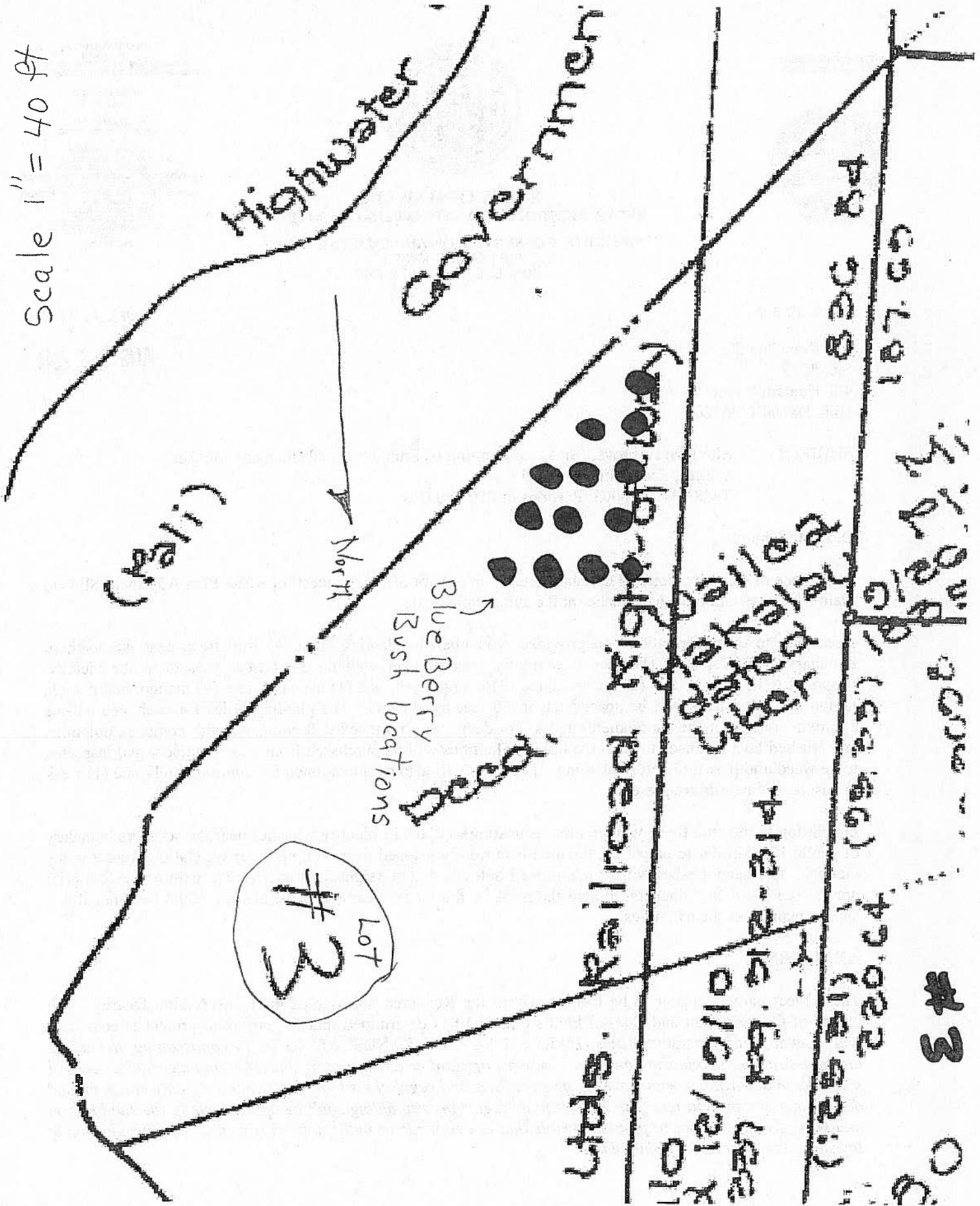
[Signature]
 Planning Director, County of Hawaii
 Date: AUG 27 1993

COUNSELLOR:
 Mr. & Mrs. James W. McCully
 P.O. Box 811
 Mt. View, Hawaii 96771

TRAK, 5147 A-2-03:13 (revisions)
 May 1, 1993 August 23, 1993
 Portions to Parcels 1, 2, 3
 to 11 boundaries on ground

P 2500-A

Scale 1" = 40 ft



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
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AQUATIC RESOURCES
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BUREAU OF CONVEYANCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref: OCCL:LY

SPA: HA 15-04

Mr. Ken Church
Ste. #275
400 Hualani Street
Hilo, Hawaii 96720

AUG 28 2014

SUBJECT: Site Plan Approval (SPA) for Planting of Fruit Trees and Blueberry Bushes
Wailea, South Hilo, Hawaii
TMK (3) 2-9-0003: Portions of 029 and 013

Dear Mr. Church:

The Office of Conservation and Coastal Lands is in receipt of your request for a Site Plan Approval (SPA) to plant fruit trees and blueberry bushes at the subject properties.

According to the information you provided, you plan on planting eight (8) fruit trees near the southern boundary of parcel 29. The area is currently grassed over with no other trees present in the vicinity. Proposed trees include two (2) lychee, three (3) mangosteen, one (1) avocado, one (1) mango, and one (1) rambo tan. The trees will be spaced out in 30-foot increments. The planting holes for each tree will be approximately 30-inches in diameter and a foot deep. Soil removed will be mixed with compost, dolomite, and crushed lava and used to refill the holes. The trees will be purchased from a local nursery and inspected to be weed and pest free before planting. The trees will also be quarantined for approximately one (1) week to ensure no fire ants are present.

In addition to the fruit trees, you are also requesting to plant 13 blueberry bushes near the southern boundary of parcel 13. Similar to parcel 29, the area is currently grassed over with no other vegetation present in the vicinity. The berry bushes will be maintained below a 4-foot height limit and have a mature size foot print not to exceed a 4 foot diameter around the trunk of the bush. Planting of the bushes would be handled in a similar manner as the fruit trees.

ANALYSIS

The subject parcels appear to be located within the Resource Subzone of the Conservation District. The Office of Conservation and Coastal Lands (OCCL) has determined that the proposed project is consistent with Hawaii Administrative Rules (HAR) §13-5-23, L-2 LANDSCAPING (B-1) *Landscaping, defined as alteration (including clearing and tree removal) of plant cover, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance, in an area less than 2,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.*

As the project appears to minor in scope, it may be considered an exempt action under HAR, §11-200-8(a)
(4) Minor alternations in the conditions of land, water, or vegetation.

Therefore, authorization is hereby granted for the proposed planting of eight (8) fruit trees and 13 blueberry trees located on the subject parcels in Wailea, South Hilo, Hawai'i and is subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of Chapter 13-5, HAR;
2. The applicant, 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 approval or relating to or connected with the granting of this approval;
3. The applicant shall comply with all applicable Department of Health administrative rules;
4. 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, and completed within three years of the approval of such use.
5. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
6. In issuing the approval, the department has relied on the information and data, which the applicant has provided in connection with the application. If, subsequent to the issuance of the approval such information and data prove to be false, incomplete, or inaccurate, this approval may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
7. Where any interference, nuisance, or harm may be caused, or hazard established by the use the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. The applicant shall implement typical Best Management Practices (BMPs) while conducting any land use in the conservation district;
9. For all landscaped areas, landscaping and irrigation shall be contained and maintained iwthin the property;
10. Should any unanticipated problems occur which may affect public health, safety or welfare, the Department may require immediate removal of all project components;
11. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during planting activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

Oct. 20, 2014

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

RECEIVED
OFFICE OF CONSERVATION
& COASTAL LANDS
2014 OCT 21 A 10:03

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Attn: Lauren Yasaka

Re: Land TMKs: (3) 2-9-003:013, 29 and 60

Subject: Site plan approval for planting of more fruit trees and developing a small vegetable garden

Dear Ms. Yasaka,

Please accept this as my "Site Plan Approval" request for permission to plant fruit trees and develop a 2,000 sq. ft. garden on TMK :013. You will find enclosed with this letter a survey map (titled #1) and a blow up scan from that map of TMK 13 (titled #2) and a cheque for the required \$50 filing fee.

This application is intended to request a Site Plan Approval, according to the Act.

The area for both the 8 fruit trees and the garden is presently grassed and mowed regularly and maintained as lawn areas. The area is gently sloping. The area was previously approved SPA: HA 15-04 on Aug 28, 2014 for the planting of 13 blueberry bushes. 4 plants were initially purchased and quarantined (in keeping with the original proposal) and thereafter taken to the property in nursery plant pots and placed in the area and temporarily placed on top of the grass for a couple of days awaiting planting. They were attacked by insects and substantially damaged (almost totally defoliated) within 2 days leading to a determination that the area was unsuitable for blueberry bushes so the project to plant 13 blueberry bushes has been abandoned. Notice is hereby given to your office that the planting of 13 blueberry bushes will not occur. None of the fruit trees on the adjacent lot 029 approved on the same permit that were planted at that time were damaged by insects so they remain.

The applicant would now like to plant 8 more fruit trees and develop a 2,000 sq. ft. garden in approximately the same area that was previously approved on lot :013. The applicant advises that the previous SPA: HA 15-04 to plant fruit trees was for lot :029.

The intended fruit trees would be (1) Lychee, (1) Avocado, (2) Chermoya, (1) Pomplamoose, (1) lime (1) lemon and (1) mandarin orange. They would be planted on approx. 30 ft. spacing. None would be closer than 40 ft. from the top of the Pali. The additional 2,000 sq. ft. garden area would be roto-tilled in order to develop a weed and grass free area on a substantially flat area of the lot on which the vegetable garden would

result. The garden would be used successively year after year for gardening. It is proposed that only seeds would be planted purchased from the local gardening supply centers. Potted gardening plants would be avoided in order to prevent the potential to import nuisance insects etc. with the potting medium.

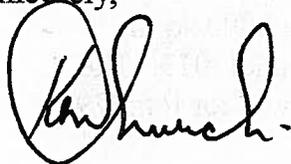
The only ground disturbance proposed for the fruit trees would be a 30" diameter planting hole where the grass would be removed and an amended soil mixture applied in the planting hole. The soil amendments in the planting holes would be compost and dolomite and crushed lava rock. The grass area between the trees would be maintained as lawn as it has been for the past several years. The trees would be purchased from a local nursery and inspected to be weed and pest free. Small fruit trees with a root ball under 2 gallons in size would be purchased. It is our intention to isolate the plants off site in a quarantine area for one week with fire ant bait traps in order to insure that no fire ants are mistakenly transplanted on to the property. As the area receives a lot of rainfall no irrigation of the garden site or fruit trees is anticipated.

None of the ground disturbance for either the fruit trees or the garden area will result in diverted run off on the property site. The fruit tree area is modestly sloping. The garden area proposed is a near flat area and has been chosen as a site least likely to suffer from run off during rains. If any ground disturbance results in the discovery of any artifacts that may be of a historical interest we will notify your Dept. and cease further plantings until advised otherwise.

In the case of the fruit trees any excess soil that did not fit back into the potting hole would be placed around the downhill side of the tree forming a semi-circular mound to trap rain water around the root ball of the tree. The applicant affirms that the areas of soil disturbance for these proposed activities was previously disturbed soil during the farming of sugar cane on this lot up to 1992. As a result of that it is highly unlikely that soil disturbance will result in disturbing of any historical artifacts.

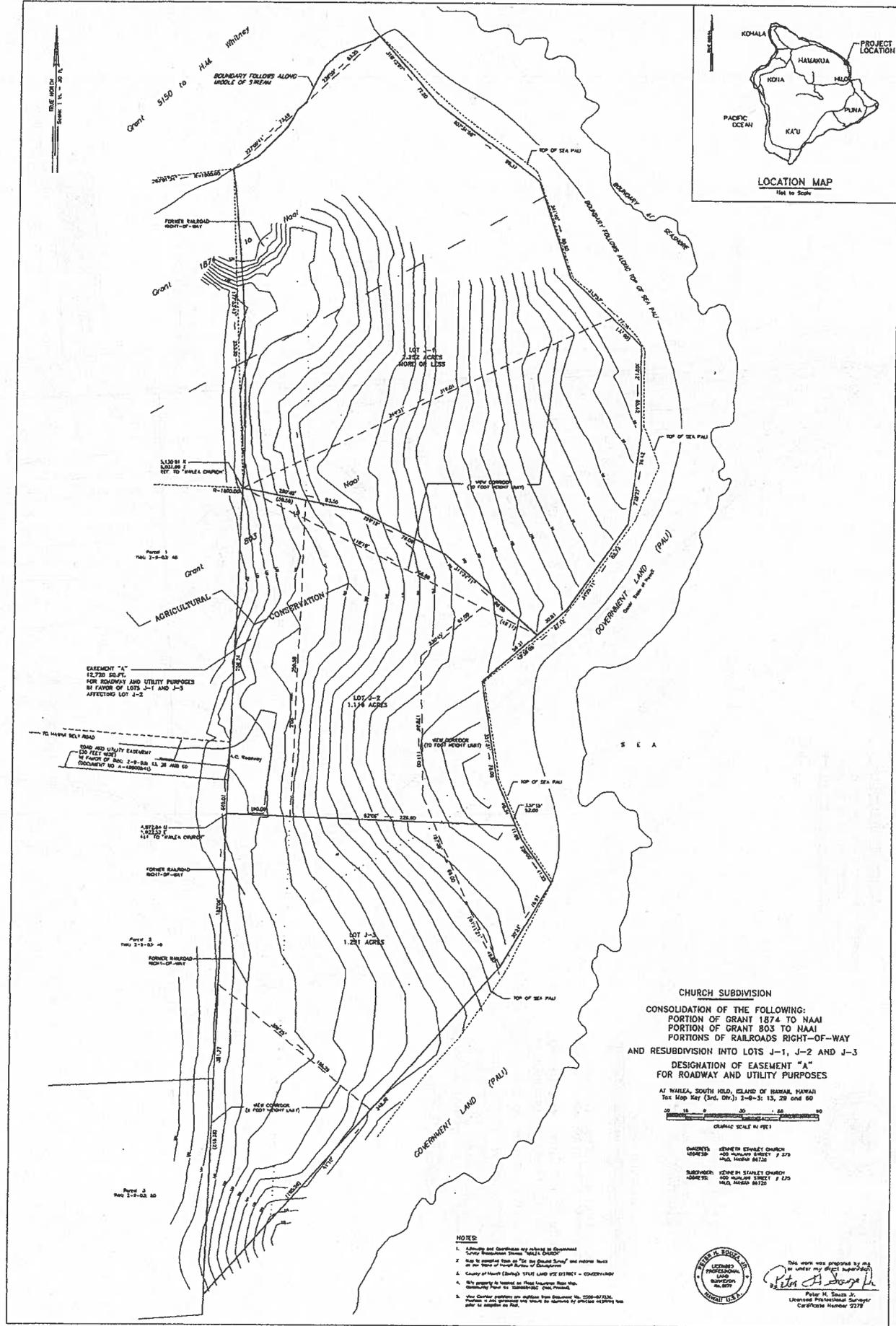
Please review this application and issue a use permit.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Church". The signature is written in a cursive style with a large, looped initial "K".

Ken Church

#1



CHURCH SUBDIVISION
CONSOLIDATION OF THE FOLLOWING:
 PORTION OF GRANT 1874 TO HAAI
 PORTION OF GRANT 803 TO HAAI
 PORTIONS OF RAILROADS RIGHT-OF-WAY
AND RESUBDIVISION INTO LOTS J-1, J-2 AND J-3
DESIGNATION OF EASEMENT "A"
FOR ROADWAY AND UTILITY PURPOSES

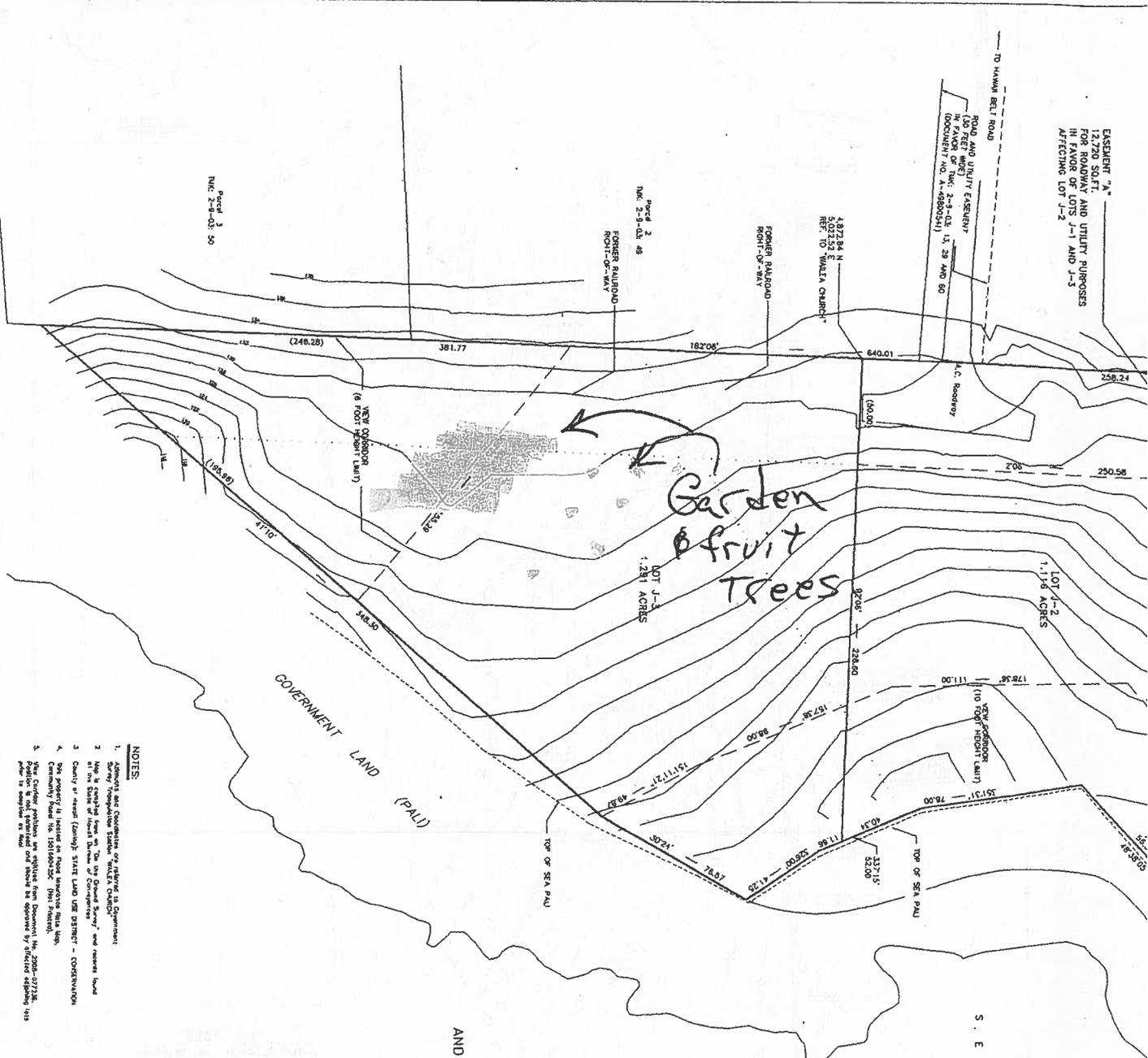
AT WAILEA, SOUTH HOLE, ISLAND OF HAWAII, HAWAII
 Tax Map Key (Enc. 09-1): 2nd-S: 15, 28 and 60
 GRAPHIC SCALE IN FEET
 0 10 20 30 40 50 60

OWNER: KENNETH EDWARDS CHURCH
 400 HANALEI STREET, P. O. BOX 100, HANALEI, HAWAII 96720
SUBDIVIDER: KENNETH EDWARDS CHURCH
 400 HANALEI STREET, P. O. BOX 100, HANALEI, HAWAII 96720

- NOTES**
1. All property and boundaries are shown as determined by the Original Survey and are shown as shown on the Original Survey and are shown as shown on the Original Survey.
 2. See the map of the State of Hawaii, Department of Land and Natural Resources, Office of the Surveyor, for the location of the Survey.
 3. County of Maui (Eighth) STATE LAND USE DISTRICT - CONSERVATION
 4. All property is shown as being conveyed to the State of Hawaii by the Original Survey.
 5. All other conditions are shown as shown on the Original Survey and are shown as shown on the Original Survey.



This work was prepared by me
 or under my direct supervision
 Peter M. Smith, J.
 Licensed Professional Surveyor
 Certificate Number 8777



EASEMENT "A"
12,720 SQ. FT.
FOR ROADWAY AND UTILITY PURPOSES
IN FAVOR OF LOTS J-1 AND J-3
AFFECTING LOT J-2

ROAD AND UTILITY EASEMENT
(50 FEET WIDE)
IN FAVOR OF LOTS J-1, J-2 AND J-3
(DOCUMENT NO. A-48800241)

4,872.84 N
REF. TO WAIKOLA CHURCH

FORMER RAILROAD
RIGHT-OF-WAY

Parcel 2
Map 2-9-401-48

FORMER RAILROAD
RIGHT-OF-WAY

Parcel 3
Map 2-9-401-50

Garden
& fruit
Trees

LOT J-1, J-2
1.281 ACRES

LOT J-1, J-2
1.116 ACRES

GOVERNMENT LAND (PAL)

- NOTES:
1. Accuracy and Reliability of Alluvial Soil Government
 2. Map is compiled from "The Great Survey" and records filed at the State of Hawaii Bureau of Conveyances
 3. County of Hawaii (County) STATE LAND USE DISTRICT - CONSERVATION
 4. This property is located on those surveys data map, Community Parcel No. 101040020C (1981 Parcel).
 5. This Contour problem are obtained from Document No. 2008-0772K, which is recorded in the Public Records Office of Hawaii.

CHURCH SUBDIVISION
CONSOLIDATION OF THE FOLLOWING:
PORTION OF GRANT 1874 TO NAAI
PORTION OF GRANT 803 TO NAAI
PORTIONS OF RAILROADS RIGHT-OF-WAY
AND RESUBDIVISION INTO LOTS J-1, J-2 AND J-3
DESIGNATION OF EASEMENT "A"
FOR ROADWAY AND UTILITY PURPOSES
AT WAIKOLA, SOUTH HILLO, ISLAND OF HAWAII, HAWAII
Tax Map Key (3rd. Div.): 2-9-3; 13, 29 and 80



OWNER:
ADDRESS: WAIKOLA STANLEY CHURCH
400 KULAMIN STREET # 275
HONOLULU, HAWAII 96820

SUBDIVIDER:
ADDRESS: KENNETH STANLEY CHURCH
400 KULAMIN STREET # 275
HONOLULU, HAWAII 96820



This work was prepared by me
or under my direct supervision
Peter H. Souza
Peter H. Souza Jr.
Licensed Professional Surveyor
Certificate Number 8275

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

Ref: OCCL:LY

SPA: HA 15-19

Mr. Ken Church
Ste. #275
400 Hualani Street
Hilo, Hawai'i 96720

OCT 31 2014

SUBJECT: Site Plan Approval (SPA) for Planting of Fruit Trees and a Garden
Wailea, South Hilo, Hawai'i
TMK (3) 2-9-003: 013

Dear Mr. Church:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your request for a Site Plan Approval (SPA) to plant eight (8) fruit trees and a 2,000 square foot (sq. ft.) garden at the subject property.

According to the information you provided, the blueberry bushes previously approved under SPA 15-04 will no longer be pursued as the initial plantings were damaged and thus thought to be an unsuitable crop for the area. Therefore, you have submitted a request to plant fruit trees including one (1) lychee, one (1) avocado, two (2) chermoya, one (1) pomplamoos, one (1) lime, one (1) lemon, and (1) mandarin orange. The trees will be spaced out in 30-foot increments. The planting holes for each tree will be approximately 30-inches in diameter and a foot deep. Soil removed will be mixed with compost, dolomite, and crushed lava and used to refill the holes. Any excess soil would be placed around the downhill side of the tree forming a mound to trap rain water around the root ball of the tree. The trees will be purchased from a local nursery and inspected to be weed and pest free before planting. The trees will also be quarantined for approximately one (1) week to ensure no fire ants are present. In addition to the fruit trees, you are also requesting to plant a 2,000 sq. ft. vegetable garden. The area would be roto-tilled to create a grass and weed-free area. The seeds would be planted from a local gardening supply center and potted gardening plants would be avoided in order to prevent the potential of importing nuisance insects, etc.

ANALYSIS

The subject parcel appears to be located within the Resource Subzone of the Conservation District. Your proposal calls for ground disturbance of more than 2,000 sq. ft. and is, therefore, not in conformance with HAR 13-5-23, L-2 LANDSCAPING (B-1) *Landscaping, defined as alteration (including clearing and tree removal) of plant cover, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance, in an area less than 2,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawai'i. The introduction of invasive plant species is prohibited.* However, OCCL is willing to move forward with the issuance of an SPA for the proposed project with the condition that the proposed area of disturbance is modified to be kept under 2,000 sq. ft.

EXHIBIT 5

As the project appears to minor in scope, it may be considered an exempt action under HAR, §11-200-8(a) (4) Minor alternations in the conditions of land, water, or vegetation.

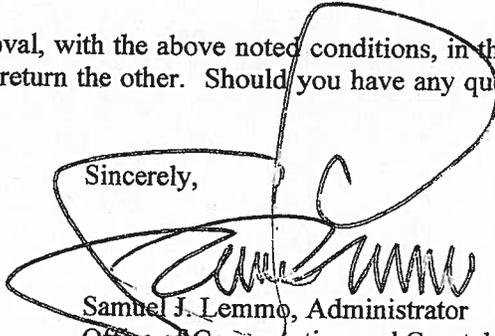
Therefore, authorization is hereby granted for the proposed planting of eight (8) fruit trees and 13 blueberry trees located on the subject parcels in Wailea, South Hilo, Hawai'i and is subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of Chapter 13-5, HAR;
2. The applicant, 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 approval or relating to or connected with the granting of this approval;
3. The applicant shall comply with all applicable Department of Health administrative rules;
4. The applicant shall modify current plans and ensure that total ground disturbance will be less than 2,000 sq. ft. to be in conformance with HAR §13-5. Failure to do so may cause this approval to be suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
5. 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, and completed within three years of the approval of such use.
6. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
7. In issuing the approval, the department has relied on the information and data, which the applicant has provided in connection with the application. In addition, If, subsequent to the issuance of the approval such information and data prove to be false, incomplete, or inaccurate, this approval may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
8. Where any interference, nuisance, or harm may be caused, or hazard established by the use the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
9. The applicant shall implement typical Best Management Practices (BMPs) while conducting any land use in the conservation district;
10. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property;
11. Should any unanticipated problems occur which may affect public health, safety or welfare, the Department may require immediate removal of all project components;

- 12. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during planting activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 13. Other terms and conditions as prescribed by the Chairperson; and
- 14. Failure to comply with any of these conditions shall render this approval void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other. Should you have any questions, you may contact me at 587-0377.

Sincerely,



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

Receipt acknowledged:

_____ Date _____
Applicant's signature

c: Chairperson
Hawai'i Board Member
HDLO
County of Hawai'i, Planning Department

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

RECEIVED
June 9 2015
OFFICE OF CONSERVATION
AND COASTAL LANDS

2015 JUN -9 A 11: 4 .

DEPT. OF LAND &
NATURAL RESOURCES
Attn: Site Plan Approval Request for a Structure Accessory to Approved Use at Wailea, South Hilo,
Hawai'i Tax Map Key (TMK): (3) 2-9-003: 029 (Subject Land)

I am proposing to build a storage and processing structure including a restroom (toilet) facility therein in support of my existing landscaping and farming activities currently ongoing at my property. The proposed structure would be in the order of 1,200 sq. ft. (30 ft. X 40 ft.). It would be used to store various pieces of equipment used for the gardening/harvesting of garden produce, fruit tree maintenance and harvesting/processing of fruit, general property maintenance, access road maintenance toilet and washroom facilities on site (presently there are no toilet facilities on the property resulting in less than desirable conditions when attending to the various noted chores/uses on the property).

For reference I already have a large Kubota tractor, small truck, a tractor type tow behind trailer, roto tiller, tractor mounted weed sprayer, garbage bins, composting bin, riding mower, misc. tools and gardening implements, tree pruning equipment, a chain saw (recently purchased in order to dispose of 3 trees downed by high winds and lightning), a chipper shredder, wheelbarrow, tools, oil, gasoline and diesel fuel containers, herbicide and pesticide chemicals, fold up chairs and table, drinking water supply, workboots and work clothes, an extension ladder. All of these items are used to support my existing Approved Land Uses on the subject property (aprox. 4.5 acres). At present the noted equipment etc. are all stored off site.

Their use on the property means that I must move my equipment over 8 miles to the property in order that I may support my current maintenance of the property and the approved uses (ie. Garden and fruit trees). Current maintenance of my property also requires that I immediately transport all garbage and waste relating to current approved land uses off site daily as there is no approved storage facility on the property to support the existing land uses. Not having a Structure Accessory to my current uses is placing an unfair burden on my proper use of my property.

All of the present uses cited are private and not commercial in nature. The storage/processing structure would have a concrete floor, windows and doors. The structure would be located along the Western boundary of the property. Only minimal leveling of the site will be required (see topographical survey document attached with sketch of planned structure location) and soil disturbance would not extend beyond a 3 foot perimeter around the structure. The structure would also be set back approximately 150 ft. mauka from the top of pali and aprox. 50 ft. East of the Western boundary of the TMK parcel 029 and more than 25 ft. from any existing or intended TMK parcel line. Its planned location will not require a roadway constructed to it as the existing access road to the Western boundary of the lot is adequately located for easy access to the planned structure.

The applicant has noted in DLNR Enforcement KA 13-18 submissions by DLNR (Page 4) for a property in the "LIMITED" subzone of the Conservation District wherein it is stated that

.....

"The storage shed and restroom facilities are considered "Minor" since the construction of these existing features (if these land uses were accessory to a permitted land use) would require a Site Plan Approval under the permit prefix "B"."

The Applicant purchased the subject land in 2014. The parcel is in the "RESOURCE" subzone of the Conservation District. The Applicant wishes to draw to the attention of DLNR the noted property enforcement action KA 13-18 is for a property in the Limited Conservation sub-zone which carries a higher degree of protection than my property which is in the Resource Conservation sub-zone.....

§13-5-12 Limited (L) subzone. (a) The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities.

§13-5-13 Resource (R) subzone. (a) The objective of this subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas.

The Applicant holds that his need for the Structure Accessory to a Use is consistent with the above noted design objective in HAR 13-5-13 Resource subzone (in order to facilitate that the Applicant ensures, proper management and sustainable use of the natural resources of his property.)

The Applicant has received Site Plan Approvals from DLNR for various fruit tree plantings on the property as well as a garden on an adjacent parcel TMK lot 013. The Applicant also has informed DLNR that the property has been maintained largely as mowed lawn for at least 13 years with some plantings of melons, squashes, coconut trees, banana trees and harvested and unharvested bamboo plantings continuously since the farming of sugar cane on the land ceased around 1992. The Applicant has made DLNR aware of all of these existing uses in several past correspondence. The Applicant states that all of his current uses of the Property are Permitted Uses according to HAR and the planned Accessory Structure would be used in support of these Permitted uses. It would be a New structure and is properly provided for in Hawaii Administrative Rules (HAR) 13-5-22, P-9 STRUCTURES ACCESSORY (B-1) Construction or placement of structures accessory to existing facilities or uses.....

While the Applicant did write DLNR in early April requesting an official Determination respecting the type of permit that would be required for this intended *Structure Accessory to a Use* no formal Determination was ever received. The DLNR response (Corr: HA 15-157) was incomplete using vague statements like

"we believe that a Conservation District Use Application (CDUA) would be required pursuant to Hawaii Administrative Rules (HAR) 13-5-22, P-9 STRUCTURES ACCESSORY TO A

LAND USE.

While the applicant repeatedly wrote to DLNR requesting a formal Determination the applicant holds that he never received a 'formal Determination' as provided for in HAR 13-5-30. The Applicant also repeatedly wrote to DLNR informing that his intended structure was a New structure HAR 13-5-22 (P-9) and was not respecting an Existing Structure HAR 13-5-22 (P-8) as cited by DLNR in the noted response (Corr: HA 15-157).

Now, in addition to the Applicant's belief that P-9 applies in his case and not P-8 as DLNR cited in CORR: HA 15-157, with the new information cited earlier in this correspondence.....

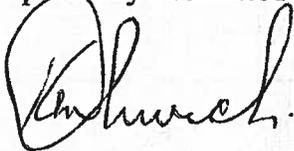
The applicant has noted in DLNR Enforcement KA 13-18 submissions by DLNR (Page 4) that

"The storage shed and restroom facilities are considered "Minor" since the construction of these existing features (if these land uses were accessory to a permitted land use) would require a Site Plan Approval under the permit prefix "B"."

the Applicant is firmly of the belief that his Application in this instance is properly requested as a Departmental Site Plan Approval and is thus requested for in this letter.

Please find enclosed with this letter \$50.00 (application fee), a contour survey map showing the planned location for the structure.

Respectfully submitted by,

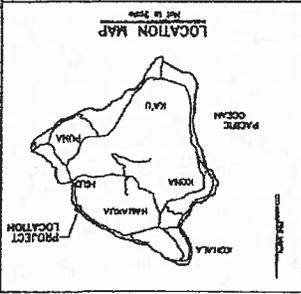
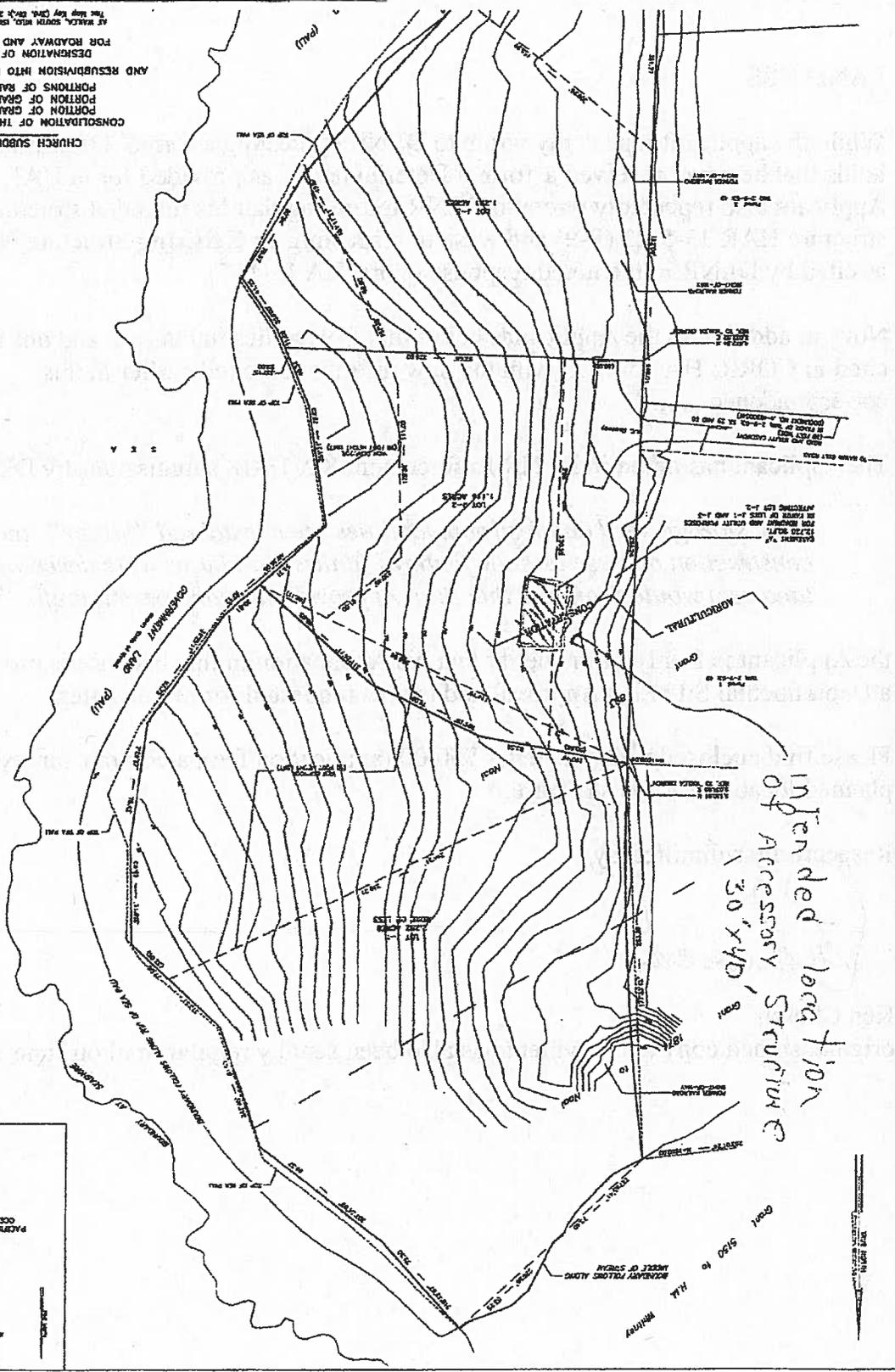


Ken Church

original signed copy and payment has also been sent by regular mail on June 3, 2015

CONSOLIDATION OF THE FOLLOWING:
 PORTION OF GRANT 1874 TO MAUI
 PORTIONS OF RAILROADS RIGHT-OF-WAY
 AND RESUBDIVISION INTO LOTS J-1, J-2 AND J-3
 DESIGNATION OF EASEMENT "A"
 FOR ROADWAY AND UTILITY PURPOSES
 AT KAHALA, SOUTH SHORE, ISLAND OF MAUI, HAWAII
 THE MAP KEY (ENCL. 204), 2-9-74, 13, 23 and 30

CHURCH SUBDIVISION



Intended location
 of Accessory Structure
 130' x 40' G.M.A.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

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

Ref: OCCL:LY

CORR: HA 15-157

Mr. Ken Church
400 Hualani Street, Suite 275
Hilo, Hawai'i 96720

JUL - 2 2015

SUBJECT: Inquiry Regarding an Accessory Structure at Wailea, South Hilo, Hawai'i
Tax Map Key (TMK): (3) 2-9-003: 029

Dear Mr. Church:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your site plan request for an accessory structure to be constructed on the subject TMK for the current maintenance of your three properties located in Wailea, South Hilo, and further identified as TMKs (3) 2-9-003: 013, 029, and 060.

According to the additional information you have provided, you are proposing to build a storage and processing structure in support for your existing landscaping and farming activities currently ongoing at your properties. The proposed structure would be on the order of 1,200 square feet (30 feet x 40 feet) and be used to store various pieces of equipment to be used for the gardening/harvesting of garden produce, fruit tree maintenance and harvesting/processing of garden produce, fruit tree maintenance and harvesting/processing of fruit, general property maintenance, access road maintenance, etc. The storage facility will also include the construction of a toilet and washroom facilities as there are currently no such facilities on the property.

After further analysis and consideration regarding your proposal, the OCCL continues to stand by our original determination that a Board permit and Environmental Assessment (EA) will be required. You may apply for a Board permit under Hawai'i Administrative Rules (HAR) 13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (D-1) *Major alteration of existing structures, facilities, uses, and equipment*. Additionally, as the structure you are proposing is connected with the harvesting and processing of your produce, you may also consider applying under 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 approved simultaneously with the permit, is also required.*

As stated in our earlier letter, when you are ready to submit an EA and CDUA for your proposed structure, please remember to be as detailed as possible and provide site plans including, but not

EXHIBIT 7

Mr. Ken Church

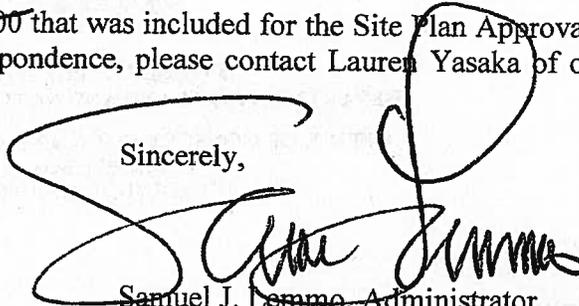
Corr: HA 15-157

limited to, construction, grading, site restoration, landscaping, fire protection, or any other plans with your application for the Department's review and approval.

~~\$50.00~~
\$70.00

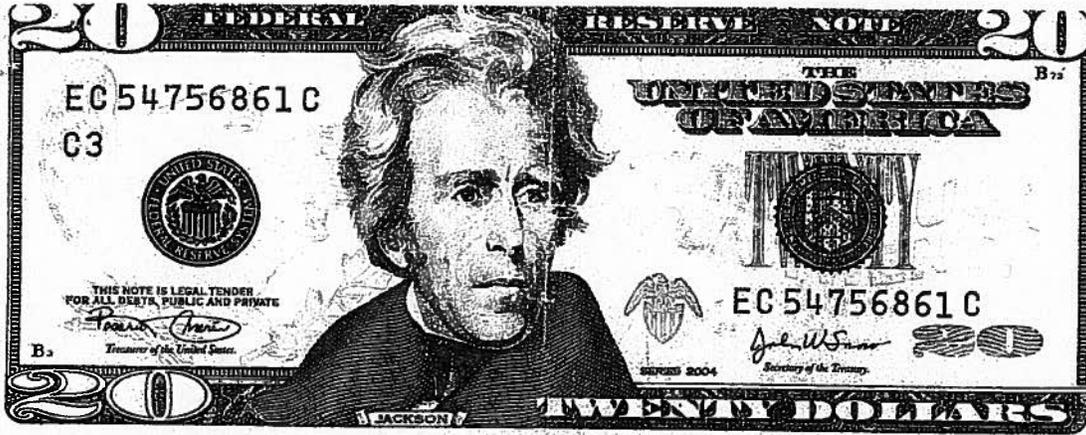
We are returning to you your ~~\$50.00~~ that was included for the Site Plan Approval. If you have any questions in regards to this correspondence, please contact Lauren Yasaka of our Office at (808) 587-0386.

Sincerely,



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

c: HDLO
County of Hawai'i, Dept. of Planning



Ken Church
Corr.: HA 15-157
Returned CASH



July 10, 2015

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

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2015 JUL 15 P 4: 24

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Attn: Lauren Yasaka

Re: DLNR/OCCL CORR: HA 15-157 dated July 2, 2015

Notice of Appeal

Dear Ms. Yasaka,

Again your office has failed to answer a number of related questions that I raised in correspondence as part of my site plan approval request. It is a legal requirement in HAR which clearly requires that your office "work with the public early assisting them in planned shoreline/coastal development". While I did request the assistance of OCCL in developing my application for a Structure Accessory to a Use ahead of advancing the application, I did not receive any such assistance.

First I asked for a "DETERMINATION" as provided for according to HAR. The reply that I received stated "in our opinion" and not a "determination". When clarification was requested it also proved insufficient in language. Then in a telephone discussion with you, you stated that the letter that was sent was "**not a determination**". Now, in the current denial of my site plan approval application letter it is referred that the original "opinion" was, in fact, a "determination". If this sounds confusing to you just imagine how I, an unskilled member of the Public, has been confused by your correspondence with me!

You now have declined my application, again without an explanation given to the questions that I raised. As ever, your office seems first to not reply to questions properly raised ahead of time and subsequently, to have the policy of saying no with no recommendations or suggestions as to how to resolve issues that seemingly should be 'allowable' by HAR. This gives the appearance to me that somehow your office is of a belief that it, and its employees, are above the law.

While not intending to threaten but rather to inform OCCL, this is not the first time that I have referenced HAR to your office. I believe that now is another appropriate time that I again direct your attention to it.....

HAWAII REVISED STATUTES, CHAPTER 205A
COASTAL ZONE MANAGEMENT

(7) Managing development;

(A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;

(B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and

(C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

(8) Public participation;

(A) Promote public involvement in coastal zone management processes;

(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and

(C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

§205A-3 Lead agency.

The lead agency shall:

(2) Provide support and assistance in the administration of the coastal zone management program;

§205A-4 Implementation of objectives, policies, and guidelines

(a) In implementing the objectives of the coastal zone management program, the agencies shall give full consideration to ecological, cultural, historic, esthetic, recreational, scenic, and open space values, and coastal hazards, as well as to needs for economic development.

§205A-5 Compliance.

(a) All agencies shall ensure that their rules comply with the objectives and policies of this chapter and any guidelines enacted by the legislature.

(b) All agencies shall enforce the objectives and policies of this chapter and any rules adopted pursuant to this chapter.

§205A-6 Cause of action.

(a) Subject to chapters 661 and 662, any person or agency may commence a civil action alleging that any agency:

(1) Is not in compliance with one or more of the objectives, policies, and guidelines provided or authorized by this chapter within the special

management area and the waters from the shoreline to the seaward limit of the State's jurisdiction; or

(2) Has failed to perform any act or duty required to be performed under this chapter; or

(3) In exercising any duty required to be performed under this chapter, has not complied with the provisions of this chapter.

(b) In any action brought under this section, the lead agency, if not a party, may intervene as a matter of right.

(c) A court, in any action brought under this section, shall have jurisdiction to provide any relief as may be appropriate, including a temporary restraining order or preliminary injunction.

(d) Any action brought under this section shall be commenced within sixty days of the act which is the basis of the action.

(e) Nothing in this section shall restrict any right that any person may have to assert any other claim or bring any other action.

§205A-32 Penalties.

(a) **Any person** who violates any provision of part II or part III shall be liable as follows:

(1) For a civil fine not to exceed \$100,000; or

(b) In addition to any other penalties, any person who is violating any provision of part II or part III shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.

(c) Any civil fine or other penalty provided under this section may be imposed by the circuit court or may be imposed by the department after an opportunity for a hearing under chapter 91. Imposition of a civil fine shall not be a prerequisite to any civil fine or other injunctive relief ordered by the circuit court.

§205A-33 Injunctions.

Any person or agency violating any provision of this chapter may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of this chapter in a suit brought by the authority or the lead agency.

In light of these HAR statutes I request that you review my correspondences relative to A Structure Accessory to a Use and now answer the unanswered questions raised in those correspondences.

In your CORR: HA 15-157 you also stated.....

Additionally, as the structure you are proposing is connected with the harvesting and processing of your produce, you may also consider applying under 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 approved simultaneously with the permit, is also required.

Just to be clear, in order that there is no misunderstanding, my proposed Structure Accessory to a Use was not intended for commercial agriculture as you well know as you gave me the site plan approval to have those trees and garden. Also, the intended Structure Accessory to a Use was only intended to marginally support the maintenance of my parcel 060 and rather was mostly intended to be used in support of my private agricultural use and maintenance of parcels 029 and 013. Where am I suppose to store my tools to facilitate caring for the property, the trees and garden that OCCL already permitted. I also need a toilet for use on the parcel in respect of the environment and community. What can you recommend for this period of time while waiting for all the approvals?

I can advise that the Administrator of your Dept., directly stated to me that OCCL **“discourages” any commercial use of my “Conservation Lands” including for Commercial Agriculture!** This stated position is surprising given that such is an allowable land use in HAR 13-5. If the Administrator disagrees with the accuracy of this quote that I assert that he made I request that he clarify exactly what he meant.

I will remind that past correspondence with OCCL has also been clouded by OCCL seemingly intentionally misquoting and misapplying HAR. The example that I am citing is where I received correspondence regarding my site plan approval for a garden from OCCL wherein it was stated, **in a directly quoted excerpt from HAR**, with only one word changed, that **'introduced species would not be allowed'** in the garden. While this was subsequently corrected, this was an additional early indicator to me of how OCCL department staff seem to obfuscate and delay in tedium and errors any application processes that I may advance to OCCL.

I noticed similar OCCL conduct in correspondence to the previous owner of my parcels, for example, even stating that the previous owner didn't own the land in question and must purchase it from BLNR before his application would be considered, at which time the previous owner threw his hands up and put the land up for sale. This, after spending hundreds of thousands of dollars to advance his applications and including a copy of his deed in his application showing that he owned the land. Shouldn't OCCL be responsible for inaccurate statements such as this? Another example of misapplication of HAR is a statement by OCCL that **“Parceling is discouraged in Hawaii”**. I have found no such reference to this in HAR and asked for clarification but received none. To this day this remains another of many unanswered questions that I raised with OCCL.

I now draw your attention to, among other things, OCCL's comments **“Parcelling is discouraged in Hawaii”** and **'commercial agriculture on Conservation lands is discouraged'**. Some time ago I inquired in written correspondence with OCCL whether they had written or unwritten guidelines by which they administered HAR to which

OCCL responded that there was none. These quotes from OCCL correspondence are either in error or the statement that there were no unwritten guidelines is in error. Please clarify which is correct?

In light of this, I question the sincerity of your recommendation that I file an application to conduct a large scale commercial agricultural operation. It seems that it would most likely be a waste of time and money given the Administrators stated opposition to such a use. This is particularly the case given OCCL's Department's track record of unanswered questions regarding my requests for information in order to assist me in developing my coastal land, and I will add, often repeatedly requested without satisfactory complete responses from OCCL and most of the time, none at all.

I began the process of communicating with your office over a year ago regarding my parcels of land. Initially, **before I purchased the parcels**, OCCL responded to questions that I raised both during telephone conversations and in writing. In particular, while unrelated directly to the subject matter that is the purpose of this letter, I draw your attention to correspondence and conversations with and from OCCL wherein OCCL stated that through consolidation of the 6 lots and resubdividing them into 3 that I could increase the size of the lots such that they would qualify for a MDA (maximum developable area) for a residence of 5,000 sq. ft. on each of the 3 resulting lots.

Around that same time OCCL recommended that I use a professional to advance my applications to OCCL. Several professionals that were recommended that I deal with declined, generally stating that they no longer cared to advance applications to OCCL as OCCL were exceeding difficult to work with. When I finally found one professional that agreed to simply meet with the OCCL Administrator on my behalf, the Administrator stated directly that I would only be allowed an MDA of 3,500 sq. ft. on each of parcels 060 and 013 and would only be allowed a MDA of 5,000 sq. ft. on parcel 029, reversing OCCL's previous written and spoken recommendations of 3 months previous. This particular professional then was discouraged to advance the application also. As a result of this and the lack of professionals willing to advance my permits, I determined to advance further inquiries and plans directly myself to OCCL and felt encouraged by the language in HAR to do so.

Before I purchased the parcels OCCL recommended that I familiarize myself with HAR 13-5 and I have. In light of the referenced reversal of OCCL's MDA position referred to herein and subsequent unanswered questions in correspondence, I will submit to you that OCCL is thus responsible for the process of dealing directly with me, rather than through a professional representative. If my questions seem tedious and time consuming for OCCL to fully consider and respond to, as has been the stated position of the Director OCCL, your office bears the full responsibility of having to deal directly with me for the stated reasons.

Now turning to the present situation regarding the current correspondence denying my site plan approval for a Structure Accessory to a Use which is allowable in HAR. I remain without advice from OCCL, which I have requested, on what process I may employ to appeal this decision. I therefore request that you give consideration to.....

*HAWAII REVISED STATUTES
CHAPTER 91
ADMINISTRATIVE PROCEDURE*

§91-2 Public information.

(a) In addition to other rule making requirements imposed by law, each agency shall:

(1) Adopt as a rule a description of the methods whereby the public may obtain information or make submittals or requests.

(2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency.

(3) Make available for public inspection all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions.

(4) Make available for public inspection all final opinions and orders.

(b) No agency rule, order, or opinion shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as here in required, except where a person has actual knowledge thereof.

§91-14 Judicial review of contested cases.

(a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law. Notwithstanding any other provision of this chapter to the contrary, for the purposes of this section, the term "person aggrieved" shall include an agency that is a party to a contested case proceeding before that agency or another agency.

(b) [2004 amendment repealed June 30, 2010. L 2006, c 94, §1.]

*Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within **thirty days** after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to rule of court, except where a statute provides for a direct*

appeal to the intermediate appellate court, subject to chapter 602. In such cases, the appeal shall be treated in the same manner as an appeal from the circuit court to the intermediate appellate court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal (except in cases appealed under sections 11-51 and 40-91). The court in its discretion may permit other interested persons to intervene.

Continuing further with HAR 91.....

Rules of CourtAttorney General Opinions.....Law Journals and Reviews

Case Notes (page 25)

Where no express procedure provided in Maui charter or Maui special management area rules for appeal of Maui planning director's decision on a minor permit application to the Maui planning commission, and commission delegated authority to render final decision on minor permit applications to director pursuant to §205A-22, director's decision not to process developer's application was a final decision equivalent to a denial of the application and was thus appealable under subsection (a). 88 H. 108, 962 P.2d 367

As near as I can tell from all of these quotes I take it that unless you provide me with a way to appeal the subject decision, as I requested that you do in past unanswered correspondence, respecting my Structure Accessory to a Use I only have 30 days to file an appeal in court to seek the court's determination. In light of the fact that I am currently in Fiji and I would have to, at considerable expense, travel to Hawaii to meet with advisers and file an appeal in court I request that you respond to this correspondence within 7 days or I will begin the process of appeal.

Finally be advised

1. If I am not satisfied that OCCL has sufficiently responded to the questions that I have raised in correspondences regarding my planned Structure Accessory to a Use by July 17th I will view it as the same as all of the questions are unanswered and I will begin processes and actions to formalize any redress that I may rightfully seek.
2. Any such filings may directly include or may be subsequently undertaken seeking just remedy regarding my belief that members of the Department OCCL are in violation of the statutes of HAR 205A which I have referenced earlier in this letter.

I am a reasonable person and I respect the law. I have observed that many people disregard the law and simply conduct unpermitted uses on their parcels because of the tedious, unproductive, obfuscated, expensive process of obtaining permits from OCCL. I am a law abiding person and I remain committed to due process. The opportunity still

exists for satisfactory resolution to these issues without unnecessarily involving these more difficult resolution processes that I have discussed herein.

Sincerely and respectfully submitted by,

Ken Church

July 13, 2014

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

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2015 JUL 13 A 8:12

Attn: Lauren Yasaka

Re: DLNR/OCCL CORR: HA 15-157 dated July 2, 2015 and my subsequent letter dated July 10, 2015 titled **Notice of Appeal**.

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

SUPPLEMENTAL TO REVERENCED NOTICE OF APPEAL

Dear Ms. Yasaka,

I will take this opportunity to further supplement the Reference **Notice of Appeal**.

I will point out also that this letter may not have been necessary had your office responded to my various questions in letters and inquiries regarding the Site Plan Approval and Determination which began in early April, 2015. I did request in a previous communication that it be described to me what 13-5-22 (P) 8 and (P) 9 meant as they applied to my planned coastal development as we apparently have different views of their meaning. The request stated that such an explanation would assist me in developing a site plan approval application that would more favourably suit me. No such explanation was ever received from DLNR/OCCL. Frankly many other questions that I raised also remain unanswered by DLNR/OCCL.

Now turning to your CORR: HA 15-157 wherein you reference HAR 13-5-22 (P) 8 stating OCCL's continuing belief that my planned structure was governed by

(HAR) 13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (D-1) **Major alteration of existing** structures, facilities, **uses** and equipment.

and then you refer to HAR 13-5-2 wherein a definition is given of

"Major alteration" is defined as work done to an existing structure, facility, or use that results in more than a fifty percent increase in the size of the structure, facility, or use.

As there is no existing structure or facility on the parcels this definition can only apply to the current uses of the parcels. My permitted garden occupies something in the order of 2,000 sq. ft. My permitted fruit tree plantings of 12 trees occupy some space also but it is subject to interpretation just how much space they occupy. The shade canopy of the 12 permitted fruit trees occupy an area in orders of magnitude greater than over 400 sq. ft (all that is required to qualify my Structure Accessory to a Use as being 1,200 sq. ft./50% of the area of permitted land uses). Taken together these 2 permitted uses comprise 2,400 sq. ft. of land use.

It bears reminding OCCL that there are other permitted uses according to HAR for my property such as property maintenance. This includes mowing the grass etc. I will remind that there exists something of the order of 3 acres of grass that is regularly mowed on the

parcels. There are many other maintenance related "approved" land uses that require no approval from OCCL. HAR outlines these (ie weed control, driveway maintenance, pruning of trees etc. Etc.) all of these relate to the entire property. Next I direct you back to the definition of Major alteration which requires that in order to be considered in 13-5-22 (P) 8 a Major Alteration to the existing permitted uses would have to comprise an area **exceeding 50% of the size of the permitted uses** which include a garden and fruit trees. My Structure Accessory to a Use was described in my site plan approval request comprised 1,200 sq. ft.

I trust that this additional information will assist you in re-considering OCCL's denial of my site plan approval request.

Please be mindful that I still request a response by July 17th to the subject Notice of Appeal as I will otherwise make arrangements to fly back to Hawaii to take whatever steps I can to rightfully exercise the use of my land. According to the HAR's that I cited in my Notice of Appeal I only have 30 days from July 2 to file an appeal of OCCL's decision in court. While I did request OCCL's advice regarding any possible appeal process none was given.

Also, if it comes to my having to fly back to Hawaii, I also may file court papers according to the sections of HAR that I cited in my Notice of Appeal as it regards my numerous unanswered questions that OCCL continue to not respond to in order to assist me in the rightful development of my coastal property. Had OCCL effectively communicated with me this matter would never have evolved into the formal process that it now is. We possibly would have mutually understood the meanings of (P) 8 and (P) 9 and the definition of Major Alteration of Existing Uses and my filing for a structure accessory to a use would have reflected that.

There also continues to be the existing case DLNR Enforcement KA 13-18 wherein your office advised the BLNR " The storage shed and restroom facilities are considered "Minor" since the construction of these existing features (if these land uses were accessory to a permitted land use) would require a Site Plan Approval under the permit prefix "B".

It would seem that this property owner was simply maintaining the 1/3 of an acre in a more restricted Conservation zone than my parcels. There was no mention in the Department's recommendation to the BLNR that there existed any more than grass and bushes to be maintained on the subject property.

Thank you for your additional consideration.....

Respectfully Submitted by,

Ken Church

July 14, 2014

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

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2015 JUL 13 P 3 32

Attn: Lauren Yasaka

Re: DLNR/OCCL CORR: HA 15-157 dated July 2, 2015 and my subsequent letter to you dated July 10, 2015 titled **Notice of Appeal**.

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Second (2nd) SUPPLEMENTAL TO REVERENCED NOTICE OF APPEAL

Dear Ms. Yasaka,

I will take this opportunity to further supplement the Reference **Notice of Appeal**.

Yesterday I undertook an extensive review of my correspondence file to and from DLNR/OCCL in order that I may identify the numerous examples that I believe exist wherein I have requested information of your office in order to assist me in the planning and development of my coastal property. During that review I have found numerous questions that remain unanswered by DLNR/OCCL. In the interest of keeping this letter specific to my Site Plan Approval request of your office which was subsequently denied by your office I will now be referring to correspondence on this subject starting April 1, 2015 relating to a Structure Accessory to a use.

During the review I also discovered a copy of an email from the Administrator, Sam Lemmo, Dated April 24, 2015, wherein he replied to a letter that I had emailed to both his attention as well as yours dated April 23, 2015 (referencing your Corr: H 15-157). His email simply said "See below". I looked below and all I saw was the OCCL's standard address label. After that on a separate page I now have discovered, during yesterday's review of the referenced correspondence emails, seeming comments that hMr. Lemmo inserted into **excerpts** (in other words the whole body of the letter was not in the reply and some sections were incomplete and/or missing in his reply) from my letter to him April 23 (noted above).

To the point now I wish to draw to your attention that there still remains unanswered questions in that communication and now new ones that I will point to in this letter.

First I will point out again as I have in my Notice of Appeal and supplement letter thereto, dated July 13, that the question remains in my mind **what, if any, appeal process exists regarding your correspondence CORR: HA 15-157 wherein you denied my site plan approval request?**

While I note in the referenced email from Mr. Lemmo dated **April 24th** wherein he stated...

"There is no appeal process that I am aware of at this stage"

This quote appears to be the answer to my request dated **April 23rd** that your office describe how I may appeal the apparent "**Determination**" that was given earlier regarding whether my planned Structure Accessory to a Use qualified under P(9) or P(8). Now

existing permitted uses would have to comprise an area **exceeding 50% of the size of the permitted uses** which include a garden and fruit trees. My Structure Accessory to a Use was described in my site plan approval request comprised 1,200 sq. ft.

While Mr. Lemmo's response to question #1 states.....

"I am not sure what you are asking here. Accessory structures are defined in our rules under "definitions."

I can find no such definition for **Structures Accessory to a Use** in the definition section of HR 13-5. I can find a definition for "Accessory Use"

"Accessory use" means a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use.

Please identify where I may find the reference where you make the assertion that I can find Accessory Structures in the definition section of HAR 13-5?

Structures Accessory to a Use seem to particularly be referenced in P(9) and P(8). I therefore ask that your office consider this and respond to this whole question **what does (P) 9 apply to when compared to what (P) 8 applies to?** It is obvious to me that P (8) it is different than (P)9 and (P)9 seems to be intended to apply to new "minor uses", as defined in the definition section as being over a 10% increase and no greater than a 50% increase in use which I hold applied to my Site Plan approval request.

This was a fundamental question that I asked in order to assist me in developing my Site Plan Approval request. **It was improperly, incompletely and confusingly responded to. I maintain that any confusion that has resulted since is the fault of OCCL/DLNR by not communicating effectively with me in order to assist me "early in my planned development of my coastal lands".**

I finally refer you again to my email to you on June 4th wherein I identified enforcement KA 13-18 wherein OCCL identified to BLNR that a storage shed only required a site plan approval from OCCL. This was in a more restricted zone classification than mine and the structure was used to support landscape maintenance in an area around 1/3 of an acre 1/12 the area of my subject parcels. There was also no reference to a requirement for an EA. **Please advise why you require that I need a CDUA and FONSI when that was not stated as a requirement in the referenced enforcement?**

Another question that I have repeatedly asked in correspondence is.....
Does DLNR/OCCL see its role in implementing HAR from a position of neutrality, particularly as it respects rights granted to property owners in HAR 13-5 or does it see its administrative role more as responsible first to "protect and conserve conservation zoned lands?"

Now turning to Mr. Lemmo's reply to question #4 in my April 23rd letter.....

"You have asked us and received letters of approval at the administrative level. This practise can lead to "parceling" when many administrative approvals lead to a de facto situation in which a major permit should have been sought an an environmental document should have been prepared. I suggest you contact the State of Hawaii Office of Environmental control for more information on that matter. We are required to implement the rules of the Department of Health on these matters Title 200-11, HAR"

Subsequent to this reply you stated in your rejection of my Site Plan Approval Request that an EA and a CDUA would be required. In light of the evidence of my Notice of Appeal and the two supplements thereto dated July 13 and now this letter July 14th I continue to seek a re-consideration of OCCL's rejection and I will now also respond to the determination therein that an EA would be required. I will first say that it is my understanding that it is normally determined by their office and not yours whether an EA will be required. **Please state therefore whether that is the case or not?**

Now turning to HAR 11-200-8 which I have only had a few hours to review. I will first remind that the parcels of land currently suffered an EA process for a residence and substantial cut and fill and substantial landscape plantings.

Ref.http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully-Residence.pdf

It seems to me that my planned Structure Accessory to a Use **qualifies to be exempted** from requiring an EA. It appears that the current version of HAR 11-200-8 is dated 1996 but a review process is underway with proposed ammendments thereto. **Is the 1996 version the correct version for me to use?** I am inserting into the text of this letter various excerts from HAR 11-200-8 in italics interspersed with my comments shown in plain text. That version of HAR 11-200-8 states, among other things.....

Cumulative impact" means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

My first comment and observation flows from a differing opinion than mine expressed by your office some time ago. I view HAR 13-5 and HAR 11-200 are to be individually applied to each of my parcels of land and determinations by your office reflect that rather that my collective use of all of my parcels is what you consider. **If you can't agree with my position then we will probably sort this out in court someday. Therefore I ask you are you aware of any statute in HAR that brings clarity to this as it will assist me in the early stages of developping plans for my coastal parcels? Simply stated my rightful use of any of my parcels ought to be viewed separately and not**

(2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;

(3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:

(A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and

(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

WOW! HAR 11-200-8 exempts 3,500 sq. ft. residences, Multi-unit structures designed for up to 4 dwellings, certain Stores, Offices, and Restaurants and your office is advising me that it is your determination that my small Structure Accessory to a Use requires an EA. That seems unsupportable in HAR and absurd!

(4) Minor alterations in the conditions of land, water, or vegetation;

(5) Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;

(6) Construction or placement of minor structures accessory to existing facilities;

While the term "**minor structures**" does not appear to me to be defined in HAR 11-200-8, HAR 13-5 does define **minor and major structures** in its definition section neither of which apply to my Structure Accessory to a Use as it is not greater in area than 50 % of the existing uses that it is intended to support.

(7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;

(8) Demolition of structures, except those structures located on and historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS;

(9) Zoning variances except shoreline set-back variances; and

(10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.

*(b) All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when **an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment***

I submit that it is normal to have a residence, a garden, a few fruit trees and a storage shed on my parcels. I submit that my existing uses generally do not construe such a "cumulative impact" as contemplated in HAR 13-5 that it would be found to require an EA. I also submit that my parcels and particularly the area intended for the planned Structure Accessory to a Use were cultivated for sugar cane production up to 1992. It hardly seems possible that the area that I intended for my Structure Accessory to a Use is in a particularly sensitive environment.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in chapter 343, HRS, and each agency shall produce the records for review upon request.

Please provide me with copies of any such lists described in (d) and (e) in order to assist me in the early stages of my planned development of my coastal properties.

Respectfully submitted,

Ken Church

DAVID Y. IGE
GOVERNOR OF HAWAII



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

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

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

Ref: OCCL:LY

CORR: HA 15-157

Mr. Ken Church
400 Hualani Street, Suite 275
Hilo, Hawaii 96720

JUL 21 2015

SUBJECT: Site Plan Request for an Accessory Structure at Wailea, South Hilo, Hawaii
Tax Map Key (TMK): (3) 2-9-003: 029

Dear Mr. Church:

Thank you for your recent letters in regards to your proposal to construct a 1,200 square foot building on parcel (3) 2-9-003:029, as well as your comments in regards to exemptions under Chapter 343, Hawaii Revised Statutes. This letter is also meant to address your appeal.

Based on the information you have provided, you have requested a Site Plan Approval (SPA) to construct a storage and processing structure, including a restroom facility, in support of your existing landscaping and farming activities currently ongoing at your property pursuant to Hawaii Administrative Rules (HAR) §13-5-22, P-9 STRUCTURES, ACCESSORY (B-1) *Construction or placement of structures accessory to existing facilities or uses*. The proposed structure would be on the order of 1,200 square feet (30 ft. x 40 ft.) and used to store various pieces of equipment including a large Kubota tractor, a small truck, a tractor type tow behind trailer, a roto tiller, tractor mounted weed sprayer, garbage bins, composting bin, riding mower, miscellaneous tools and gardening implements, tree pruning equipment, a chain saw, a chipper shredder, wheelbarrow, oil, gasoline and diesel fuel containers, herbicide and pesticide chemicals, fold up chairs and table, drinking water supply, work boots and work clothes, and an extension ladder.

Under the Administrative Rules for the Conservation District, an accessory structure is defined as "a land use that is conducted *on the same property* as the principal land use, and is *incidental to, subordinate to, and customarily found in connection with* the principal land use." Hawaii Administrative Rules (HAR) § 13-5-2. Upon our review of the approvals we have granted you thus far, the only land use permitted on Parcel 29 is the planting of eight (8) fruit trees. This was approved by the Department on August 28, 2014 as a landscaping use under SPA HA 15-04.

Thus, based on the information in our files, your proposed 1,200 square foot building, including a restroom facility does not appear to be "subordinate to, and customarily found in connection with" the principal land use which, according to our records, consists of eight (8) fruit trees on Parcel 29. It appears that a small shed structure might be "customarily found" in connection with the

EXHIBIT 11

propagation and management of eight (8) fruit trees, but not a 1,200 square foot, slab on grade building with bathroom. As we understand that you also mow the grass on that parcel, if you need to maintain a riding lawn mower on the premises, a small shed could be accommodated under a P-9 accessory use.

If you review our Administrative Rules, you will find that we require major permits for structures half the size of the structure you propose. For example, a cabin, which is defined as "*a permanent structure not more than six hundred square feet under roof, intended for use in managing large or remote land areas or both,*" is an identified land use that would require a Conservation District Use Board Permit pursuant to HAR §13-5-22 P-13 (D-1). Also, a shelter, which is defined as "*structure used for sheltering from the elements, with a maximum floor area of six hundred square feet*" is an identified land use that would require a Conservation District Use Departmental Permit pursuant to HAR §13-5-22 P-13 (C-1). Your proposed structure is double in size compared to both of these identified land uses that require a Board or Departmental permit. Approval of a structure of the size you have proposed pursuant to a Site Plan Approval is not consistent with the other example uses in the Conservation District as indicated above. If you would like to pursue your request to construct a 1,200 square foot structure on Parcel 29, then we suggest you to instead apply for a Conservation District Use Board Permit under the Agriculture use category. At this time, we feel that this would be the most reasonable use category as your proposed shed will be used to store a large tractor and other equipment that are often associated with an agriculture use as well as the fact that you have stated that you will use the structure as a processing facility for your garden produce as well as your fruit. Please note that an agriculture use does not always imply a commercial use.

In regards to your appeal, we want to assure you that the Department has not made a final determination on your request for a structure. We notified you on April 13, and June 2, 2015 that a Board permit would be required for the structure you were proposing. We do not interpret this as a denial of the use. You are free to apply for the structure you have proposed, but it will require the filing of a Conservation District Use Application (Board permit) under the Agriculture use category. As part of the application, you should be prepared to submit preliminary construction plans as well as a description on how and where the structure will be constructed with mention of any necessary grubbing and grading as well as best management practices to be followed. You must answer all of the items within the CDUA. More information is also needed regarding the proposed restroom facility. It is unclear if the restroom will be connected to the County's municipal wastewater system or if a septic system will need to be installed. Details regarding the utility connections are needed.

If you would like to pursue the proposed 1,200 square foot structure as a P-9 accessory structure, you will need to fill out and return the attached application form with your application fee and necessary documentation. See HAR § 13-5-31.

As far as meeting the requirements of Chapter 343, Hawaii Revised Statutes, we acknowledge that single family residences less than 3,500 square feet can be exempt. However, section 11-200-8(b), HAR states that "All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment."

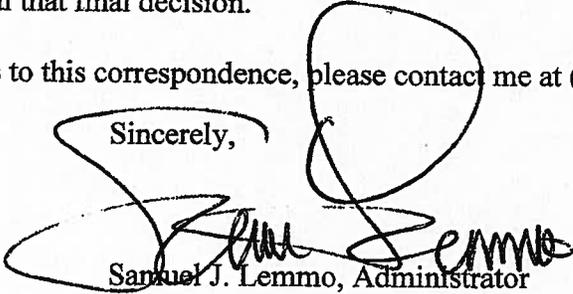
The Department has routinely required environmental assessments for single family residences within Conservation District lands, that may be "particularity sensitive" regardless of size. Moreover, we do not view the proposed 1,200 square foot structure as a "minor structure."

As your property is located within the Special Management Area (SMA), it is also the applicant's responsibility to comply with the provisions of Hawai'i's Coastal Zone Management law (Chapter 205A, HRS) that pertain to the Special Management Area (SMA) requirements administered by the various counties. Negative action on an application can be expected should you fail to obtain an official determination that the proposal is exempt from the provisions of the county rules relating to the SMA; an official determination that the proposed development is outside the SMA; or an SMA Use Permit for the proposed development.

You have also requested information as to how the Department's decision can be appealed. As we have indicated above, no final decision has been made so there is no basis for an appeal at this time. Also, we have requested that you inform us which type of application you intend to pursue. The type of application you pursue and the Department's response will determine the process for appeal. When a final determination is made on the application you submit, we will also inform you of the applicable procedure to appeal that final decision.

If you have any questions in regards to this correspondence, please contact me at (808) 587-0377.

Sincerely,



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

Attachment

c: Chairperson
HDLO
County of Hawai'i, Dept. of Planning

July 22, 2015

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

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OFFICE OF CONSERVATION
AND COASTAL LANDS

2015 JUL 22 A 8 06

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

FURTHER NOTICE OF APPEAL

Subject: Site Plan Request for an Accessory Structure at Wailea, South Hilo, Hawai'i
Tax Map Key (TMK): (3) 2-9-003: 029 and correspondence GA 15-157 dated July 21, 2015

Dear Mr. Lemmo,

Thank you for your correspondence GA 15-157 dated July 21, 2015. I will first remind that in my Notice of Appeal dated July 10th, 2015 and the 2 supplemental letters thereafter that I asked several questions again and again. Many of these questions still remain unanswered and I continue to await answers to the unanswered questions. The most confusing question remains: How many times or in how many different ways must I apply for a site plan approval to actually get an approval or a denial?

Now turning to the subject correspondence. I have taken particular note in Corr: GA 15-157 how you have taken the approach that my structure accessory to a use can only be considered to serve in conjunction with existing uses of Lot 029 IE. "*on the same property*". As you are probably aware the term "*property*" is not defined in HAR 13-5.

OCCL's subject correspondence appears to me to be in conflict with previous communications from OCCL wherein OCCL has taken the position that when considering any application for a use of my property you consider the use of all of the parcels collectively.

While there exists more than one example of this inconsistent application of HAR by OCCL I point particularly, as one example, to early correspondence last summer between me and OCCL regarding my request for 6 X 2,000 sq. ft. gardens on my 6 lots (3 parcels). I was advised by OCCL that any use over 2,000 sq. ft. on all of the lots combined would be viewed by OCCL as a single use which would require a CDUA which is a much more onerous application process than a simple department site plan approval as provided for in HAR.

Now when I turn to HAR 13-5, which you have relied upon in your correspondence to support your argument that the garden area is on a separate lot (lot 13) and therefore I cannot count it in my square foot calculation for the allowable area for a structure accessory to a use P(9), I find that HAR 13-5 does not offer a definition of the word

“property”. None-the-less the authors of HAR have used the word frequently in the regulations.

My “Deed to my property” describes my 3 TMK parcels as a single property that I have purchased stating.....

*“THAT FOR ten and no/100 DOLLARS (\$10.00), and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Garantor does hereby grant, bargain, sell and convey unto “Grantee, as Tenant in Severalty, in fee simple, **all of that certain real property** described in Exhibit “A” attached hereto and made a part hereof.”*

While I purchased 3 TMK's they are treated in my Deed to the Property utilizing the word **“property” in a singular tense.**

Exhibit A in the deed refers that the **property** purchased consists of 3 **parcels** of land.

Also HAR 13-5-22 has numerous references to “property”. Therein it is described that more than one lot can comprise a property.....

(C-2) **Consolidation of property** into a lesser number of legal lots of record currently existing and approved, which furthers the objectives of the subzone.

I draw your attention to this reference because property is described in the singular tense and may comprise many lots of record. This again is relevant as **one could not consolidate property into a lesser number of legal lots of record unless the property first comprised several legal lots of record.**

Webster's dictionary describes “property” as.....

“a thing or things owned; holdings or possessions collectively; especially, land or real estate owned.”

HAR 23-7 also discusses the term “property” stating.....

(c) Notice by Posting of Signs. Within ten days of filing the application for a variance, the applicant shall post a sign on the subject property notifying the public of the nature of the variance, the proposed number of lots, the size of the property, **the tax map key or keys of the property** and that they may contact the planning department for additional information. The sign shall give the address and telephone number of the planning department.

I draw your attention to the bold faced underlined section wherein **several tax map keys may be identified in a single property.**

Another section of HAR 23-7 continues to confirm the view that “property” can be comprised of many TMK parcels.....

Section 23-58.1. Posting of signs for public notification.

(a) Within ten days of filing the application for a subdivision, the applicant shall post a sign on the subject property notifying the public of the following:

- (1) The nature of the application;
- (2) The proposed number of lots;
- (3) The size of the property;

(4) The tax map key or keys of the property;

Again another section of HAR 23-7 confirms the view that "property" can be comprised of many TMK parcels.

Now today you are advising that a structure accessory to a use that would serve all of my property (particularly lots 013,029 but also 060) can only be considered as it would apply to lot 029. It is quite obvious that OCCL's rulings are inconsistent with each other and HAR.

Had your correspondence dealt with all of the questions that I asked in my notice of appeal and its supplements I would not have to be repeating this question again today!

I note in the subject correspondence wherein you vaguely now describe the qualities of the structures that are referenced in (P) 8 and (P) 9. I asked this question of OCCL some time ago and then again. OCCL chose to not respond to the question then and appear now to only be attempting to answer the question today in the vaguest way. Frankly your answer is inconsistent with HAR 13-5. OCCL continues to avoid, obfuscate and delay my rightful use of my property.

The evidence within HAR and Websters well confirms my views that my proposed Structure Accessory to a Use can appropriately support my garden on lot 013, my fruit trees on 029 and the general support of approved land uses on all of the lots, ie. maintenance. All of these uses comprise much more than 2,400 sq. ft. of use and my structure qualifies under (P) 9 as it does not increase the size of the approved property/land uses by more than 50%.

In the subject correspondence OCCL further refers me to other land uses described in HAR 13-5 that have nothing to do with my application. I am not applying to build a cabin or a shelter. I don't care what documents are required to support those applications. I am applying for a Structure Accessory to a Use which is well described in HAR 13-5-22-(P) 9.

I also note in your letter wherein you suggest that my property may be in a 'particularly sensitive environment'. I will remind that most of my property was cultivated for sugar cane production. The existing FONSI document for my property basically states that it is not a "particularly sensitive area". Please describe to me what characteristics my

further example of reckless or deliberate conduct on behalf of OCCL to avoid, delay and obfuscate my application.

Again turning back to the subject correspondence from OCCL. You refer that "*the Department has not made a final determination on your request for a structure.*" I submit that my application for a structure accessory to a use is **well described** in my letter to OCCL dated June 2, 2015 wherein I requested a "Site Plan Approval for a Structure Accessory to a Use" described in HAR 13-5-22 P-9. There followed thereafter an Appeal and 2 supplementary letters. As you currently hold that you have not made a "final determination" **I now request that you specifically do.** You state in the subject letter "*We do not interpret this as a denial of the use.*" It certainly seems to me that you have denied my **application!** In plain words, consider these final arguments that support my application and accept it with your normal conditions or deny it so I may seek my remedy through what ever avenue of appeal is appropriate/provided.

In the event that you deny my site plan approval as requested, again please identify the reasons and the proper appeal process.

Please!!! You complain that you have millions of acres to permit and manage. Wouldn't it be to both of our advantages for you to answer questions simply as required of your office so I can get on with the appropriate application process?? Can't I simply get some direct and concise answers in plain language to my well meaning and properly asked questions that will assist me in the early phases of my property development instead of all this inane back and forth for no reason?

How many times do I have to ask you for the site plan approval as I proposed??? In how many different ways do I have to ask for it or any of the other questions I've asked over and over??? How many times will you say one thing verbally **and** in writing and then reverse your decision??? I'm sure you have much better things to do and manage than a measly 4.6 acres of previously AG land.

I have noted on at least two occasions you have indicated to others that you hold a negative attitude towards me. Recognizing this, I would hope that you leave these personal matters behind and give me your answers as they solely pertain to my property and HAR. I pity the poor guy with a family and a job that unwittingly purchased Conservation Zoned land believing he would be able to get a permit for a home for his family.

Once again, to be perfectly clear, **My formal application for a site plan approval for a structure accessory to a use according to HAR 13-5-22 P9** remains as already requested. It was dated June 2, 2015. It is now close to 2 months on and I still have not received a formal yes or no to that request. Also to be clear the June 2 request was not

for a Determination. It was a site plan approval request similar in quality and in simple letter form as my previous site plan approval requests for fruit trees and a garden.

Respectfully Submitted,
Ken Church

July 22, 2015

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

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

2015 JUL 22 A 8:06

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

FURTHER NOTICE OF APPEAL (supplemental to letter titled Further Notice of Appeal also dated) July 22, 2014

Subject: Site Plan Request for an Accessory Structure at Wailea, South Hilo, Hawai'i
Tax Map Key (TMK): (3) 2-9-003: 029 and correspondence GA 15-157 dated July 21, 2015

Dear Mr. Lemmo,

Upon further review of OCCL correspondence GA 15-157 I have found a significant error in a quote from HAR that you provided in that correspondence. Specifically you state.....

"Under the Administrative Rules for the Conservation District, an accessory structure is defined as "a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use." Hawai'i Administrative Rules (HAR) § 13-5-2."

HAR 13-5-2 actually states.....

"Accessory use" means a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use.

The only definition of "Structure Accessory to a use is found in HAR 13-5-22.....

*P-9 STRUCTURES, ACCESSORY
(B-1) Construction or placement of structures accessory to existing facilities or uses.*

While you may choose to interpret otherwise HAR 13-5-2 clearly does not state what you have represented it to say. None-the-less I continue to hold that even if it did the word "property" in the quote excerpted from the subject correspondence refers to all 3 of my TMK parcels and not just TMK 029.

Furthermore you state in the subject letter.....

“Approval of a structure of the size you have proposed pursuant to a Site Plan Approval is not consistent with the other example uses in the Conservation District as indicated above.”

While it is true that my proposed structure is larger than the smaller ones that you have pointed to (which I none-the-less hold have no relevance to my structure) I have noted that OCCL frequently allows a very large water tank associated with residential use without requiring it to be calculated into the MDA of the residence. Such tanks frequently have a foundation. It would appear that such tanks are considered structures accessory to a use.

Thank you for your further consideration of these important matters.

Respectfully Submitted by,

Ken Church

August 6, 2015

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2015 AUG -6 P 2:46

State of Hawaii

Department of Land and Natural Resources

Office of Conservation and Coastal Lands

P.O. Box 621

Honolulu, Hawaii

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

supplemental to SPAA submitted on or around July 22, 2015

Subject: Site Plan Request for an Accessory Structure at Wailea, South Hilo, Hawai'i

Tax Map Key (TMK's): (3) 2-9-003: 013, 029, 060

Dear Ms. Yasaka,

I am in receipt of your email yesterday wherein you indicate that the subject SPAA is being referred to the BLNR for a final determination. In that email you indicated that the second and fourth Friday of each month is a scheduled meeting day and request that I indicate a suitable date for my attendance at that meeting. Friday, August 28th is the most suitable date for my attendance. If that is not possible Sept. 11th would be the next possible date. Delaying past that date would create a technical problem for me.

I also want to draw to your attention an error on page one of my SPAA wherein it is stated "*Tax Map Keys for property (TMK's): (3) 2-9-003: 029, 023, 029*" it should have rather stated "*Tax Map Keys for property (TMK's): (3) 2-9-003: 013, 029, 060*".

As a result of this new information (ie OCCL will not process my SPAA as provided for in HAR and now is referring to BLNR my SPAA) I request clarification from your

office whether my application is being treated as a CDUA or a SPAA? Also please provide me with a reference number for my application.

Further as a result of this new information and further consideration on my part I request that my SPAA be supplemented as follows.....

Lot 029 is comprised of an area over one acre in size.

Ref: Page 5,

Proposed use section of SPAA

Therein I wish to add at the end of the paragraph stating.....

The structure will support all property maintenance on all 3 of the TMK'S that comprise the property for which this structure accessory to a use is applied for. It will also support the 2,000 sq. ft. garden on Lot 013 and fruit trees.

The structure will also support the existing approved garden uses on lot 029 ref: garden use letter of approval CORR: HA 15-119. Leading up to that letter I detailed in numerous correspondences to OCCL and a telephone conversation with the Administrator leading up to OCCL approving my existing garden uses on lot 029. I identified the existing squash garden areas comprised 2 areas on lot 029. Each of those 2 garden areas on lot 029 are in the order of 2,000 sq. ft.

Ref: Page 17,

Long term impacts, Alternatives add as follows.....

For clarity the applicant has existing approved ag/garden land uses as follows.....

1. SPA: HA 15-04, dated **August 28, 2014**, planting of 8 fruit trees on lot 029 and 13 blueberry bushes on lot 013 (the blueberry bushes were subsequently removed and replaced according to.....)
2. SPA: HA 15-19, dated **Oct. 31, 2014**, deleting the blue berry bushes on lot 013 and planting 8 fruit trees along the border between lots 13 and 29 and developing a 2,000 sq. ft. garden on lot 013
3. CORR: HA 15-119, dated **Jan 28, 2015**, approval of 2 squash gardens located on lot 029 of an approx. area of 2,000 sq. ft. each (4,000 sq. ft. total on lot 029 existing and approved).

Please add the following alternatives...

1. If it is properly determined by the BLNR that the proposed structure accessory to a use can only be considered to be placed on the same lot as the 2,000 sq. ft. garden approved in SPA: HA 15-19 in order to qualify as a HAR 13-5-22 P9 structure I propose that SPA: HA 15-19 dated Oct 31, 2014 be amended to reflect that the 2,000 sq. ft. garden will be placed on lot 029 rather than lot 013 however the 8 fruit trees would remain along the border area of 013 and 029. (this would, however, be in addition to the two existing squash gardens on lot 029).

The applicant has been off-island since Dec. of 2014 and has not yet cultivated the mowed grass area on lot 013 for which the SPA for a garden was issued.

2. If the existing garden uses on lot 029 approved in CORR: HA 15-119 comprising approx. 4,000 sq. ft. are insufficient to qualify for a structure accessory to a use according to HAR 13-5-22 P9 the applicant would consider placing the approved garden area for lot 013 on lot 029 to replace one of the squash garden areas already existing and approved on lot 029 in the referenced CORR: HA 15-119.

The applicant notes that placing the approved 2,000 sq. ft. garden area SPA: HA 15-19, dated **Oct. 31, 2014** - on lot 029 would create a situation where there then would exist several gardens on lot 029 totaling more than 2,000 sq. ft. and, if now approved additionally, a 1,200 sq. ft. structure accessory to a use

also on lot 029. **Therefore** in order to bring **lot 029** more into conformance with conservation guidelines the applicant would consider...

(a) maintaining/replacing one of the existing squash garden areas as mowed lawn,

(b) replacing the other squash garden area with the existing approved garden area of 2,000 sq. ft. for lot 013 but now rather than on lot 013 now on lot 029 and

(c) building the proposed structure accessory to a use as applied for in his SPAA also on lot 029.

(d) the fruit trees existing and approved would continue to be grown there also.

The applicant holds however that an EA/FONSI need not be required which is supported by further commentary in this supplemental letter.

3. If it is further determined, in order to qualify under HAR 13-5-22 P9, that the proposed structure would be required to be reduced in size to an area not greater than 1,000 sq. ft. the applicant will consider reducing the size of the proposed structure accessory to a use to 1,000 sq. ft. Reducing the size of the structure to 1,000 sq. ft. would represent a considerable, cumulative decision/concession on the part of the applicant however and would not be taken lightly given the concessions already offered herein (loss of the 2 existing garden areas on lot 029, replacing one with the already approved garden area from lot 013) would result in a considerable reduction of the applicant's rightful land uses. (effectively three 2,000 sq. ft. gardens down to one)

Discussion.....

In correspondence

Supplemental to page 6 of SPAA

OCCL has stated to the applicant that OCCL will require that I may be required to submit an EA for this proposed land use described in this SPAA and supplemental documents thereto. In addition to what is stated in the SPAA as it regarded the potential need for a EA/FONSI for the proposed structure accessory to a use the

applicant wishes to draw the attention of BLNR that such a requirement is a **discretionary requirement** of OCCL/BLNR. The applicant draws to the attention of BLNR the following excerpts from his correspondence to OCCL mistakenly dated July 14, 2014 (actual date of writing was July 14, 2015)

I will first remind that lot 029 (where the proposed structure is contemplated) suffered an EA/FONSI process for a residence and substantial cut and fill and substantial landscape plantings.

Ref.http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully-Residence.pdf

This FONSI document was filed in 2008. It was for a 5,000 sq. ft. SFR on the same lot and in substantially the same location on lot 029 as my proposed 1,200 sq. ft. minor structure accessory to a use. This SFR was never built. The applicant's SPAA represents a considerable reduction in land use and intensity of land use over the previously referenced FONSI for this property/lot 029. The applicant holds that repeating/duplicating this former EA/FONSI is unnecessary for the current proposed SPAA and would thus result in inefficient use of precious OCCL staff time, BLNR time and general government resources.

I inquired of the office of OCCL whether I should supply a copy of this former EA/FONSI document to my SPAA. I was told that would not be necessary and OCCL would resource that EA/FONSI from government files and include it into my SPAA along with the existing updated botanical study which I have also supplied and is also in existing government files.

Some months ago OCCL required that I update the botanical study filed in that 2008 FONSI in order to rely on it for a CDUP HA 37-35 (combine and re-subdivide lots) dated April 30, 2015. When I inquired why an updated study would be required I was told that

'a bird(s) may have flown over the property and dropped a seed(s) since 2008 of new plant species that now need to be identified (if they exist).'

OCCL was well aware that the area involved with any contemplated land use comprised around 4 acres of mowed lawn that was formerly used for sugar cane cultivation. While I did update that botanical study and submitted it to OCCL in order to support my CDUA HA 37-35 it appears to have been unnecessary and added a large, unnecessary additional cost burden and delay of process to me in my application process.

The applicant wishes to point out there appears to me to be an inconsistency in how OCCL processes applications and in my particular case has unfairly burdened my processes in land uses in a seeming discriminating way. I documented this inconsistency to OCCL in that same letter incorrectly dated July 14, 2014 cited earlier herein. OCCL never clarified this apparent inconsistency in subsequent correspondence even though such was requested by the applicant. I point now to.....

Ref: CDUA O-A-3739 (reviewed at BLNR meeting July 10, 2015)

In that CDUA/P OCCL relied on a FONSI conducted in 2008, the same year as the referenced FONSI which I intended to rely on in my CDUA HA 37-35. In this CDUA/P no updated botanical study seems to have been required by OCCL even though the property was in a higher conservation rated and more sensitive environment than mine. Unlike mine it was also comprised a considerable acreage of natural botanical setting. That CDUA was seemingly processed and recommended to the BLNR without requiring an updated botanical study to be conducted by that applicant and it is unlikely the entire property was covered by the survey.

Now referring again to the content of that incorrectly dated July 14, 2014 letter....

HAR 11-200 (EA rules) appears to state that my planned Structure Accessory to a Use **qualifies to be exempted** from requiring an EA.

I am inserting into the text of this letter various excerpts from HAR 11-200-8 in italics interspersed with my comments shown in plain text. That version of HAR 11-200-8 states, among other things.....

***Cumulative impact**” means the impact on the environment which results from the incremental impact of the action when added to other **past, present,** and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

My property's (4.6 acres) **past** use was substantially utilized for sugar cane production up until around 1992 and subsequently substantially planted to gardens and lawn. Even if the applied for structure accessory to a use is approved for this property the property, as proposed, has experienced a more favorable reduction in the **cumulative use** up to the present. The former use was large scale commercial agriculture on aprox. 4 of the 4.6 acres up until 1992. Also the applicant has further offered to reduce the **present** existing 4,000 sq. ft. garden areas on lot 029 to 2,000 sq. ft. and eliminating the 2,000 sq. ft. garden area on lot 013. The applicant holds that the proposed structure accessory to a use when added to the reductions in **past, present and reasonably foreseeable future** actions cumulatively represent a net reduction in land use and intensity of land use and not an increase in either.

Now returning again to HAR 11-200.....

“Exempt classes of action” means exceptions from the requirements of chapter 343, HRS, to prepare environmental assessments, for a class of actions, based on a determination by the proposing agency or approving agency that the class of actions will probably have a minimal or no significant effect on the environment.

“Significant effect” or “significant impact” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the state’s environmental policies or long-term environmental goals and guidelines as established by law, or adversely affect the economic or social welfare, or are otherwise set forth in section 11-200-12 of this chapter.

I further stated in my July 14th letter.....

‘If OCCL believes this section above applies in the case of my planned Structure Accessory to a Use please state clearly how my applied for use is contrary to the State's environmental policies or long term environmental goals and guidelines?’

No explanation was given to the applicant in response to this question by OCCL.

§11-200-7 Multiple or phased applicant or agency actions.

A group of actions proposed by an agency or an applicant shall be treated as a single action when:

(1) The component actions are phases or increments of a larger total undertaking;

- (2) An individual project is a necessary precedent for a larger project;*
- (3) An individual project represents a commitment to a larger project;*
or
- 4. *The actions in question are essentially identical and a single statement will adequately address the impacts of each individual action and those of the group of actions as a whole.*

§11-200-8

Exempt classes of action.

(a) Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following list represents exempt classes of action:

.....

(3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:

(A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and

HAR 11-200-8 exempts **3,500 sq. ft.** residences, Multi-unit structures designed for up to 4 dwellings, certain Stores, Offices, and Restaurants. None-the-less OCCL advised me that an EA/FONSI would likely be required for my proposed **1,200 sq. ft. structure** (note A above where a 3,500 sq. ft. residence, 4-plex residences, stores, offices and restaurants can be exempt from requiring an EA).

(4) Minor alterations in the conditions of land, water, or vegetation;

.....

6. Construction or placement of minor structures accessory to existing facilities;

While the term "**minor structures**" does not appear to me to be defined in HAR 11-200-8, HAR 13-5 does define **minor and major structures** in its definition section neither of which apply to my Structure Accessory to

a Use as it is not greater in area than 50 % of the existing uses that it is intended to support.

(b) All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment

I submit that it is normal to have a garden, a few fruit trees and storage shed on my parcels. I submit that my existing uses generally do not construe such a "cumulative impact" as contemplated in HAR 13-5 that it would be found to require an EA.

I also submit that my parcels and particularly the area intended for the planned Structure Accessory to a Use were cultivated for sugar cane production up to 1992. It hardly seems possible that the area that I intended for my Structure Accessory to a Use is in a particularly sensitive environment. I also inquired of OCCL to identify to me what they believed, if in fact they did believe, was particularly sensitive about the environment on my property. OCCL never replied identifying that my property was in a particularly sensitive environment.

I will add here as supplemental information for BLNR consideration that in the event that I do someday apply to build a SFR on one of my 3 TMK parcels I support any requirement of OCCL and/or BLNR for an EA/FONSI at that time for that use. Turning back now again to the referenced letter dated July 14th

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent

expressed in these exempt classes and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in chapter 343, HRS, and each agency shall produce the records for review upon request.

While I requested of OCCL to provide me with copies of any such lists described in (d) and (e) in order to assist me in the early stages of my planned development of my coastal properties none was received.

Since the time of my purchase of the subject property I have attempted to work with OCCL in order that I may develop land uses compatible with HAR 13-5 and now particularly compatible with HAR 13-5-22 P9. I consistently wrote letters of inquiry seeking guidance from OCCL. Many of my inquiries of OCCL suffered incomplete responses from OCCL requiring that I write the same questions over and over again.

Some time back I identified to OCCL certain sections of HRS 205 A that requires that OCCL **'assist me early in my planning process towards developing my coastal land through staff contact and in plain language'**. While I identified to OCCL that they ought to answer my questions and be forthcoming only limited information has been offered which was sometimes inconsistent particularly with HAR 13-5.

Now turning to my comments again.....

In the early stages of my developing my SPAA for a structure accessory to a use I asked OCCL specifically.....

'how may I design my structure in order for it to qualify under HAR 13-5-22 P(9) instead of P(8) as they were requiring?'

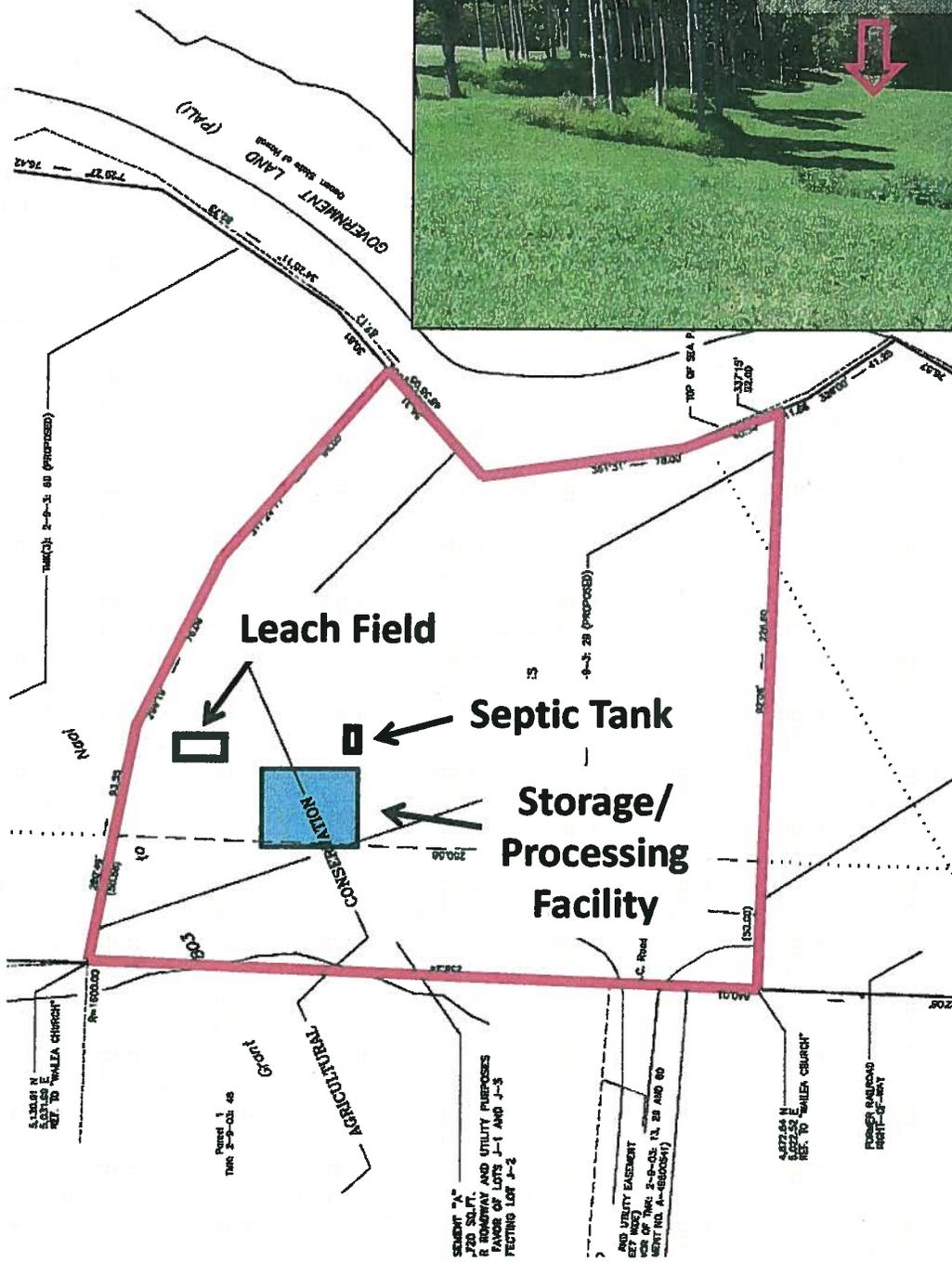
Several communications were exchanged without an answer to this question. Only after I finally submitted a SPAA did OCCL finally make any attempt to clarify this however even that was so vague as to be of little guidance to me.

The applicant holds that all of this information is of relevance to the current SPAA that is being considered by the BLNR. The applicant has used every reasonable effort to draft his application according to HAR 13-5. When he sought the assistance early from OCCL in developing his planned use of his coastal property little/incomplete assistance and proper guidance was given by OCCL.

Thank you in advance for your consideration.

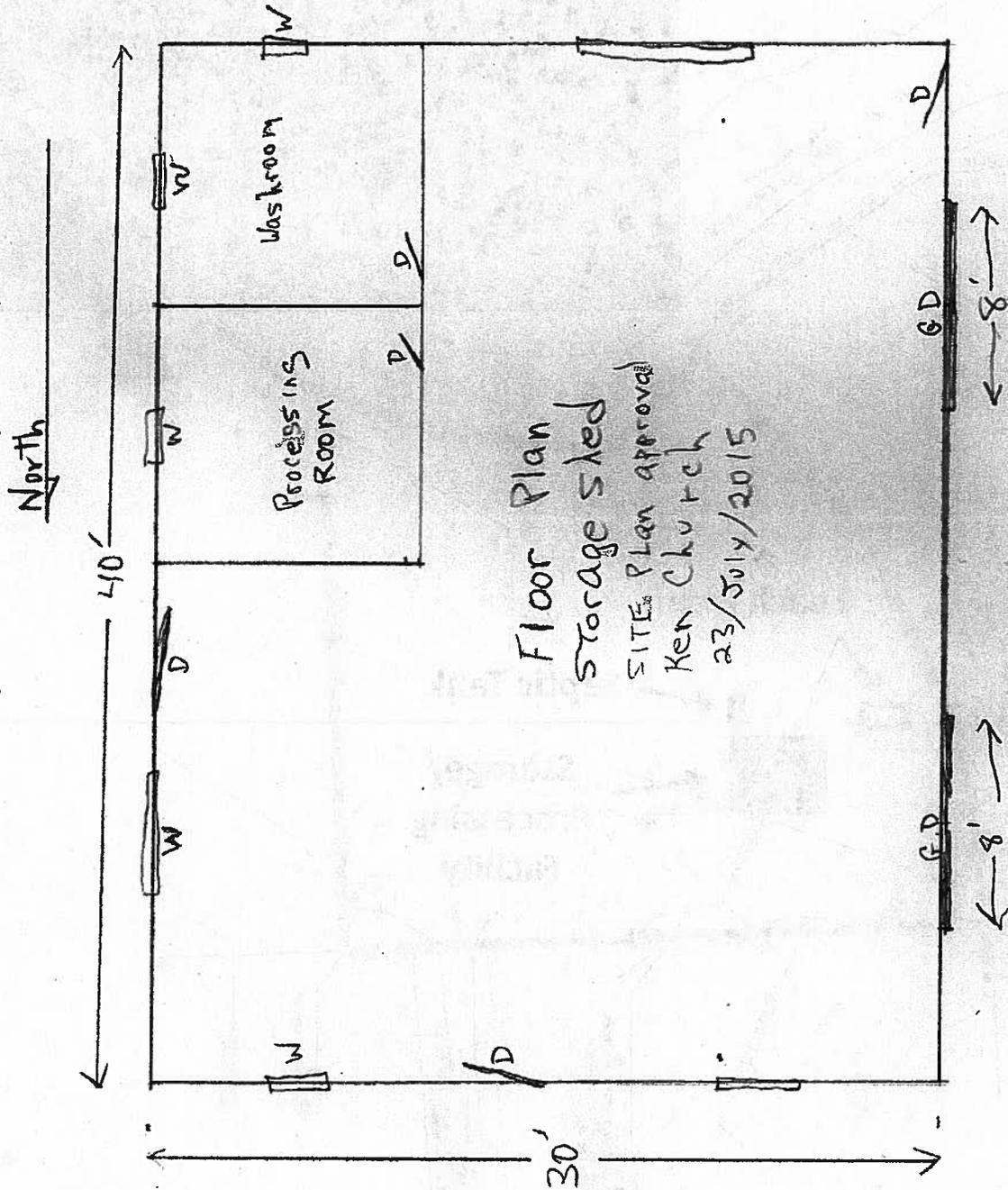
Respectfully submitted by,

Ken Church



SITE PLAN

Legend
W = Window
D = Door
GD = GARAGE DOOR
Scale 1" = 5'



PLAN VIEW OF STORAGE/PROCESSING SHED

Sept. 2, 2014

State Of Hawai'i
Department of Land And Natural Resources
Office Of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai'i 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2014 SEP -8 P 12: 28

DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Attn: Samuel J. Lemmo

Subject: Inquiry Regarding Potential Land Uses Within the Conservation District located at Wailea, South Hilo, Hawai'i, Tax Map Keys (TMK's) (3)2-9-003:013, 29, and 60

Dear Mr. Lemmo,

Thank you for the approval to plant fruit trees.

With that letter you enclosed another letter regarding my previous correspondence wherein I raised questions. In your letter dated August 28, 2014 you stated that you were unable to provide me with

'reasonable answers without insight into the larger picture of what you are proposing to construct.' "Again, we ask you to develop a formal proposal before requesting any further guidance from us regarding this matter so that we may better assist you."

It is my position that your responses to my questions would have assisted me in developing an CDUP application. We are having considerable difficulty finding a land use lawyer suitable to us as you have recommended that we do. As you may appreciate developing a CDUP application is a very expensive process. Your closing the door now to my inquiry process and for me to not have a reply to my existing questions is likely to cause delays, possible re-drafts, withdrawals and re-submissions of my application. None-the-less I appreciate the assistance that has been given thus far and respect your notice to me to not inquire of your office further.

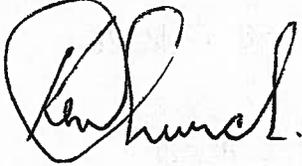
None-the-less

I have a concern regarding some squash plants that I have found growing on the lots. They are growing in two large patches. They are quite mature and their age clearly show that their planting pre-date my purchase of the lots. Also because they appear to all be of the same age they were likely planted there by someone and are not volunteer growth. I spoke to the previous owner and he was surprised to hear of their existence.

I spoke to the owner of the adjacent property to the West (the orchid greenhouse owner). He said they were not his and pointed that there have been on-going problems with trespassers on both his lot and mine and perhaps they were planted by such a trespasser.

I would ask permission to put up no trespassing signs on the property and furthermore ask your instruction what to do with the plants?

Regards,



Ken Church



squash farm
Ken Church
to:
Lauren.E.Yasaka
09/08/2014 07:40 AM
Hide Details
From: Ken Church
To:

Please respond to Ken Church

Good morning Lauren,

I wrote to you last week regarding discovering 2 large patches of squash growing on the property. I have discovered more information since writing that letter and regarding that I wrote a snail mail letter to you clarifying the matter which I am sending this a.m.. I am inserting the text of that letter herein in order that you unnecessarily respond to my first letter without the benefit of this further knowledge.....

Sept 8, 2014

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

Attn: Sam Lemmo

Subject : Land TMKs: (3) 2-9-003:013, 29 and 60, squash farming on lots

Dear Mr. Lemmo,

Last week I wrote to you informing you that I had found 2 large areas on our lots that had squash growing on them. I stated in my previous letter that I had enquired of the previous property owner regarding these and that he did not seem to be aware of them.

I have now investigated the matter further and I have discovered that squash, taro and sweet potatoes have been farmed on the property ever since the land was taken out of sugar cane production in the early 90's. After my enquiring of Mr. McCully last week he apparently made his own enquiries and has now given me further information regarding the squash.

It appears that Mr. McCully's employee who cut the grass on the property during his period of ownership of the land planted, cared for and harvested these crops successively over the years. He is currently cutting the grass semi-weekly for me also. At the time of writing you last week informing you of the squash farming I had not yet interviewed this man. Over the weekend I was able to discover that this practise has been on-going. I suspect the current crop will be harvested in 4-8 weeks time.

EXHIBIT 17

9/9/2014

For the time being I withdraw my request discussed in my previous letter to put up no trespassing signs as it appears that there was not a trespasser but rather an authorized employee of the previous owner of the property that has been farming on the land.

I can further advise that I have selected a land use planner that I plan to hire to represent me in my plans for the property. He is currently examining some of the written history for the property and will determine over the next couple of weeks if he will accept the appointment as our representative. Therefore it is prudent that I defer further communication with your office for his consideration.

Regards,

Ken Church

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

Jan. 8, 2015

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

Attn: Lauren Yasaka
Re: Land TMKs: (3) 2-9-003:013, 29 and 60 / your email dated Jan. 8, 2015
Subject: non conforming land use

2015 JAN 26 A 11: 00

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Lauren,

I am in receipt of your email regarding the noted subject above. Thank you again for your prompt response.

I respect the law and so much as I am aware of laws I try to conduct myself in accordance with the law. For me the problem with HAR, in regard to the non conforming use issue, it is difficult for me and frankly even for professional advisers to give advice. Frankly I have had 2 different opinions (conflicting) expressed by two different lawyers on the very subject of non conforming uses of Conservation zoned lands. In summary my concern is that I have identified that my property has been reported to me as having been used for and it continues to be used for ag today as I have identified in past communications with your office. I simply cannot figure out from HAR whether your office would view my possible ag use as a legal non conforming use or not.

My question therefore is.....

Since my 3 TMK lots have been used for agriculture (a non conforming use as defined in HAR 13-5) can I reasonably expect that future ag use by me on the TMK's could legally be continued as an on going non conforming use?

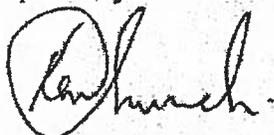
For clarification it is intended by me that any future ag use (non conforming or permitted) would only involve portions of the areas that were previously used for ag use and not involve any of the land that was not used for agriculture in the past. Regarding your question....

"Also, could you please discuss what you want to do about the current ag use; i.e. you would like to keep doing it, you want to stop doing it, etc."

In reply I would like to continue to use the 3 TMK lots for non conforming ag use but probably not for all of the same crops as present but with a reasonable degree of comfort that ag use would be viewed by your department according to HAR as a legal non conforming use.

To me it would seem that it would be much simpler for both your department and myself for me to conduct ag use on the lots as a non conforming use but I want to be sure that general ag use is legal as a non conforming use or alternatively what forms and quantities of ag use are legal as a non conforming use. Any clarity that you can bring to these questions would be very much appreciated.

Respectfully submitted by,



Ken Church

EXHIBIT 17

Sept 8, 2014

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

2014 SEP 12 A 10:14

Attn: Sam Lemmo
Subject : Land TMKs: (3) 2-9-003:013, 29 and 60, squash farming on lots

HA
STATE OF HAWAII FS

Dear Mr. Lemmo,

Last week I wrote to you informing you that I had found 2 large areas on our lots that had squash growing on them. I stated in my previous letter that I had enquired of the previous property owner regarding these and that he did not seem to be aware of them.

I have now investigated the matter further and I have discovered that squash, taro and sweet potatoes have been farmed on the property ever since the land was taken out of sugar cane production in the early 90's. After my enquiring of Mr. McCully last week he apparently made his own enquiries and has now given me further information regarding the squash.

It appears that Mr. McCully's employee who cut the grass on the property during his period of ownership of the land planted, cared for and harvested these crops successively over the years. He is currently cutting the grass semi-weekly for me also. At the time of writing you last week informing you of the squash farming I had not yet interviewed this man. Over the weekend I was able to discover that this practise has been on-going. I suspect the current crop will be harvested in 4-8 weeks time.

For the time being I withdraw my request discussed in my previous letter to put up no trespassing signs as it appears that there was not a trespasser but rather an authorized employee of the previous owner of the property that has been farming on the land.

I can further advise that I have selected a land use planner that I plan to hire to represent me in my plans for the property. He is currently examining some of the written history for the property and will determine over the next couple of weeks if he will accept the appointment as our representative. Therefore it is prudent that I defer further communication with your office for his consideration.

Regards,



Ken Church

DAVID Y. ICE
GOVERNOR OF HAWAII



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

CARTY S. CHANG
ACTING CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
FIRST DEPUTY
WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref: OCCL:LY

CORR: HA 15-119

Mr. Ken Church
400 Hualani Street, Suite 275
Hilo, Hawai'i 96720

JAN 28 2015

SUBJECT: Existing Land Uses at Wailea, South Hilo, Hawai'i
Tax Map Key (TMK): (3) 2-9-003: 013, 029, and 060

Dear Mr. Church:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your inquiry regarding existing squash, sweet potato, and taro crops currently being cultivated on the subject properties.

Based on the information you have provided, you are inquiring whether or not the current crops found on your properties could be considered a nonconforming use as the area was once cultivated for sugar cane. What you have described appears to be more appropriately described as a garden, which the Department has no objections to. As it was existing prior to you purchasing the property, the Department has no concerns with the continued cultivation of squash, sweet potato, taro.

To characterize the lands as a nonconforming agricultural use, you as the landowner, would need to submit proof that such lands were indeed used for agriculture production. Pursuant to Hawai'i Revised Statutes (HAR) 13-5-7 (f), *The burden of proof to establish that the land use or structure is legally nonconforming shall be on the applicant.* Proof may include historic photos or records showing that the specific area in question was used for agriculture.

If you have any questions in regards to this correspondence, please contact Lauren Yasaka of our Office at (808) 587-0386.

*

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Samuel J. Lemmo".

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

c: HDLO
County of Hawai'i, Dept. of Planning

EXHIBIT 17