



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONVEYANCES
FORESTRY AND WILDLIFE
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LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

'99 FEB 24 P2:24

FEB 22 1999

Ref.:PB:THE

(F.C. G. 11)
QUALITY CONTROL

File: MA-2904

MEMORANDUM

To: Gary Gill, Acting Director
Office of Environmental Quality Control

From: Dean Y. Uchida, Administrator *[Signature]*
Land Division, Department of Land and Natural Resources

Subject: Final Environmental Assessment (EA)/Finding of No
Significant Impact (FONSI) for Marquard Family
Subdivision, Hoolawa, Maui, TMK parcel: (2)2-9-02:14

The Department of Land and Natural Resources has reviewed the comments received during the 30-day public comment period that began on October 23, 1998 for the subject project. We have determined that this project will not have significant environmental effects, and have therefore issued a FONSI. Please publish this notice in the March 8, 1999 OEQC Environmental Notice.

We have enclosed a completed OEQC Bulletin Publication Form and four copies of the Final EA for the project. The summary for this project has not changed from that noted in Publication Form for the draft EA, although the "Permits Required" section has been amended to delete the notation that a re-zoning had been (but no longer is) required. Please contact Tom Eisen of our Land Divisions's Planning Branch at 587-0386 if you have any questions.

Enclosures

c: Brian Jenkins

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1999-03-08-MA-FEA-Marquard Family
Subdivision
FINAL ENVIRONMENTAL ASSESSMENT

MAR 8 1999

FILE COPY

FOR

THE SUBDIVISION OF CONSERVATION DISTRICT LAND
HO'OLAWA, HAMAKUALOA, MAKAWAO, MAUI, HAWAII
TMK: II 2-9-02:14

OWNERS: MICHAEL MARQUARD IN HIS INDIVIDUAL CAPACITY AND IN HIS
CAPACITY AS TRUSTEE FOR HIS MOTHER'S TRUST AND AS CUSTODIAN FOR
HIS DAUGHTER

February 1999

RECEIVED
DIVISION OF
LAND MANAGEMENT
FEB 12 4 12 PM '99

Prepared by:
Brian R. Jenkins, Esq., Brumbaugh & Jenkins, 2065 Main Street, Suite 101,
Wailuku, Hawaii 96793
Telephone No. (808) 242-5545

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FIGURES

- Exhibit No. 1: Planning Department Letter stating that no SMA permit is required for the subdivision.
- Figure No. 1: Shows Project Location on the Island of Maui.

- Figure No. 2: Shows the Project site.
- Figure No. 3: Shows the boundary between the agricultural and conservation districts.
- Figure No. 4: A map showing the location of the archaeological sites on the subject property.
- Appendix 1: Archeological Inventory Survey of Ho'olawa Ranch Property, Ho'olawa Ahupuaa, Makawao District, Maui Island dated December, 1998.
- Appendix 2: Draft Conservation Agreement
- Appendix 3: Communications to and from Consulted Parties
- Appendix 4: A Bill for an Ordinance Establishing an Agricultural District in Title 19 of the Maui County Code (enacted December 31, 1998)

A SUMMARY

Applicant

The applicant filing the Conservation District Use Application (CDUA) for the subdivision of Conservation District Land is Mr. Michael Marquard.

Approving Agency

The approving agency is the Board of Land and Natural Resources of the State of Hawaii by its chairperson.

Anticipated Determination

It is anticipated that the approving agency will make a Finding of No Significant Impact with regard to the proposed land use within the Conservation District.

Consulted Parties

Twelve Federal, State, and County agencies were provided copies of a preliminary draft EA (DEA) for pre-assessment consultation as well as eight private agencies and all of the adjacent landowners. Furthermore, the Office of Hawaiian Affairs, local cultural experts, the Commission on Water Resource Management and the Division of Aquatic Resources of the Department of Land and Natural Resources of the State of Hawaii were also consulted pursuant to comments by the Office of Environmental Quality Control. A full list of these parties is set out in Section Three, below. The documents regarding the communications with these parties and the responses received and the replies where appropriate are attached in Appendix 3.

General Description

Technical Characteristic: The approval of the CDUA is for the legal subdivision of a 24.980 acre parcel of oceanfront land in Hoolawa, Hamakualoa, Makawao, Maui, Hawaii identified in the tax maps of the State of Hawaii as TMK II 2-9-02:14 (hereinafter referred to as the "Hoolawa

Property"). The majority of the Hoolawa Property is in the Agricultural District. There is a strip of land along the top of the seacliffs adjacent to the government property that runs down to the shoreline that is in the Conservation District. There will be no change of use, construction or development activity that will take place in the Conservation District portion of the Hoolawa Property as a result of the subdivision. Mr. Marquard is proposing a conservation agreement with the State of Hawaii guaranteeing that there will be no change of use, construction or development activity within the Conservation District portion of the Hoolawa Property subsequent to the subdivision.

The Conservation District portion of the Hoolawa Property on the North Shore of the Island of Maui consists of a narrow strip of land that runs along the top of nearly vertical sea cliffs of approximately 100 feet in height along the entire ocean boundary. The State of Hawaii is the owner of the land from the top of the sea cliffs down to the ocean. On top of the sea cliffs, the narrow strip of Conservation District land is wind-blown pasture that has been used for grazing and possibly pineapple and sugar cultivation since approximately the turn of the century. There is currently agricultural grazing of cattle and goats on the property. The purpose of the subdivision is to provide separate legal lots of record for Mr. Marquard, his mother and his daughter. There will be no change of use, construction or development within the Conservation District portion of the Hoolawa Property and there is no contemplated change of use for the remaining Agricultural District portion of the Hoolawa Property with the exception of the eventual construction of farm dwellings for the owners.

The subdivision of the Conservation District portion of the Hoolawa Property will have no effect on the Conservation District property. In fact, with the proposed conservation agreement between the owners and the State of Hawaii, the Conservation District portion of the Hoolawa Property will enjoy greater protection than it currently has. The only existing structure within the Conservation District portion of the Hoolawa Property is a wooden post and wire fence which keeps the livestock away from the lip of the sea cliff. Part of the proposed conservation agreement would allow the owners to maintain the existing fence within the Conservation District.

Socio-Economic Characteristic: The minor nature of this project, being the creation of a three lot family subdivision with resulting total lot sizes, including both the Agricultural and the Conservation District portions, of 14.831 acres, 5.099 acres and 5.050 acres, and the eventual construction of farm dwellings on the Agricultural District portion of the Hoolawa Property, is not expected to adversely impact the area nor the County/State facilities nor be contrary to Coastal Zone Management Regulations.

Environmental Characteristic: The project site is in a somewhat remote rural area off the Hana Highway. The Conservation District portion of the Hoolawa Property consists of a narrow strip of land which runs along the top of nearly vertical sea cliffs and extremely rugged shoreline. The shoreline area is subject to rough waves especially during the winter months. There are no County water or wastewater systems in this area. There is no nearby telephone or electric service. Domestic water source and wastewater treatment for the anticipated farm dwellings outside of the Conservation District will be handled on site and designed to meet applicable County and Health department regulations.

Summary Description of Affected Environment

The project site includes the easterly shoreline of Hoolawa Bay up to a point and continuing to the East fronting an unnamed bay until the boundary of the Hoolawa Property. The predominant vegetation consists of the grasses wainaku (Panicum repens L.) and buffelgrass (Cenchrus ciliaris). Interspersed in the grass are clumps of lantana, pluchia, guava and vervain. Other observed vegetation on the parcel besides the alien grass and brush species, includes indigenous beach *naupaka* (Scaevola serciaea), endemic *ko'oko'olau* (Bidens hillebrandiana Subsp. Polycephala), *'ulei* (Osteomeles anthyllidifolia), and scattered indigenous *hala* (Pandanus tectorius) trees. These were on the brink of the sea cliff and most plants located on the point area of the parcel exhibit signs of wind and salt spray stress.

A full archaeological inventory survey of the Hoolawa Property was completed in December of 1996 by Xamanek Researches, a copy of which is attached, which reveals two archaeological sites within the Conservation

District portion of the Hoolawa Property. One of these sites (Site 4234) is on the tip of Hoolawa Point and has been identified as a burial site which appears to be several exposed waterworn cobbles which are arranged in an oval pattern. The other site (Site 4236) is a site remnant located near the top of the sea cliff to the Southwest of Site 4234. Cultural materials found at this site included one waste flake of volcanic glass, two pieces of volcanic glass shatter, and one unutilized basalt flake. There was no surface evidence of architectural features or food midden remains present at Site 4236. As there will be no change in use, construction activities or any development activity associated with the proposed subdivision of the Conservation District portion of the Hoolawa Property and in light of the proposed conservation agreement between the owners and the State of Hawaii, there will be no impact on the archaeological sites mentioned above. Maps of the project site are attached hereto.

Identification and Summary of Major Impacts

The bare legal subdivision of the Hoolawa Property into three legal lots of record will have no impact whatsoever on the Conservation District portion of the Hoolawa Property. The proposed conservation agreement between the owners and the State of Hawaii would prohibit construction and provide the Conservation District portion of the Hoolawa Property with greater legal protection than it currently enjoys.

Proposed Mitigation Measures

Mr. Marquard proposes that a conservation agreement be entered into between the owners of the Hoolawa Property and the State of Hawaii whereby it will be agreed that no construction or development activity take place on the conservation District portion of the Hoolawa Property. The conservation agreement would allow the continued grazing as has been done since approximately the turn of the century. The conservation agreement would also allow the repair, maintenance and, if necessary, the replacement of the post and wire fence line which keeps livestock away from the edge of the sea cliff. The conservation agreement should also allow for the planting of trees and other vegetation for wind break and esthetic purposes. The proposed conservation agreement would run with the legal title to the land and would provide greater legal protection than

is currently enjoyed by the Conservation District portion of the Hoolawa Property.

Consideration of Alternative Methods

Other alternatives, besides not subdividing the property at all, is to create a fourth lot in the Hoolawa Property which consists only of the Conservation District portion of the land or to reconfigure the three lots so that one of the lots contains all of the Conservation District land. These alternatives would not give the Conservation District portion of the Hoolawa Property the added protection of the proposed conservation agreement and could conceivably allow the development of a residence on the land. In light of the proposed alternatives, it appears to be in the public interest to retain the original plan of allowing the Hoolawa Property, including that portion in the Conservation District, to be subdivided into three roughly rectangular lots.

Expected Determination

In view of the lack of any construction or development activity as a result of the legal subdivision of the Conservation District portion of the Hoolawa Property and in light of the proposed conservation agreement that would give the Conservation District portion of the Hoolawa Property greater protection than it currently enjoys, a finding of no significant impact is anticipated. The various specific criteria resulting in an expected determination of no significant impact are discussed in detail in the body of this Environmental Assessment.

Required Permits and Approvals and Their Status

There was an application before the Planning Department of the County of Maui seeking the establishment of agricultural zoning for the formerly County Interim Zoned land but the passage of the new Agricultural Zoning Bill by the County of Maui in late December of 1998 has caused the Agricultural District portion of the Hoolawa property to be automatically given agricultural zoning. There has already been preliminary subdivision approval for the Hoolawa Property. In order to achieve final subdivision approval, a Conservation District Use Permit for

the subdivision of the Conservation District portion of the Hoolawa Property must be issued. No other permits are required for the project. The Applicant is working with the State Land Use Commission to determine the exact location of the Conservation District portion of the Hoolawa Property and a final determination of this matter by the State Land Use Commission is expected in the near future. The proposed Conservation Agreement is worded in such a way that the provisions of that agreement will conform to the boundary of the Conservation District however it may be eventually determined or changed by the State Land Use Commission.

Documentation Of Contacts Made With Consulted Parties

The draft environmental assessment was circulated for pre-consultation purposes and was also circulated by the State of Hawaii as part of the environmental assessment process. Copies of the environmental assessment were also circulated to the general public by sending copies to the Maui library. Subsequent to the public comment period a copy of the draft environmental assessment was also sent to the Office of Hawaiian Affairs pursuant to comments by the Office of Environmental Quality Control. Consultations were made with cultural specialists chosen by the Office of Hawaiian Affairs as well as a representative of the Office of Hawaiian Affairs. Furthermore consultations were had with the Maui Representative of the Division of Aquatic Resources as well as the Commission on Water Resource Management of the Department of Land and Natural resources of the State of Hawaii. All documentation received as a result of the circulation of this environmental assessment as well as other consultations is appended hereto together with replies from the Applicant where appropriate.

SECTION 1 IDENTIFICATION OF APPLICANT

The applicant seeking permission to subdivide the Conservation District portion of the Hoolawa Property is:

Michael P. Marquard in his individual capacity.

Michael P. Marquard in his capacity as Custodian for Michelle Marquard.

Michael P. Marquard in his capacity as Trustee under the Alexandra Morrow 1992 Irrevocable Property Trust dated December 28, 1992.

Mr. Marquard's address is c/o Brumbaugh & Jenkins, 2065 Main Street, Suite 101, Wailuku, Hawaii 96793.

This environmental assessment has been prepared in support of a Conservation District Use Application (CDUA) in conformity with applicable regulations.

Figure No. 1 shows the general location of the Hoolawa Property in Hoolawa, Hamakualoa, Makawao, Maui, Hawaii.

SECTION 2 IDENTIFICATION OF APPROVING AGENCY

The approving agency for the Conservation District Use Application is the Board of Land & Natural Resources.

Chairperson
Board of Land & Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Under Section 183C-3(7) of the Hawaii Revised Statutes, as amended, it is the duty of the Board and Department of Land & Natural Resources of the State of Hawaii to establish and enforce land use regulations on Conservation District lands within the State of Hawaii as established by the Land Use Commission.

A small portion of the Hoolawa Property along the top of the coastal seacliffs is within the State Conservation District with the remainder of the property being within the State Agricultural District. The portion of the property within the State Agricultural District is regulated by the Maui County Zoning Regulations. The Hoolawa Property is within the SMA

boundary. However, as evidenced by the attached letter from the Planning Department of the County of Maui, Exhibit 1, the subdivision of the parcel does not require a Special Management Area (SMA) permit.

Figure No. 2, shows the location of the Hoolawa Property. Figure No. 3 is a reduced copy of a map showing the certified boundary between the State Agricultural District and the State Conservation District on the Hoolawa Property.

SECTION 3 IDENTIFICATION OF AGENCIES CONSULTED

Copies of the draft environmental assessment were submitted to the following agencies/ persons for review and comment with the exception of the three below-identified Cultural Specialists who were personally interviewed and consulted with on the Ho'olawa Property.

FEDERAL:

- U.S. Geological Survey
- U.S. Fish & Wildlife Service
- U.S. Natural Resources Conservation Service
- U.S. Army Corps of Engineers

STATE:

- Department of Land & Natural Resources
- Department of Health
- Department of Transportation
- Office of State Planning of the Department of Business, Economic Development & Tourism
- Office of Hawaiian Affairs
- Commission on Water Resource Management of the Department of Land & Natural Resources
- Division of Aquatic Resources of the Department of Land & Natural Resources

MAUI COUNTY:

- Department of Planning
- Department of Public Works

Department of Water Supply
Economic Development Agency

PRIVATE:

Maui Electric Company
GTE Hawaiian Tel
East Maui Irrigation Company
Audubon Society of Hawaii
Sierra Club of Hawaii (Maui)
The Nature Conservancy
The Outdoor Circle
Hawaii's 1000 Friends
Cultural Specialist Charles Keau
Cultural Specialist Kenneth Okano
Cultural Specialist Paul Fujishiro

ADJACENT LANDOWNERS:

TMK II 2-9-001:20

State of Hawaii
Department of Land and Natural Resources
200 S. High Street
Wailuku, Hawaii 96793
and

Roan Brown Trust
Susan C. Browne Trust
570 W. Kuiaha Road
Haiku, Hawaii 96708

TMK II 2-9-001:33

State of Hawaii
Department of Land and Natural Resources
200 S. High Street
Wailuku, Hawaii 96793
and

Hoolawa Farms
P.O. Box 731
Haiku, Hawaii 96708

TMK II 2-9-002:13
Chester Zywicki, et al.
Robert C. Zywicki Trust
Helen Zywicki
P.O. Box 211
Paia, Hawaii 96779

TMK II 2-9-002:16
Michael J. Piscitelli Trust
923 Alyssum Road
Carlsbad, California 92009

(The COMMENTS AND RESPONSES received from the above are attached to this Environmental Assessment at Appendix 3)

SECTION 4 GENERAL DESCRIPTION

This Environmental Assessment has been prepared for the purposes of a Conservation District Use Application. Pursuant to Section 13-5-22: P-11 of Chapter 13-5 of the Hawaii Administrative Rules, the subdivision of Conservation District property into two or more legal lots of record which serves a public purpose and is consistent with the objectives of the subzone is an identified land use which requires a permit from the Board of Land & Natural Resources.

Technical Description: The proposed three lot family subdivision of the Hoolawa property, including the portion within the Conservation District, coupled with the proposed conservation agreement is a legitimate use of the property as it serves the identified public purpose of the Conservation District and is consistent with the objectives of the Limited subzone.

Section 13-5-1 of Chapter 13-5 of the Hawaii Administrative Rules states that the "purpose of this chapter is to regulate land use in the conservation district for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare." The applicant herein is proposing to enter into a conservation agreement with the State of Hawaii which will provide a greater range of conservation, protection and preservation than is currently available under state law. As such, the subdivision of the Conservation District portion of the Hoolawa property would serve the public purpose of conserving, protecting and preserving the Conservation District land.

The Conservation District portion of the Hoolawa property is within the Limited Subzone. The objective of the Limited Subzone is to limit uses where natural conditions suggest constraints on human activities. The proposed conservation agreement between the applicant and the State of Hawaii would ensure that there would be no construction or development of any type within the Conservation District portion of the Hoolawa Property. The Limited Subzone of the Conservation District portion of the Hoolawa Property would have greater protection than the law allows under the proposed conservation agreement. As such, the subdivision of the Conservation District portion of the Hoolawa Property is consistent with the objective of the Limited Subzone.

Figure No. 3 shows the proposed subdivision of both the Conservation District and the Agricultural District of the Hoolawa Property as well as the boundary between the two districts. There would be no construction or development activity of any type within the Conservation District portion of the Hoolawa Property subsequent to the proposed subdivision. The purpose of the proposed subdivision is so that there will be separate legal lots of record for the applicant as well as his daughter and mother. Currently, the applicant owns the Hoolawa Property in his individual capacity and in his capacity as the Custodian for his daughter Michele Marquard and in his capacity as Trustee for his mother's trust as tenants in common. The only construction or development anticipated for the Agricultural District portion of the Hoolawa Property will be the eventual construction of farm dwellings for the respective owners. The proposed

conservation agreement would be an agreement that would be on the title of all three resulting parcels and would run with the land even in the event of the sale of the property.

Socio-Economic Characteristic: At the time of the 1990 census, the Island of Maui had a population of 91,361. The projected population for the year 2000 is 111,381. The Hoolawa Property is in the Paia-Haiku area of Maui. The 1990 population of the Paia-Haiku area was 7,788 and the projected population for the year 2000 is 9,068.

The Paia-Haiku region supports the sugar and pineapple industries as well as numerous other small agricultural endeavors including livestock grazing and truck farms. The present towns were originally plantation villages. While the sugar and pineapple industries have come upon hard times, they are still an economic force in this region. The famous Wailuku-Hana Highway cuts its way through this region. The initial section of the Hana Highway has been improved to Waipio Stream gulch. Beyond this, the narrow winding road to Hana has become a symbol of rural lifestyle. Plans to further extend the improvements to the highway have not received general support from the public. The secondary access road to the project site leaves the Hana Highway shortly before the end of the improvements. The secondary access road known as Hoolawa Road is a government road that has a gravel surface. This secondary road leads to a 24 foot wide private easement that provides access to the project site.

There will be no significant impact on the socio-economic status of this area or the County of Maui due to the extremely minor nature of this project, the creation of a three lot family subdivision for the purpose of providing the existing owners with their own separate legal lots of record. No additional government services other than what are now provided will be required. The subdivision will add a higher value to the property tax valuation of the project site upon subdivision thereby generating increased revenue to the County of Maui. The proposed conservation agreement between the owners and the State of Hawaii will provide greater protection to the Conservation District portion of the Hoolawa Property than the land would enjoy if no such conservation agreement were entered into.

Environmental Characteristics: The Hoolawa Property, some 24.980 acres, occupies Hoolawa Point, overlooking Hoolawa Bay to the West and an unnamed bay to the East. On the ocean side, the Hoolawa Property runs to the brow of the sea cliffs where the property drops precipitously for over one hundred feet to the rocky shore below. The State of Hawaii is the owner of the land from the top of the sea cliffs down to the ocean. Photographs of the Conservation District portion of the Hoolawa Property are attached as Exhibit 2. The land has been used for livestock grazing for decades and is exposed to the northeast trade winds on a normal day. The surf can be quite large especially in the winter months. The Hoolawa property is in a somewhat remote rural area and access to the property from the Hana Highway is by way of unpaved government and private roads.

Time Frame: It is hoped that all necessary approvals will be received prior to June of 1999.

Funding and Source of Funds: This project is funded entirely by the applicant. There are no governmental funds involved in this project.

SECTION 5 SUMMARY DESCRIPTION OF THE AFFECTED ENVIRONMENT

5 A Physical Description

The soils are classified as Pauwela clay (Pfc), which consists of dominantly silty clay loams, silty clays, and clays. They occur in areas where isolation is low, and slopes range from 8 to 25 feet (Foote, et al., 1972, p 141). The slope on the subject parcel ranges from 7 to 15 percent. Annual rainfall is 70 to 120 inches (Ibid). Permeability is moderately rapid and runoff is slow to medium. Soils developed in alluvium, colluvium, volcanic ash and material weathered from basic igneous rocks. Soils range from 30 to 60 inches in depth. The annual mean air temperature is between 62 and 73 degrees F. (Ibid., p.145).

The predominant vegetation consists of the grasses *wainaku* (*Panicum repens L.*) and buffelgrass (*Cenchrus ciliaris*). Interspersed in the grass are clumps of lantana, pluchia, guava and vervain. Other observed vegetation on the parcel, besides the alien grass and bush

species, includes indigenous beach *naupaka* (*Scaevola sercinea*), endemic *ko'oko'olau* (*Bidens hillebrandiana* subsp. *Polycephala*), indigenous *'ulei* (*Osteomeles anthyllidifolia*), and scattered indigenous *hala* (*Pandanus tectorius*) trees. These were on the brink of the sea cliff and most plants located on the point area of the parcel exhibit signs of wind and salt spray stress.

To the south of the point, Java Plum trees dominate a drainage area lying in the eastern part of the parcel and on the area upslope of Hoolawa gulch along the western boundary of the property. Several large mango trees are present as well, along with quantities of Christmas berry trees. Scattered *noni* (*Morinda citrifolia*), a species introduced by the early Polynesians, are also present in the understory of the drainage area, as well as a few coconut (*Cocos nucifera* L.) trees nearby. In the wetter area, at least two types of fern grow in abundance.

Land in the area of the Hoolawa Property has been under agricultural use since the 1800's. Sugarcane was the first commercial crop cultivated in the area and portions of the Hoolawa Property may have been included in the Hui Aina O Huelo. Pineapple was another commercial crop grown in the area in the past and may have been produced on the parcel. Local resident Abby Ajifu, whose family members were the Applicant's predecessors in title, said that the land was used for pasturage for many decades. The property is currently fenced and is still used for grazing of cattle and other livestock.

5B Endangered and Endemic Species

The birds and mammals observed or possibly present in the project area, with the exception of a very limited number of native birds and one land animal, are all forms that have been introduced by humans.

In the project area, it is possible that one endemic mammal classified as "endangered" by the U.S. Fish & Wildlife Service may be found. This is the Hawaiian bat, *Lasiurus cinereus semotus*. These bats are Hawaii's only native land mammal and are widely distributed throughout the main islands of the Hawaiian archipelago. They have not been reported near the project area but possibly may fly over it. According to the Fish and

Wildlife Service of the United States Department of the Interior, it is also possible that the federally endangered dark-rumped petrels (Pterodroma phaeopygia sandwichensis), which occur on Maui and nest in Haleakala Crater, may be present at the site intermittently as they transit between ocean feeding grounds and upland roosts. As such, the Fish and Wildlife Service recommends that all artificial lighting at the project sites be shielded and oriented toward the ground and away from the coast in order to help protect this species. The applicant has agreed that all exterior lighting on the farm dwellings that will eventually be constructed outside of the Conservation District portion of the Hoolawa property (there will be no building within the Conservation District) will be shielded and oriented toward the ground and away from the coast. See Appendix 3.

The only other native birds (not introduced by humans) that were seen or may be expected in or flying near the project area are those widely distributed through the state. They include the Hawaiian owl (Pueo), black crowned night heron ('Auku'u), frigate bird ('Iwa) and other species of shore birds. Several of the birds that may be found near the project area often winter in Hawaii and leave each spring to fly to Alaska where they nest and raise their young. These are the Pacific Golden Plover (Kolea), The Wandering Tattler ('Ulili), and the Ruddy Turnstone ('Akekeke).

More than 50 species of birds that have been brought to the Hawaiian Islands by humans have become established in the islands. Many of these are present in the project area. All are found elsewhere on Maui and on other islands.

5C Archaeological Sites

There are five archaeological sites located on the Hoolawa Property. Two of these sites are located in the Conservation District portion of the Hoolawa Property. One of these sites is a grave located on the tip of Hoolawa Point above the sea cliffs. The other site is a site remnant located near the edge of the sea cliff overlooking Hoolawa Bay to the West of the Hoolawa Property. A full archaeological report is attached hereto as appendix 1 which describes the entire Hoolawa Property. A map showing the location of the archaeological sites on the subject property is attached as Figure 4.

5D Geology of the Area

The project site, in East Maui, is located on the northwestern slope of Haleakala, a shield volcano. The earlier Honomanu volcanic flows of the tertiary period were followed by the Kula volcanic series. Late Kula flows filled the canyons or valleys of the earlier Kula flows in this section of Haleakala. Later volcanic flows were the Hana volcanic series which occurred in the East and Southwest sections of Haleakala. The last known eruption occurred on the Southwest rift probably around 1750 A.D. Geologically speaking, Maui is a young island. Its age is estimated to be 1.15-1.30 for West Maui; and 0.4-0.8 for East Maui measured in millions of years. This means that the Haleakala slopes are slightly over 500,000 years old on the average.

5E Rene Sylva Letter Response to Draft Environmental Assessment

On September 3, 1998, the attorney for the Applicant received a letter dated September 2, 1998 from Mr. Rene Sylva of Paia who expressed a number of concerns regarding the Draft Environmental Assessment for the proposed land use. A copy of this letter and a copy of the response to Mr. Sylva's letter is included in Appendix 3. Mr. Sylva was concerned that a botanical survey by a qualified botanist had not been performed. Mr. Sylva was informed that the persons performing the archaeological survey did an inspection, which included a botanical report, of the Hoolawa Property and published their report which is contained in Appendix 1. Mr. Sylva was also informed that the Hoolawa Property had been used for grazing and pasturage purposes for approximately 100 years and, as such, the original vegetation had probably been impacted more than the neighboring parcels which had not been grazed. Mr. Sylva stated that there were two endangered species growing at the base of the sea cliff below the Hoolawa Property. Mr. Sylva was requested to describe exactly where these plants were but the Applicant received no response. However, the Hoolawa Property only runs to the brow of the sea cliff. The face of the cliffs and the shore line area are owned by the State of Hawaii. As such, the endangered species of plants, if in fact present, are not within the area for which a Conservation District Use Permit is requested.

Mr. Sylva also stated that Wedge-tailed Shearwater (*Puffinus pacificus*) nesting sites had been found on various shoreline areas on the Island of Maui and that an anonymous "reliable source" stated that Wedge-tailed Shearwater nesting burrows were once observed along the naupaka shrubs at Ho'olawa Point. Mr. Sylva also observed that other species of birds have been known to nest in cliff faces, namely: the White-Tailed Tropicbird (*Phaethon lepturus*), the Black Noddy (*Anous Minutus*) and the Brown Noddy (*Anous stolidus*). The creation and execution of the proposed Conservation Agreement between the Applicant and the State of Hawaii would provide enhanced protection to any and all species of birds within the Conservation District Portion of the Ho'olawa Property by barring any development within that portion of the property. It should be noted that the cliff face which Mr. Sylva states is a possible habitat and nesting site area for the above-named birds is owned by the State of Hawaii and not by the Applicant.

Next, Mr. Sylva opined that the electric fence which is maintained by the Applicant is not sufficient to keep the Applicant's livestock away from the brow of the sea cliff. The extreme climatic conditions with the nearly constant trade winds and salt spray mean that any metallic fencing requires ongoing maintenance. The Applicant agrees to keep the fence along the top of the seacliffs in a "stockproof" condition to prevent any livestock from being able to approach the top of the seacliff. Furthermore, the proposed Conservation Agreement has an express provision which would allow the Applicant to maintain the fence on an ongoing basis without seeking any further permission from the Department of Land and Natural Resources. Mr. Sylva also opines that the fence should be moved to a hundred foot contour on the inland side of the sea cliff. This particular demand makes no sense. The entire parcel has been used for agricultural and grazing purposes since the last century. To deprive the Applicant of the use of this part of his land for no particular reason other than the whim of Mr. Sylva is unfair and at variance with the traditional use of the land and the use of the surrounding parcels of land. For example, the two adjacent parcels at the mouth of Ho'olawa Stream to the west of the Ho'olawa Property which are owned by the State of Hawaii and are under revocable permits to a person who uses those parcels for livestock grazing. The Applicant should not be held to a higher standard than the State of Hawaii with regard to his ability to use his property.

Finally, Mr. Sylva recommends that "anti-social" trees such as ironwood not be used for windbreak purposes. The Applicant will consult with persons knowledgeable about appropriate windbreak plants when and if it is decided to plant such windbreak plants.

It must be again emphasized that the sought for Conservation District Use Permit will result in a Conservation Agreement that will provide greater protection to the Conservation District portion of the Hoolawa Property than it currently enjoys. Furthermore, there will be no construction or development within the Conservation District portion. As such, there will be no impact of any type on any plants or animals in the Conservation District so that the huge expense of a in-depth botanical field survey would be without any purpose other than satisfying Mr. Sylva's curiosity. Any and all plants within the Conservation District will benefit from the increased protection offered by the Conservation Agreement. The alternative proposal of including all of the Conservation District land in one of the three lots or creating a fourth lot consisting only of the Conservation District Land would not require the Applicant to obtain a Conservation District Use Permit and would not result in a Conservation Agreement. As such, the current proposal will far better serve the public purpose of preserving the Conservation District land than the alternatives that the Applicant may be forced to consider if the various public and private "wish lists" become prohibitively expensive and oppressive to the Applicant.

5F Paul Horikawa Letter Response to Draft Environmental assessment

The Applicant also received a letter dated September 1, 1998 from Mr. Paul Horikawa, the attorney for the adjacent landowners on the south boundary of the Hoolawa Property, on September 3, 1998. The Rene Sylva letter, discussed above, was copied to Mr. Larry Ing, who is Mr. Horikawa's law partner, so it is assumed that both letters were written at the instruction of the same persons.

The Paul Horikawa letter contained four areas of concern. The first area was the presence of an underground railroad tunnel that was once used by the abandoned sugar mill located in Hoolawa Valley to the West of the Hoolawa Property. This sugar mill is discussed in the archaeological

report attached hereto as Appendix 1. The easement to the Hoolawa Property runs over the underground railroad tunnel. This easement is the original access for the Hoolawa Property. The rusty remains of a 1930's vintage pickup truck off to the side of the easement attests to the long period of time that the easement has been in use.

Mr. Horikawa's client hired a company to prepare a "soils report" to use in his long standing attempts to relocate the Applicant's easement. The report states that vehicles in excess of 10,000 pounds may have an adverse effect on the underground tunnel. However, the easement which has been in existence for decades has apparently not had any adverse impact on the tunnel to date. As such, the "soils report" has not been regarded as a particularly unbiased or accurate report. The underground tunnel is not within the Conservation District portion of the Hoolawa Property nor is it within any other portion of the Hoolawa Property. It is located on the property to the south of the Hoolawa Property and it passes under the easement to the Hoolawa Property. There will be no direct, or indirect, impact on the underground tunnel as a result of the issuance of the Conservation District Use Permit. Even if the Conservation District Use Permit were not issued and the Applicant used one of the above-discussed alternatives to subdivide the property, there would still be vehicle access over the easement. The Applicant does not believe that the underground Tunnel will be affected in any possible way as a result of the subdivision of the Conservation District Portion of the Hoolawa Property.

Mr. Horikawa's client also purchased an archaeological report for his property that is partially quoted in Mr. Horikawa's September 1, 1998 letter. This archaeological report apparently states that "[I]t would seem reasonable to speculate that the [Yamamoto family] burials are in the area now under the driveway easement, or in a different location along the easement." As the Hoolawa Property and its easement was sold to the Applicant by members of the Yamamoto family, it strains credibility that the family burial plot would be under the access easement. When an archaeological or other professional uses a phrase such as "reasonable to speculate" it hardly shows any real conviction that the Yamamoto family burial plot is under the access easement that the Yamamoto family sold to the Applicant.

Next, Mr. Horikawa's client states, without any backup information, that the Hoolawa Road is inadequate for the traffic that would result from the Applicant's subdivision of the Hoolawa Property. This does not make any particular sense as the current owners of the Hoolawa Property will be the same before and after the subdivision. Furthermore, there is no other justification for that assertion other than the bald claim of Mr. Horikawa's client.

The final concern in Mr. Horikawa's letter is an alleged inaccuracy in the draft Environmental Assessment as it was stated that the entire Hoolawa Property was inspected by the archaeologists who prepared the report attached as Appendix 1 yet the report was entitled a "limited inventory survey". This is not accurate information as the entire Hoolawa Property was thoroughly examined as can be seen from the report attached as Appendix 1.

Mr. Horikawa's client's final "question" is whether the Hoolawa Property will be occupied by Maui residents. The applicant and his family have been residents of Maui and California for many years and the property, after subdivision, will continue to be owned by the Applicant.

The key issue to keep in mind is not whether the subdivision will take place but whether the Conservation District portion of the Hoolawa Property will enjoy greater or lesser protection if the Conservation District Use Permit is granted to the Applicant. The one item that is without dispute, is that the proposed Conservation Agreement will enhance the legal protection enjoyed by the Conservation District portion of the Hoolawa Property and, therefore, enhance the purposes of the State of Hawaii in protecting the Conservation District land.

5G Use of Public Services

There are no County water or sewer systems in this area. The electrical and telephone services are close to the Hana Highway quite some distance from the Hoolawa Property.

5H OEQC Consultations Re: Impacts on Ho'olawa Stream/Bay

Pursuant to a letter dated November 23, 1998, the Office of Environmental Quality Control noted that Hoolawa Stream was depicted in Figure 2 of the Environmental Assessment and requested an analysis of the direct, indirect and cumulative impacts to Hoolawa Stream and Bay complex that would result from the proposed subdivision of the Conservation District portion of the Hoolawa Property. The Office of Environmental Quality Control requested that the Applicant consult with the Department of Land and Natural Resources, the Commission on Water Resource Management and the Division of Aquatic Resources on flora and fauna in and near the Hoolawa Stream and Bay complex. This analysis follows:

The Hoolawa Property is adjacent to Property along its most of its western boundary, TMK II 2-9-01: 33, which is owned by the State of Hawaii and which is subject to a revocable permit in favor of a business called Hoolawa Farm. TMK II 2-9-01:33 is, in turn, located adjacent to property, TMK II 2-9-01:32, which is owned by the Kiakona Family and leased out to principles of Hoolawa Farm. TMK II 2-9-01:32 contains a portion of Hoolawa Stream. In other words, along the majority of the Western Boundary of the Ho'olawa Property, Ho'olawa stream is located two properties over. There is no part of Ho'olawa Stream within the Ho'olawa Property.

Along a small portion of the northern part of the western boundary of the Hoolawa Property, the adjacent properties, TMK II 2-9-01: 20 and 21, are owned by the State of Hawaii. Hoolawa Stream passes through these two state owned parcels where it enters the ocean. No part of Hoolawa stream is contained within the Hoolawa Property. The vast majority of the Hoolawa Property is on top of the ridge adjacent to the valley carved out by Hoolawa Stream. There is no reason to believe that the flora and fauna in and near Hoolawa Stream vary to any significant extent from the flora and fauna present on the Hoolawa Property which is described above.

With regard to Hoolawa Stream itself, this stream is best known for the popular swimming location adjacent to the Hana Highway, well above the Hoolawa Property, commonly called "Twin Falls". A comprehensive description of Hoolawa Stream is contained in the Hawaii Stream

Assessment: Hawaii's Streams and Their Instream and Riparian Resources: a Conservation Point Of View-Draft 1990 (hereinafter "Hawaii Stream Assessment"). The Applicant was referred to this resource while consulting with biologist Skippy Hong of the Division of Aquatic Resources of the Department of Land and Natural Resources of the State of Hawaii. According to the "Hawaii Stream Assessment", the Hoolawa Stream is not considered to be an outstanding aquatic resource. Its' waters are diverted for municipal water supply and by Hawaiian Commercial and Sugar for sugar production. It drains approximately 1.34 square miles of land.

According to the "Hawaii Stream Assessment", there are wetlands associated with Hoolawa Stream which means that one or more of the following exists: 1) there is open standing water, and/or 2) the presence of hydrophytic plants and/or hydric soils. According to the Stream Assessment, there is no native forest in Hoolawa Stream or its drainage basin. It contains a detrimental plant known as *Hau* and there are feral pigs which are considered to be detrimental to the stream. The stream is not protected and contains no threatened birds or rare plants. The stream has received limited archaeological survey coverage, has taro cultivation associated with it and has been deemed to be a moderately sensitive site with possible scattered clusters of pre-contact sites. The recreational uses of Hoolawa Stream are deemed to hiking, swimming, and scenic views. According to biologist Skippy Hong, there are native species of fish in Hoolawa Stream and one type of fish in the NG2 list has been observed in Hoolawa Stream according to the "Hawaii Stream Assessment." Mr. Hong had no other comments than to refer the Applicant to the "Hawaii Stream Assessment" and state that there are native species of fish in Ho'olawa Stream.

The only possible impact that the subdivision of the Hoolawa Property would have on the Hoolawa Stream is potential erosion runoff from construction of the proposed farm dwellings subsequent to subdivision. This erosion runoff would have to be of such enormous magnitude as to traverse the adjacent state and private properties to the West and finally reach Hoolawa Stream. There is no proposed construction or development on the Hoolawa Property that could possibly result in erosion runoff of this magnitude. Furthermore, any potential erosion would only be present in the resulting lot closest to the rim of Hoolawa

Valley. The other two lots have drainage away from Hoolawa Valley. The Applicant proposes the use of standard erosion control measures on the resulting lots, including revegetating any area cleared for the construction of the future farm dwellings, to eliminate any possible impact on the Hoolawa Stream/Bay complex.

In an effort to obtain input from the respective governmental agencies that would have jurisdiction over any impact on Hoolawa Stream/Bay complex, the applicant mailed a copy of the Draft Environmental Assessment to Maui Land Agent Phil Ohta of the Department of Land and Natural Resources on August 5, 1998 but received no response. The Applicant also consulted with Mr. Skippy Hong, a stream biologist with the Maui office of the Division of Aquatic Resources on flora and fauna in and near the Hoolawa Stream and Bay complex. Mr. Hong referred Applicant to the Hawaii Stream Assessment: Hawaii's Streams and Their Instream and Riparian Resources: a Conservation Point Of View-Draft 1990 as the resource for this material. Excerpts from this document are set forth above.

The Applicant also requested input from the Commission on Water Resource Management in Honolulu regarding this project. The attorney for the Applicant spoke with Mr. Charles Ice from the Commission on Water Resource Management in Honolulu regarding this project. Mr. Ice, after reviewing the submitted documents stated that his office acknowledged the presence of water well No. 521401, in the Agricultural District Portion of the Ho'olawa Property, which had been licensed since January of 1990. Mr. Ice wanted the Applicant to take monthly readings of the amount of water extracted from this well and wanted the monthly readings to be consolidated into an annual report which would be submitted to his office. The Applicant has agreed to provide this reporting. Mr. Ice stated that his office did not foresee any impacts on Ho'olawa Stream as a result of this project but stated that any land grading activities must be in full compliance with the rules and regulations of the Soil and Water Conservation District and any other governmental rules and regulations. The Applicant agrees to fully abide by all governmental rules and regulations including any rules and regulations of the Soil and Water Conservation District.

**5 I OEQC Consultations Re: Cultural Impacts Regarding the
Extent to which the Ho'olawa Stream/Bay Complex is used
for Traditional Native Gathering Practices**

Pursuant to a letter dated November 23, 1998, the Office of Environmental Quality Control requested that the Applicant consult with the Office of Hawaiian Affairs and any identifiable community informants as to the extent to which the Hoolawa Stream/Bay complex is used for traditional native gathering practices. The Applicant contacted the Office of Hawaiian Affairs and was referred to Maui Cultural Specialist, Mr. Charles Keau. A meeting took place with Mr. Keau in Iao Valley, Wailuku, Maui, wherein he was provided with the archaeological report, maps and photographs of the Hoolawa Property. A site visit was arranged for Friday, February 5, 1999 in order that Mr. Keau and Ms. Lynn Lee of the Land & Natural Resources Division of the Office of Hawaiian Affairs could personally inspect the Hoolawa Property. Also present were cultural specialists Mr. Kenneth Okano and Mr. Paul Fujishiro. A Cultural Impact Assessment follows:

1. Discussion of Methods Applied and Results of Consultation

The Applicant contacted the Land & Natural Resources Division of the Office of Hawaiian Affairs which in turn instructed the Applicant to consult with Maui cultural specialist Charles Keau. The attorney for the Applicant met with Mr. Keau in Iao Valley and gave him maps and photographs of the Ho'olawa Property as well as a copy of the archaeological report attached as an exhibit hereto. Mr. Keau was very familiar with that part of the island and had done archaeological work on the large heiau in the adjacent ahupuaa of Honopou. Mr. Keau, in turn, contacted two other cultural specialists who were very familiar with the area and the attorney for the Applicant arranged for a "site visit" and interviewed the cultural specialists on the Ho'olawa Property. As a result of this interview, valuable information was learned regarding fishing access to the coastal area fronting the Ho'olawa Property and the type of fish that were commonly harvested in the ocean fronting the Ho'olawa Property. The cultural specialists wanted assurances that the Hawaiian fisherman's access trail that followed the top of the seacliff and allowed access to an extremely steep and dangerous trail down to the shoreline through State of Hawaii property would not be blocked by the Applicant.

The cultural specialists also wanted some provision for access to the burial sites on the Ho'olawa Property. The Applicant has agreed to incorporate language into the proposed conservation that would provide access to the Hawaiian fisherman trail, the trail over state property and the burial sites to the full extent mandated by the Constitution of the State of Hawaii, any relevant statutory law and any relevant case law regarding Hawaiian access. The cultural specialists agreed that access did not include the right to camp or use any part of the Ho'olawa Property for any purpose other than access. To partially defray liability concerns, the Applicant is also including a provision in the Conservation Agreement giving him the right to post warning signs at the top of the steep dangerous trail over the state property informing persons of the possibility of injury or death as a result of traversing the shoreline access trail.

2. Methods Adopted to Identify, Locate, and Select the Persons Interviewed

The lead cultural specialist, Mr. Charles Keau, was selected by the Office of Hawaiian Affairs. Mr. Keau, in turn, selected two other cultural specialists who were familiar with the Ho'olawa area. The Applicant was concerned with getting the best possible sources for ascertaining information regarding the extent that the Ho'olawa Stream/Bay complex is used for traditional native gathering practices. The use of Cultural Specialists recognized by the Office of Hawaiian Affairs was believed by the Applicant to be the appropriate way to obtain the best possible information from an unbiased source.

3. Ethnographic and Oral History Interview Procedures

The Cultural Specialists were interviewed on the Ho'olawa Property overlooking Ho'olawa Bay to the West and Ho'olawa stream in the distance and another unnamed Bay to the East in order that the independently chosen Cultural Specialists would be able to personally inspect any site of their choosing to explain their findings and refresh their recollections. The Cultural Specialists were questioned, in the presence of the representative from the Office of Hawaiian Affairs, regarding the extent that the Ho'olawa Stream/Bay complex is used for traditional native gathering practices and the type of gathering that took place.

4. Biographical Information Regarding the Individuals and Organizations Consultant

The three Cultural Specialists, Charles Keau, Kenneth Okano and Paul Fujishiro, have all spent much of their lives on the Island of Maui. Mr. Keau has been active in the areas of Hawaiian history including work with the Bailey House Museum. Mr. Keau has participated in archaeological work at various sites on the Island of Maui. Mr. Okano was personally familiar with the Ho'olawa Property and was related to the previous owners. Mr. Fujishiro is a long time Maui resident who was familiar with the previous owners of the Ho'olawa Property. Ms. Lynn Lee of the Office of Hawaiian Affairs has worked on number of matters concerning traditional Hawaiian rights. Ms. Lee is the person who recommended Mr. Charles Keau as a very knowledgeable source for the type of project of involved in this matter.

5. Historical and Cultural Source Materials Consulted

The Applicant retained Xamanek Researches which is an archaeological consulting firm whose members are archaeologists Eric M. Fredericksen and Demaris L. Fredericksen to perform an archaeological inventory survey on the entire Ho'olawa Property. A copy of this survey is attached hereto as Appendix 1. A copy of this inventory survey was provided to Cultural Specialist Charles Keau as well as to the Office of Hawaiian Affairs weeks before the visit to the Ho'olawa Property. The historical and cultural source materials appear on pages 38 and 39 of the archaeological inventory survey and are referred to throughout the archaeological survey.

6. Cultural Resources, Practices and Beliefs Identified

With regard to the extent to which the Ho'olawa Stream/Bay complex is used for traditional native gathering practices, the Cultural Specialists all agreed that Ho'olawa Bay was and has been, up to the present time, used extensively for fishing and the gathering of opihi along the rocky shoreline. The unnamed bay fronting the eastern section of the Ho'olawa Property was well known for a type of fish called Mempachi while Ho'olawa Bay was very well known for Ulua. The Cultural Specialists agreed that there was a Hawaiian fisherman trail that followed the top of

the sea cliff within the Conservation District portion of the Ho'olawa Property. They stated that the trail along the top of the sea cliff provided an easy and convenient access above the rocky shoreline to Hawaiian fishermen and opihi gatherers. The top of the sea cliff trail also provided access to the rocky shoreline by way of an extremely steep, dangerous trail starting at the tip of Ho'olawa Point which was traversed with the use of ropes. The Cultural Specialists also acknowledged the cultural practice of visiting burial sites and noted the existence of two confirmed and one possible burial site, as noted in the archaeological inventory, within the Ho'olawa Property. The Applicant has agreed to incorporate language into the proposed conservation that would provide access to the Hawaiian fisherman trail, the trail over state property and the burial sites to the full extent mandated by the Constitution of the State of Hawaii, any relevant statutory law and any relevant case law regarding Hawaiian access. The cultural specialists agreed that access did not include the right to camp or use any part of the Ho'olawa Property for any purpose other than access.

7. Cultural Practices and Beliefs and the Significance of the Cultural Resources within the Project Area Affected Directly or Indirectly by the Proposed Project

With regard to the extent to which the Ho'olawa Stream/Bay complex is used for traditional native gathering practices, the Conservation District Portion of the Ho'olawa Property contains the top of an extremely steep and dangerous access trail which, with the use of ropes, provided access to the rocky shoreline fronting the Hoolawa Property. Photographs of the seacliff are attached as Exhibit 2 to this Environmental Assessment. The subdivision of the Conservation District portion of the Ho'olawa Property would result in a Conservation Agreement that would provide greater protection to any and all cultural resources located in the Ho'olawa Property. The Applicant has agreed to incorporate language into the proposed conservation that would provide access to the Hawaiian fisherman trail, the trail over state property and the burial sites to the full extent mandated by the Constitution of the State of Hawaii, any relevant statutory law and any relevant case law regarding Hawaiian access. The cultural specialists agreed that access did not include the right to camp or use any part of the Ho'olawa Property for any purpose other than access. The proposed Conservation Agreement would also allow the Applicant to

post a warning sign that the use of the steep dangerous trail over state property could result in serious injury or death. In the event that the proposed warning sign deters persons from using the steep trail over state property, there are alternative access routes to the shoreline fronting the Ho'olawa Property from the government road terminating at Ho'olawa Bay landing and from parcels of land owned by the State of Hawaii directly to the East of the Ho'olawa Property. These alternative access ways provide much safer access to the ocean resources traditionally used by Hawaiian fishermen. As a result of the proposed conservation agreement which acknowledges the legal rights to use the access trails and to visit the burial sites, the cultural resources will receive greater protection than currently exist

8. Confidential Information Withheld from Public Disclosure

There is no confidential information being withheld from public disclosure regarding the extent to which the Ho'olawa Stream/Bay complex is used for traditional native gathering practices.

9. Conflicting Information in Regard to Identified Cultural Resources, Practices and Beliefs

There was no conflicting information presented to the Applicant with regard to identified cultural resources, practices and beliefs.

10. Analysis of the Potential Effect of any Proposed Physical Alteration on Cultural Resources, Practices or Beliefs; the Potential of the Proposed Action to Isolate Cultural Resources, Practices or Beliefs from their Sudden; and the Potential of the Proposed Action to Introduce Elements which may Alter the Setting in which Cultural Practices take Place

There will be no physical alteration of the Conservation District Portion of the Ho'olawa Property. In fact, the Applicant is proposing a Conservation Agreement which will prevent any development or construction within the Conservation District Portion of the Ho'olawa Property with the exception of maintaining a fence in "stockproof" condition and possibly planting windbreak trees and surface irrigation

pipes to provide water to said windbreak trees.

Access to the Hawaiian fishermen trail on the top of the sea cliff within the Conservation District portion of the Ho'olawa Property, access to the steep dangerous rope trail descending from Ho'olawa Point, and access to the burial sites will be acknowledged in the proposed Conservation Agreement to the full extent mandated by the Constitution of the State of Hawaii, existing statutory law and existing case law. The proposed warning sign that the Applicant intends to install at the top of the steep dangerous trail across state property may deter some persons from using this trail as the sign would give warning of possible injury or death stemming from the use of this trail. However, the warning sign would not state that access was prohibited, it would merely warn of dangerous conditions. This warning sign may increase the use of safer alternative access ways to the ocean resources fronting the Ho'olawa Property.

The proposed action will not introduce elements that will alter the setting of the Conservation District portion of the Ho'olawa Property. The proposed Conservation Agreement will enhance the protection of the Conservation District Portion of the Hoolawa Property by prohibiting any construction or development within the Conservation District.

11. A Bibliography of References and Attached Records of Interviews

A bibliography of references is attached to the archaeological inventory survey, Appendix 1, at pages 38-39. The interviews with the three Cultural Specialists were not recorded but the substance of the interviews is described in paragraph 6, above.

12. Alternative Access Routes to the Shoreline Fronting the Ho'olawa Property

The Hoolawa Property is adjacent to land owned by the State of Hawaii that borders Hoolawa Bay. There is an old boat landing that apparently served the abandoned sugar mill in Hoolawa valley at the mouth of Hoolawa Stream and according to Cultural Specialist Kenneth Okano was also once used for the loading of locally raised cattle onto boats for transport to market. This boat landing is accessed by means of an old government road, that is currently overgrown with vegetation. This government road provides access to both Hoolawa Landing and the State of

Hawaii property fronting Hoolawa Bay and containing the mouth of Ho'olawa Stream. A small portion of the overgrown government road to Hoolawa Landing passes through the extreme western boundary of the Hoolawa Property. The Applicant has never denied access to anyone using the old road and, as the road has been determined to be owned in fee simple by the State of Hawaii, the Applicant does not have any legal right to prevent people from traveling over the road to exercise their traditional native gathering practices or for any other purpose.

The trail that is actually currently used by the public for access to Hoolawa Bay is a foot path that approaches Hoolawa Bay from the West and not the old government road which is overgrown with vegetation. The foot trail and the old government road both provide access to the mouth of Hoolawa Valley and, therefore, the Hoolawa Stream/Bay complex. From this location, people have access to the shoreline at the foot of the State of Hawaii property adjacent to the makai boundary of the Hoolawa Property. The proposed subdivision of the Hoolawa Property would have no impact whatsoever, directly, indirectly or cumulatively on the public's right to use the old government road or the foot trail to the west of Hoolawa Stream to practice their traditional native gathering practices.

5.I Na Ala Hele Comments Re: Old Government Road to Ho'olawa Landing

In a letter dated November 4, 1998, Michael E. Baker, Trails & Access Manager-Maui of Na Ala Hele of the Division of Forestry and Wildlife of the D.L.N.R of the State of Hawaii stated that conditions for granting the Conservation District Use Permit should include: 1) in-place preservation of the road surface and grade of the old government road and 2) a ban on the placement of any signs, fences, barriers, or other structures in the vicinity that would dissuade, block, or otherwise impede public access along the roadway.

Mr. Baker pointed out that the roadway was depicted as a trail to Hoolawa Landing in an 1881 map, being Registered Map No. 862 as surveyed by James Gay or Brewer and Co., and pursuant to the Highways Act of 1892, the "trail" became a government access. The Applicant fully intends to comply with the two suggestions in Mr. Baker's November

4,1998 letter. As the old government road belongs to the State of Hawaii, in fee simple the Applicant would have no legal right to disturb road surface or grade or block access over the old government road.

5K OEQC Analysis Re: Potential Development in Agriculturally Zoned Land

Pursuant to a letter dated November 23, 1998, the Office of Environmental Quality Control requested an analysis of the potential development that could conceivably take place on the Hoolawa Property pursuant to the new agricultural zoning law and the likely impact of any development on the resulting lots. A copy of the new agricultural zoning law is attached hereto as Appendix 4. Sections 19.30A.050 and 19.30A.060 list all the permitted uses, accessory uses and special uses of agriculturally zoned land on the Island of Maui. Permitted uses include agriculture, agricultural land conservation, agricultural parks, animal and livestock raising, including animal feed lots and sales yards, private agricultural parks, minor utility facilities, retention restoration or improvement of sites of historical or archaeological significance. Accessory uses include two farm dwellings per lot plus one farm labor dwelling per 5 acres of land, 1 agricultural products stand per lot, farmers markets, storage, wholesale and distribution buildings including barns, the processing of agricultural products, small scale energy systems, small scale animal keeping, animal hospitals and animal boarding facilities, riding academies, open land recreation, parks for public use and other uses which primarily support a permitted principal use.

The Applicant intends to keep the land in its current use which is livestock grazing and also intends to build farm dwellings on the resulting lots subsequent to subdivision. The Hoolawa Property would have all of the above-mentioned uses pursuant to the new agricultural zoning bill whether or not the Conservation District Use Permit was granted or not. Furthermore, the subdivision of the Hoolawa Property will take place whether the Conservation District Use Permit is issued or not. The alternative subdivision methods will result in a less pleasing configuration but will take place. The issue for the Board of Land and Natural Resources is whether the protection offered to the Conservation District portion of the Hoolawa Property will be enhanced by the proposed Conservation

Agreement in the event that the Conservation District Use Permit is issued. It seems beyond dispute that the land will enjoy greater protection and the public interest will be served if the Conservation District Use Permit is granted to the Applicant.

SECTION 6 IDENTIFICATION AND SUMMARY OF IMPACTS AND ALTERNATIVES CONSIDERED

A. Identification and Summary of Impacts

There will be no major impacts on the Conservation District portion of the Hoolawa Property. There will be no construction or development activities within the Conservation District as a result of the subdivision of the Hoolawa Property. The proposed warning sign to be installed by the Applicant warning of the possibility of injury or death resulting from the use of the steep dangerous trail from Ho'olawa Point down to the shoreline may deter some persons from using this trail and using safer alternative access ways to the ocean resources fronting the Ho'olawa Property.

Subsequent to the subdivision, there will be construction of farm dwellings on the Agricultural District portion of the Hoolawa Property. However, this construction activity will not affect the Conservation District portion of the Hoolawa Property. Furthermore, the Applicant will use appropriate methods to control any possible runoff or erosion resulting from the construction of the farm ones including revegetation of any cleared land as soon as possible. The Applicant will also use artificial lighting for the future farm dwellings that will be oriented downwards and away from the ocean so as not to confuse any sea birds.

The goal of the subdivision of the Hoolawa Property does not run counter to the General Plan of the County of Maui, the objectives of which include providing attractive, and affordable homes for Maui residents and to provide for the social and economic benefit of Maui's residents. Another objective of the General Plan which will be fulfilled by the proposed conservation agreement will be the protection and preservation of Maui's unique and fragile resources.

The minor size and nature of the project will not affect the objectives and policies of the Paia-Haiku Community Plan. No existing land use change is required or requested.

B. Alternatives Considered

The Applicant could subdivide the Hoolawa Property into four (4) lots with the fourth lot encompassing the entire Conservation District portion of the Hoolawa Property along the coastal portion. A subdivision of this type would not require a Conservation District Use Permit as there would be no subdivision of the Conservation District portion of the Hoolawa Property. This mode of subdivision would probably allow the Applicant to construct a dwelling on the fourth resulting lot. The Applicant could also subdivide the property into three lots with one of the lots so configured as to include all of the Conservation District Portion of the Ho'olawa Property. This alternative, like the four (4) lot alternative would not provide additional protection to the Conservation District portion of the Hoolawa Property. Another alternative considered by the Applicant is to not subdivide the property at all but this would defeat the basic purpose of providing each of the Applicant's family members with their own lot of record and also would not provide any additional protection to the Conservation District portion of the Hoolawa Property.

The Applicant wishes to preserve the open space of the Hoolawa Property and to protect the Conservation District portion of the land. As such, the Applicant believes that it is in the best interest of all concerned to proceed with the Conservation District Use Application process and to subdivide the Hoolawa Property into three lots with a conservation agreement prohibiting construction or development within the Conservation District portion of the land.

**SECTION 7
PROPOSED MITIGATION MEASURES**

The Applicant proposes to enter into a conservation agreement with the State of Hawaii to enhance the level of protection that is currently given to the Conservation District portion of the Hoolawa property pursuant to State law. The final version of the proposed conservation

agreement would be in a form to be decided upon by the Applicant and the Department of Land & Natural Resources of the State of Hawaii. A preliminary draft of the conservation agreement is attached hereto as Appendix 2 and, as seen, would prohibit construction or development within the Conservation District portion of the Hoolawa Property but would allow the maintenance, repair and, if necessary, the replacement of the existing pole and wire fence that keeps the livestock away from the edge of the sea Cliffs. The proposed conservation agreement would also allow planting within the Conservation District portion of the Hoolawa Property for windbreak or esthetic purposes. In the event of such planting, the use of surface irrigation lines would also be permitted to provide water to said planting. The Applicant also agrees to modify any potential artificial lighting in the Agricultural District portion of the Ho'olawa Property so as to reduce any hazard to federally endangered dark-rumped petrels and to use standard erosion control measures so that any land cleared in the process of the construction of the farm dwellings would be revegetated as soon as possible in order to prevent any possible runoff during the construction process from reaching the ocean or Ho'olawa Stream. Finally, the Applicant will acknowledge access to the Hawaiian fishermen trail that runs along the top of the sea cliff and provides access to burial sites and access to the steep dangerous trail off of Ho'olawa Point to the full extent mandated by the Constitution of the State of Hawaii, Hawaii statutory and case law.

SECTION 8 ANTICIPATED DETERMINATION

In view of the lack of any significant adverse impact and in light of the proposed conservation agreement that would heighten the protection currently enjoyed by the Conservation District portion of the Hoolawa Property, a finding of no significant impact is anticipated.

SECTION 9 REASONS SUPPORTING THE ANTICIPATED DETERMINATION

In most cases, an agency determines that an action may have a significant impact on the environment if the use meets any of the following criteria:

1. The use involves an irrevocable commitment to the loss or destruction of any natural or cultural resource. In this case, there would be no loss or destruction of any resource and the proposed conservation agreement would enhance the protection already enjoyed by any natural or cultural resource within the Conservation District of the Hoolawa Property.

2. The use curtails the range of beneficial uses of the environment. In this case, the proposed subdivision coupled with the proposed conservation agreement would not curtail any beneficial use of the environment.

3. The use conflicts with the state's long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders. In this case, the proposed conservation agreement that would enhance the existing protection enjoyed by the Conservation District portion of the Hoolawa Property and prohibit any construction or development on said property is in accord with all governmental policies, goals and guidelines.

4. The use substantially affects the economic or social welfare of the community or state. In this case, the only economic impact will be increased property tax revenues for the County of Maui and the only social welfare impact will be the enhanced protection of the Conservation District portion of the Hoolawa Property.

5. The use substantially affects public health. There will be no effect on public health as a result of the proposed use.

6. The use involves substantial secondary impacts, such as population changes or effects on public facilities. In this case, the land is currently owned by Mr. Marquard, his daughter and his mother and the sole reason for the proposed three lot family subdivision is so that each family member can have their own legal lot of record. The population change resulting from the subdivision would be extremely minor. As mentioned above, if the applicant sought a four lot subdivision with the entire Conservation District contained within the fourth lot, the potential population change could conceivably be higher than the proposed use

which would grant perpetual protection to the Conservation District land. There will be no impact on public facilities as there is no municipal water or sewage service or trash collection in the immediate vicinity and no other public facility is in the vicinity.

7. The use involves a substantial degradation of environmental quality. In this case, there will be no change of use to the Conservation District portion of the Hoolawa Property and, with the proposed conservation agreement, the existing protection to the environmental quality of the land will be enhanced.

8. The use is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions. In this case, there will be no cumulative effect or any commitment for any larger action.

9. The use substantially affects a rare, threatened, or endangered species, or its habitat. In this case, the use will offer a greater protection to the Conservation District portion of the Hoolawa Property than is currently available for the land.

10. The use detrimentally affects air or water quality or ambient noise levels. In this case, there will be no detrimental effect and, in fact, the Conservation District portion of the Hoolawa Property will be greater than it currently is.

11. The use affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters. While the Conservation District portion of the Hoolawa Property includes the base of the sea cliff fronting the Hoolawa Property which is undoubtedly in a tsunami zone, there will be no actual physical use of the property which would affect or be likely to suffer damage.

12. The use substantially affects scenic vistas and viewplanes identified in county or state plans or studies. There will be no such impact with the proposed use.

13. The use requires substantial energy consumption. The proposed subdivision of the Conservation District portion of the Hoolawa Property coupled with the proposed conservation agreement will have no effect on energy consumption.

As stated in Section 5, above, the use requested is an identified land use within a Conservation District and is in conformity with County zoning regulations and SMA provisions.

With the proposed conservation agreement, the subdivision of the Hoolawa Property would further the purposes of the Conservation District and conform with the objectives of the Limited subzone.

There will be no adverse archaeological, botanical or wildlife impacts to the land within the Conservation District as a result of the bare legal subdivision of the land from one lot into three lots.

The proposed conservation agreement would provide a higher and more comprehensive level of protection than is currently afforded by existing state law. The proposed conservation agreement would allow the maintenance, repair and, if necessary, the replacement of the existing pole and wire fence in order to keep livestock away from the fragile edge of the sea cliff fronting the property.

No adverse socio-economic impact will result. The goal of home ownership for the three generations of the Marquard family will be attained as a result of the three lot family subdivision. No additional governmental expenditures for services other than what now exists will be required by this project. However, the completed subdivision will increase the property values thereby generating increased property taxes for the benefit of Maui County.

In view of the lack of any significant adverse impact to the Conservation District land and the public, the finding of no significant impact is expected.

SECTION 10
AGENCIES TO BE CONSULTED IN THE PREPARATION OF THE EIS, IF
AN EIS IS TO BE PREPARED

This section is not applicable, since no EIS is being prepared.

SECTION 11
PERMITS AND APPROVALS NEEDED FOR PROJECT

Prior to December 31, 1998, there was pending before the Planning Department of the County of Maui an application to establish agricultural zoning on that portion of the Hoolawa Property within the State Agricultural District. The Ho'olawa Property was given automatic agricultural zoning by the passage of the new Agricultural Zoning bill which was passed by the County of Maui on December 31, 1998. A copy of this zoning bill is attached as Appendix 4. The Conservation District Use Permit for the Conservation District portion of the Hoolawa property and a determination of the exact boundary of the Conservation District Portion of the Ho'olawa Property by the State Land Use Commission are conditions listed by the County of Maui in its preliminary subdivision approval for the Hoolawa Property. The subdivision of the Hoolawa Property does not require a Special Management Area permit or any other permit. The agreement of the final version of the conservation agreement between the Applicant and the Department of Land and Natural Resources of the State of Hawaii will also be required.

SECTION 12
DOCUMENTS REGARDING CONTACT WITH COMMUNITY GROUPS
AND AGENCIES

A preliminary version of this draft environmental assessment was sent to the parties identified in Section 3, above, for pre-consultation purposes. Furthermore, the Draft Environmental Assessment was distributed by the Approving Agency and published by the Office of Environmental Quality Control. Attached hereto as Appendix 3 are copies of all communications to and from all consulted parties.

DATED: Wailuku, Hawaii, February 11, 1999

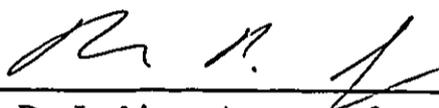

Brian R. Jenkins, Attorney for Applicant

EXHIBIT 1

LINDA LINGLE
Mayor

DAVID W. BLANE
Director

LISA M. NUYEN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 5, 1998

CLAYTON I. YOSHIDA
Planning Division

AARON H. SHINMOTO
Zoning Administration and
Enforcement Division

Brian R. Jenkins, Esq.
Brumbaugh & Jenkins
P. O. Box 640
Wailuku, Hawaii 96793-0640

Dear Mr. Jenkins:

RE: Special Management Area Assessment for the Proposed Three-Lot
Subdivision at TMK: 2-9-002:014, Hoolawa, Maui, Hawaii
(SM5 980006)

The Maui Planning Department has reviewed your request which indicates that the property will be subdivided into three lots having multiple land use zones (State Agriculture and State Conservation). The proposed development qualifies as "the subdivision of lands into four or fewer parcels where no associated construction activities are proposed" and is, therefore, exempt from the permit procedures of the Special Management Area Rules of the Maui Planning Commission.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 243-7735.

Sincerely,

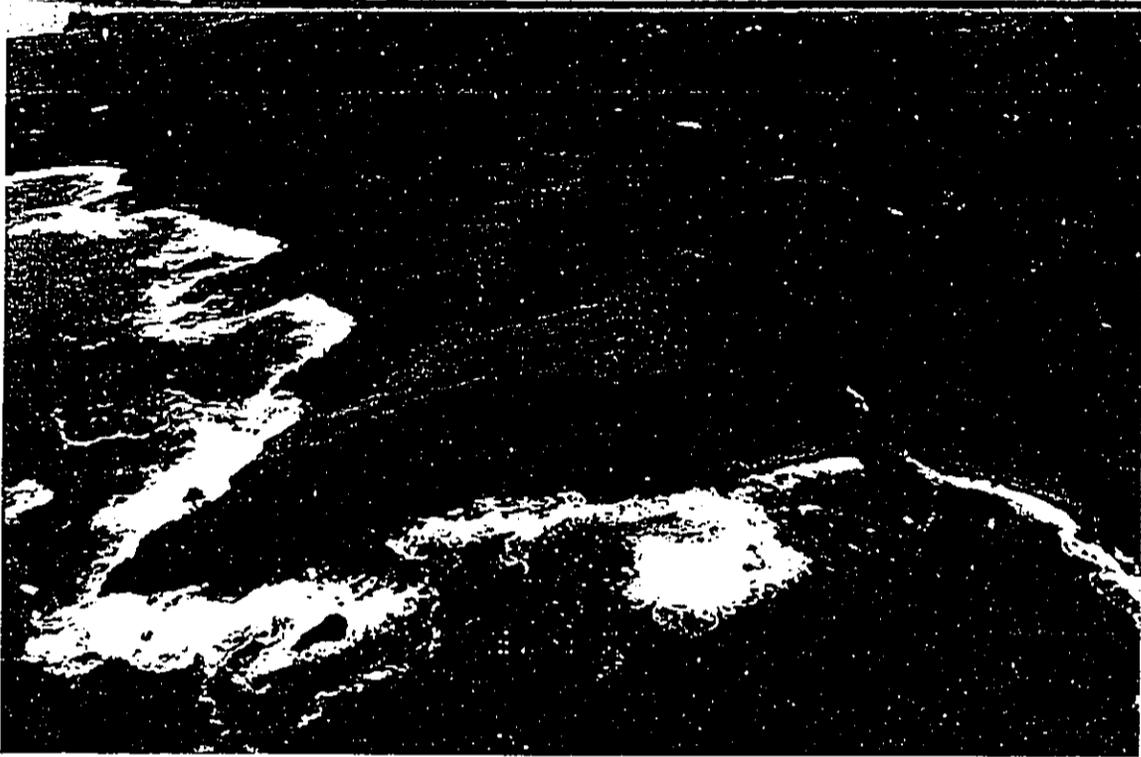
Lisa M. Nuyen

LISA M. NUYEN
Director of Planning

LMN:CMS:cmh

c: Clayton Yoshida, AICP, Planning Program Administrator
Aaron Shinmoto, Planning Program Administrator
Colleen Suyama, Staff Planner
LUCA (2)
98 CZM Exemption File
Project File
General File
(S:\CMS\Jenkins2)

EXHIBIT 1



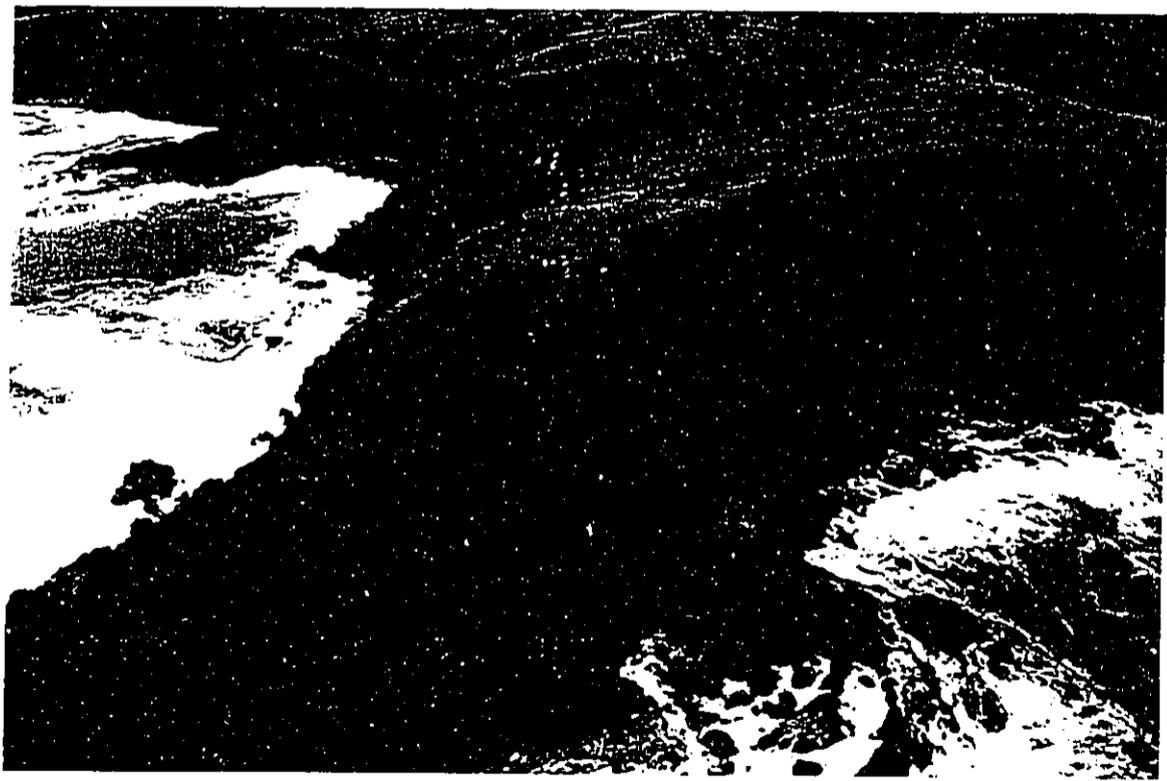
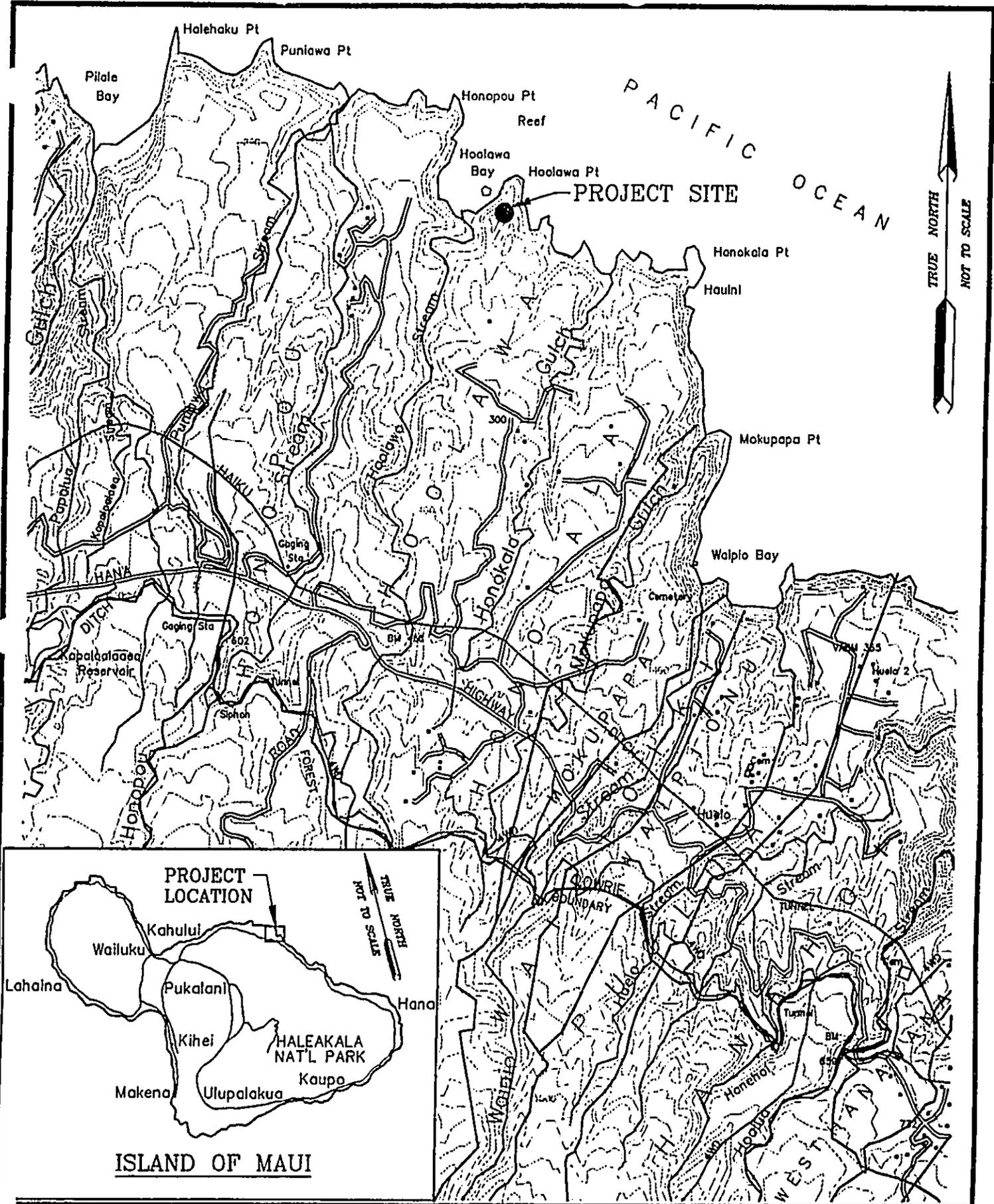


FIGURE 1



MARQUARD: SUBDIVISION

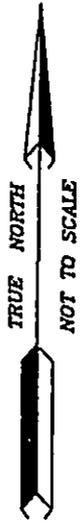
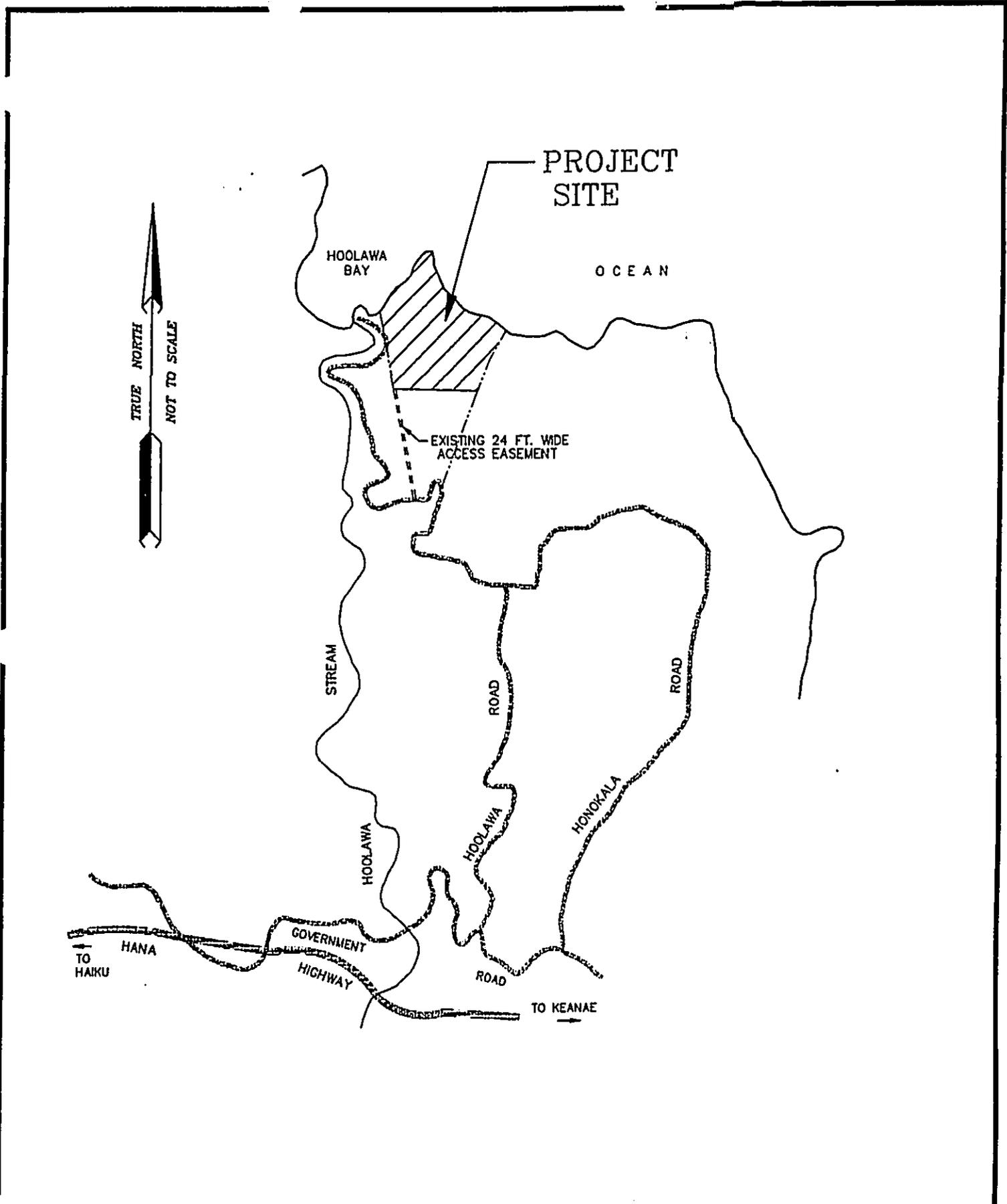
FIGURE 1

HOOLAWA, MAUI

LOCATION/TOPOGRAPHIC MAP

FIG. 1

FIGURE 2



MARQUARD: SUBDIVISION

FIGURE 2

HOOLAWA, MAUI

SITE LOCATION MAP

FIG. 2

8.5"X11"

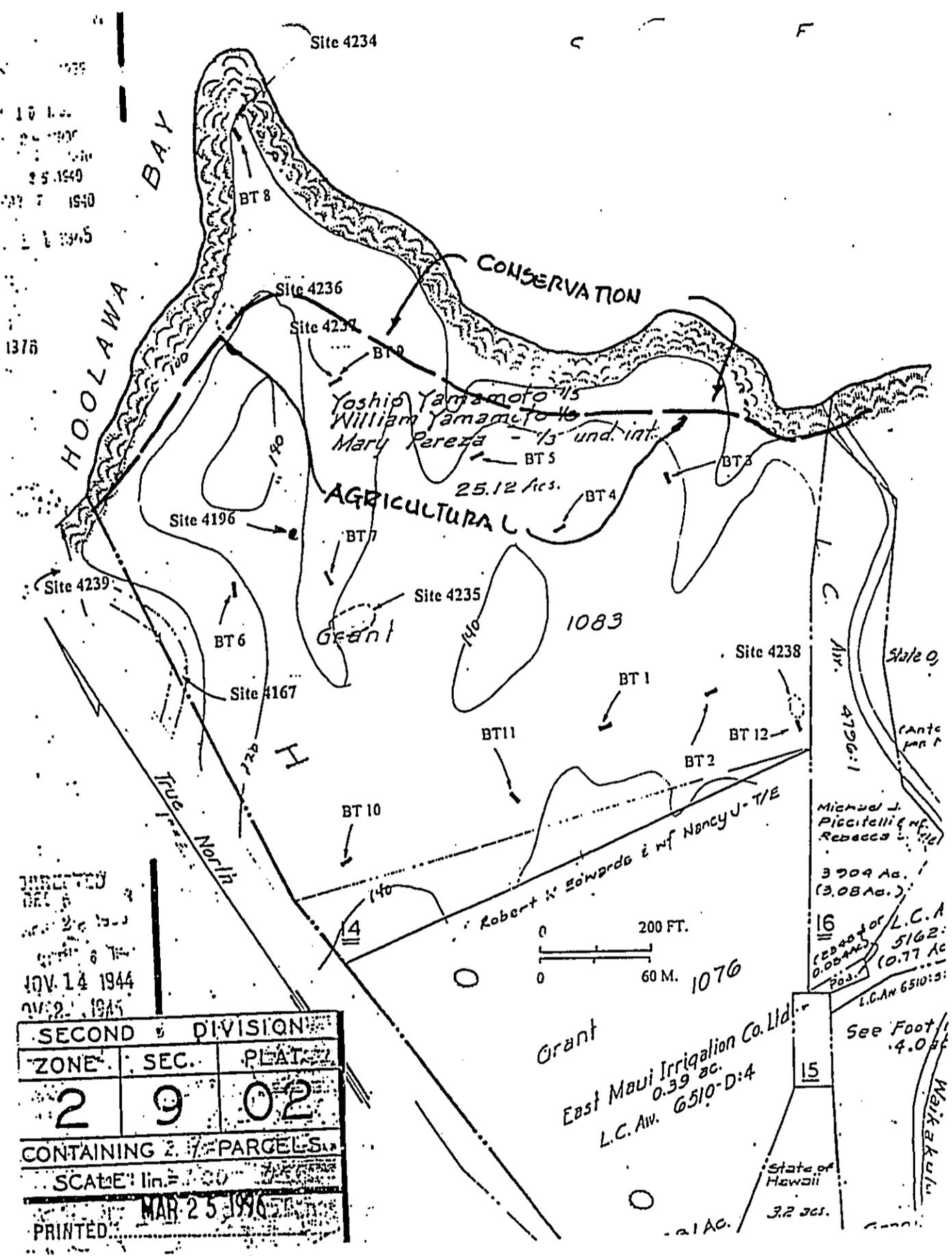
DWG NO. 3727D1

JOB NO. 95-3727

FIGURE 3



FIGURE 4



APPENDIX 1

ARCHAEOLOGICAL INVENTORY SURVEY
OF HO'OLAWA RANCH PROPERTY,
HO'OLAWA AHUPUA'A,
MAKAWAO DISTRICT, MAUI ISLAND
(TMK: 2-9-02: 14)

Prepared for:
Michael P. Marquard

Prepared by:
Xamanek Researches
P.O. Box 131
Pukalani, Hawaii 96788

Erik M. Fredericksen
Demaris L. Fredericksen

December 1996

APPENDIX 1

ABSTRACT

An inventory survey was conducted on a 25.12 acre parcel situated in Ho'olawa *Ahupua'a*, Makawao District, on the north shore of Maui Island. A total of 5 sites were identified and assigned State Historic Site numbers (Sites 50-50-06-4234 to 4238). One is an historic grave (4234) identified by a local informant, 2 are surface scatter site remnants (4235 and 4236), 1 is a subsurface precontact fire pit (4237), and 1 is a stone feature which may contain a burial (4238). Two other sites on the property had been identified in a prior survey, Site 2956, Ho'olawa Landing Road, and Site 4196, an historic grave. The Ho'olawa Landing (Site 2956) lies at the end of the road, and once provided the only sea access between Kahului and Hana. It is not on the property, but is part of the historic complex associated with commercial sugar raising activities in the late 19th, early 20th centuries. Finally, a large rock shelter on the west side of Ho'olawa Stream, just off the property, was also assigned a site number, Site 4239, but not tested.

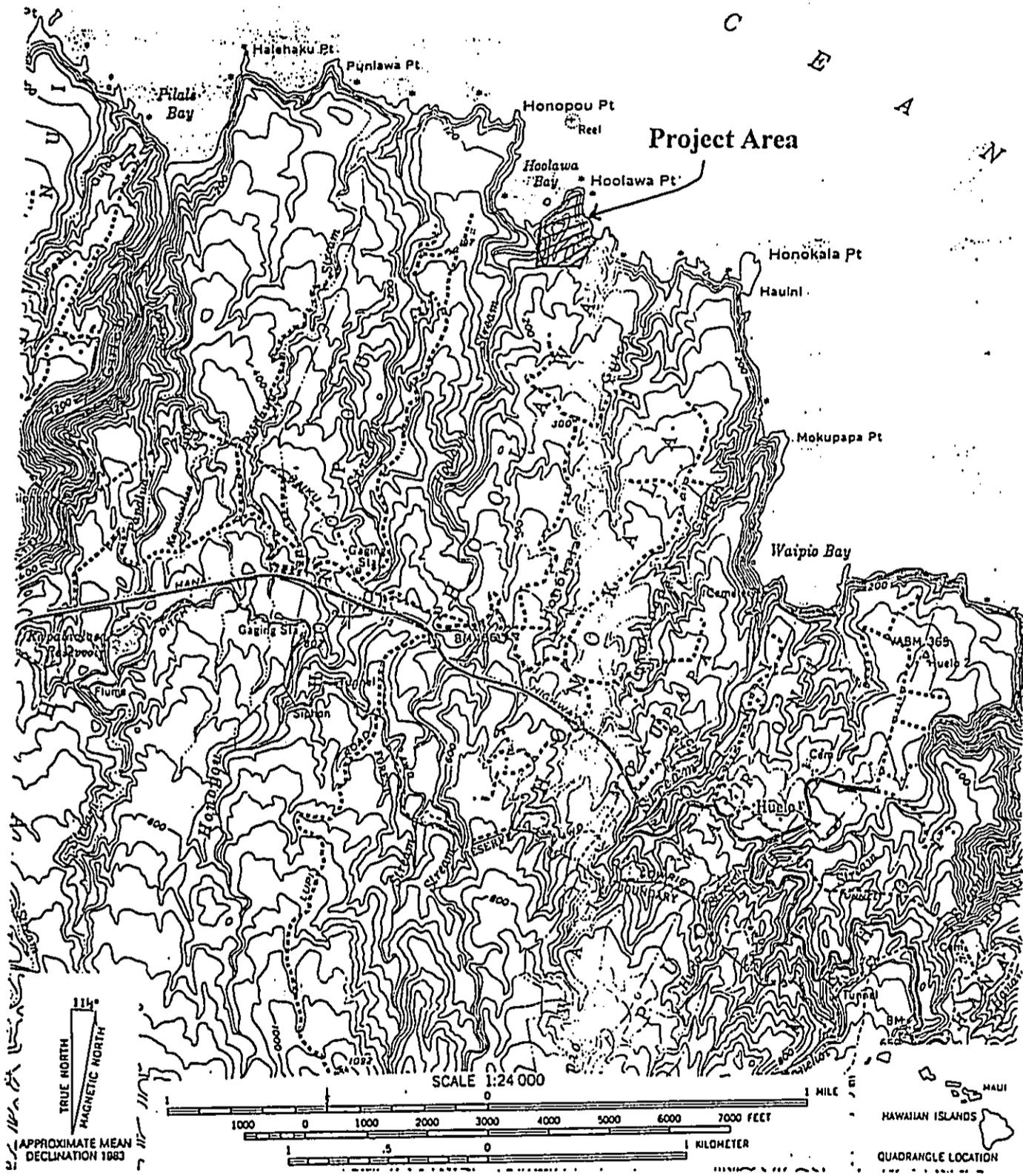
Site 4237, the subsurface fire pit, provided the only radiocarbon date—360 +/- 60 or a calibrated date of AD 1435 to 1660.

Preservation in place is the recommended mitigation for the 2 known historic graves (Sites 4196 and 4234). Preservation is also recommended for Site 4238, which contains a possible grave. No further archaeological work is deemed necessary for the other identified sites on the property.

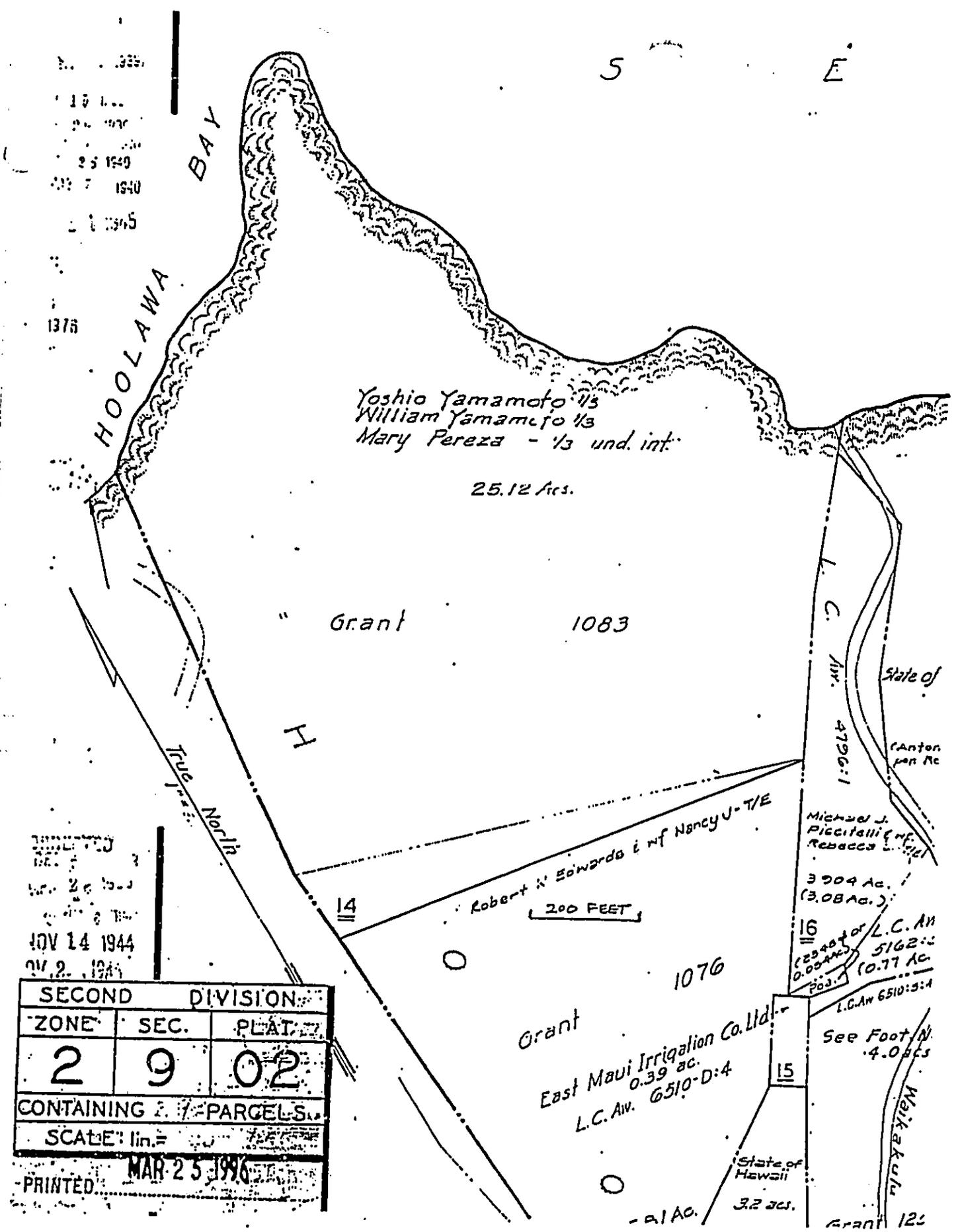
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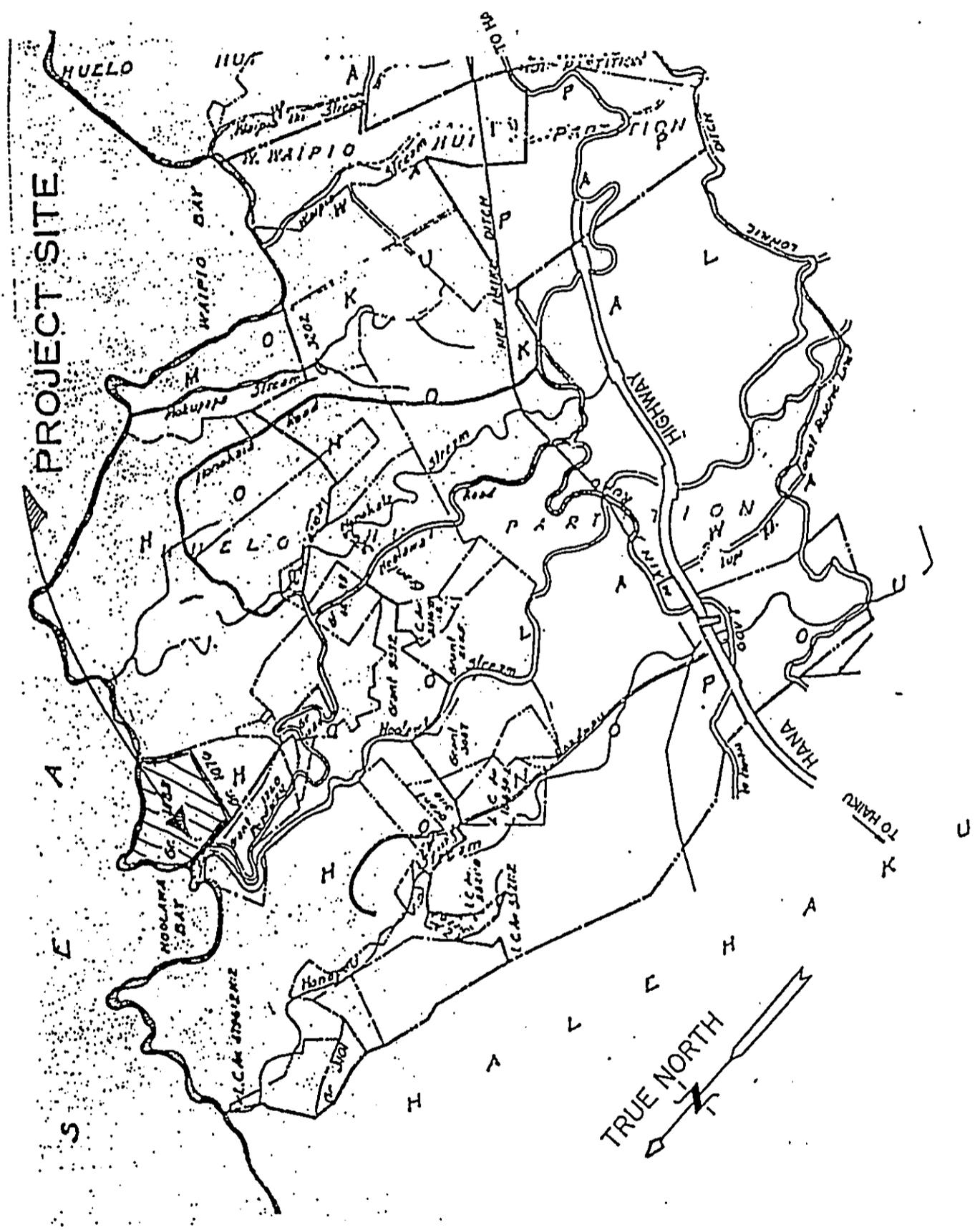
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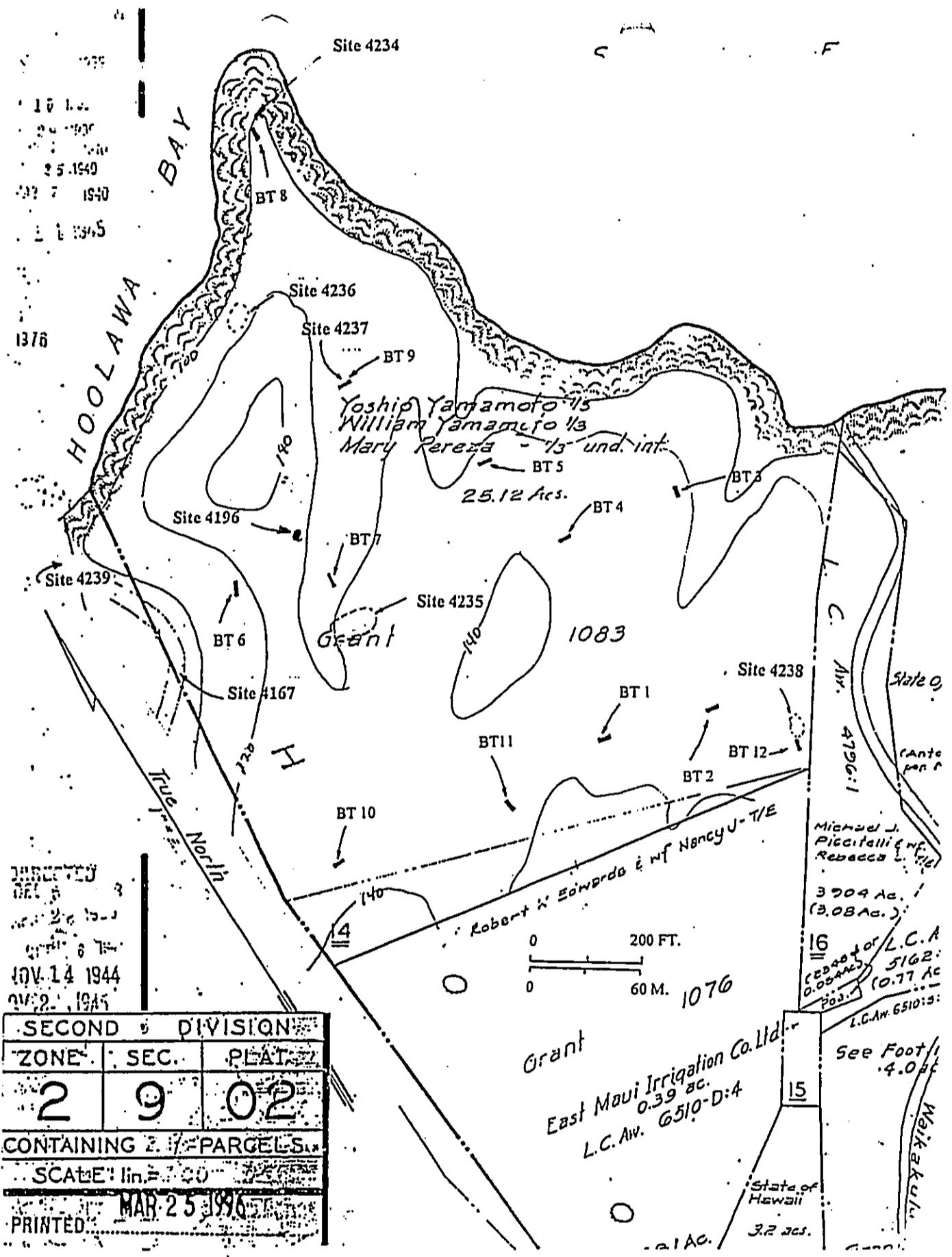
Map 1 - Topographic Map, U.S.G.S., Haiku Quadrangle, 1983.



Map 2 - Tax Map, portion Zone 2, Section 9, Plat 02, State of Hawaii.



Map 3 - District map showing project parcel. (Provided by Otomo Engineering, Inc., Wailuku.)



Map 4 - Project Map showing location of identified sites and backhoe test trenches.

INTRODUCTION

In March of 1996, we were contacted by Mr. Michael Marquard regarding a property situated at Ho'olawa Bay, Huelo, Maui (TMK: 2-9-02: 14). Mr. Marquard had applied for a SMA minor permit to cut an access road down from one part of his property to the existing Ho'olawa Landing Road, which is also located on his property. This historic roadway was once a public thoroughfare, and the State Historic Preservation Division required that an archaeological inventory survey be conducted of the immediate area which would be impacted by the cutting of the access road. In April of 1996, Xamanek Researches undertook this limited inventory survey (Fredericksen, May 1996).

The primary objectives this phase were to complete the archaeological inventory survey which included the identification and assessment of cultural resources on the entire subject property.

SURVEY AREA

Natural History

The entire property, some 25.12 acres in area, occupies Ho'olawa Point, overlooking Ho'olawa Bay to the west and an unnamed bay to the east. On the ocean side, the property drops precipitously for over one hundred feet to the rocky shore below. The soils are classified as Pauwela clay (Pfc), which consists of dominantly silty clay loams, silty clays, and clays. They occur in areas where insolation is low, and slopes range from 8 to 25 feet (Foote, et. al., 1972, p. 141). The slope on the subject parcel ranges from 7 to 15 percent. Annual rainfall is 70 to 120 inches (Ibid.). Permeability is moderately rapid and runoff is slow to medium. Soils developed in alluvium, colluvium, volcanic ash and material weathered from basic igneous rocks. Soils range from 30 to 60 inches in depth. The annual mean air temperature is between 62 and 73 degrees F. (Ibid., p. 145).

The predominant vegetation consists of the grasses *wainaku* (*Panicum repens* L.) and buffelgrass (*Cenchrus ciliaris*). Interspersed in the grass are clumps of lantana, pluchia, guava and vervain. Other observed vegetation on the parcel besides the alien grass and bush species, includes indigenous beach *naupaka* (*Scaevola sercinea*), endemic *ko'oko'olau* (*Bidens hillebrandiana* subsp. *Polycephala*), indigenous *'ulei* (*Osteomeles anthyllidifolia*), and scattered indigenous *hala* (*Pandanus tectorius*) trees. These were on the brink of the sea cliff and most plants located on the point area of the parcel exhibit signs of wind and salt spray stress.

To the south of the point, Java plum trees dominate a drainage area lying in the eastern part of the parcel and on the area upslope of the old Ho'olawa Landing Roadway (Site 4167). Several large mango trees are present as well, along with quantities of Christmas berry trees. Scattered *noni* (*Morinda citrifolia*), a species introduced by early Polynesians, were also observed in the understory of the drainage area, as well as a few coconut (*Cocos nucifera* L.) trees nearby. In addition, 'ape (*Alocasia macrorrhiza*) and some possible *kalo* (*Colocasia esculenta*) were visible near the bank of a stream c. 50 m. to the east on the adjacent property. In the wetter areas, at least 2 types of fern were growing in abundance.

The property is being fenced to allow cattle to graze on the abundant grasses. Presently, domestic goats are grazing on the property and have made a trail down over the cliff face. Apparently there is a spring located in the cliff side, from which they drink water.

BACKGROUND RESEARCH

Previous archaeological work in the Huelo area

During his survey as a Research Fellow of the Bishop Museum between October 1928 and August 1929, Winslow Walker completed the entire circuit of the island documenting *heiau*. He states: "Regions beyond the reach of auto roads were covered on horseback or afoot, and in this manner all of the open country was seen in detail. All of the earlier mentioned sites were visited and many new ones found, so it is felt that the survey is now as complete as is possible." (1931, p. 2). Approximately 2 kilometers west of the study parcel, 2 *heiau* are noted. *Heiau* Site 66 (name unknown) is described as situated on the bluff just above Halehaku Bay, at the edge of the pineapple fields. It is described as:

"A good sized heiau partly destroyed to plant pineapples. The north side measures 128 feet and the east side 120. At a point 68 feet from the northeast corner a wall runs back dividing the heiau into two divisions. The back measures 115 feet. The north and west sides have been terraced in two or three steps. The height of the front wall facing is 4 feet. No coral or pebbles seen." (Ibid., p. 156).

Site 67, named Piilani, is located on shore at Halehaku Bay about 50 yards from the sea. In describing this structure, Walker says:

"A massive structure of beach rocks terraced on the front to a height of 10 feet. It extends parallel to the shore for 150 feet. The greatest width is 60 feet. The interior was probably paved but is now heavily overgrown with grass and bushes. A terrace 2 feet

high forms the back against the hill; no coral was found. Numerous enclosures at the base of the hill indicate a good sized village site, now mostly gone." (Ibid., p. 157).

Another structure lies within 1 km. of the present study parcel in the Honopou region. It is identified as Site 68, and is named Poohoolewa. Walker writes:

"At Apiapi on the high bluff beyond Honopou Gulch to the east.... A large walled heiau probably of sacrificial class. It is 300 feet long, 130 feet wide at the front. A large open court occupies the distance of 200 feet from the front of the heiau. The remaining 100 feet is divided into two 50 foot enclosures with walls 5 feet high and 6 thick. The western side has been broken down to permit planting of pineapples. Beach stones, pebbles and basalt are used in its construction." (Ibid., p. 158).

Another site in Honopou *ahupua'a*, Site 1223, is identified as the Honopou Burial in the State Register of Historic Places. It lies c. 1/3 mile inland of Ho'olawa Bay. It is a roughly rectangular platform 9.5 by 6 meters in size. It was reported to contain a burial, which was not confirmed by subsurface testing. The platform has 3 distinct levels of roughly similar dimensions, and is built of waterworn basalt rocks. The central level is the highest, rising c. 1 meter above ground, and c. 0.5 meters above the other levels. No coral or *'ili'ili* were noted, nor were there any precontact artifacts or midden found. The site was recommended for Reserve Status, and is considered to have moderate research potential (Connolly, 1974).

Two more recent archaeological inventory surveys have been carried out in the general vicinity of the present study parcel by Scientific Consultant Services, Inc. (Dunn, Burgett, and Spear, September, 1995 and Dunn and Spear, June 1996).

One, in Kea'aula *ahupua'a* (TMK: 2-8-03: 18, 20, 21, 24), prepared for the Manawai Homesteads Subdivision (Maui Ocean Vista Estates), encompassed 121.32 acres. The majority of the project area was former pineapple lands (60%) lying to the east of Manawai Gulch and bordered by sea cliffs on the north. Eleven sites, containing 21 component features, were identified. Four sites are historic, and consist of portions of the Spreckels Ditch (Site 4086), the Haiku Ditch (Site 4092), and two historic roads (Sites 4093 and 4095). The remainder of the sites represent prehistoric agriculture or possible agricultural usage (Sites 4085, 4089, and 4091), a red ochre quarry (Site 4088), a habitation site (Site 4090) a probable habitation site (Site 4087), and a lithic scatter (Site 4094). [Dunn, Burgett, and Spear, September 1995].

The second, on an adjacent 73 acre property to the west of the Manawai Subdivision, was conducted for the Sea Ranch Estates residential subdivision developed by AROSI Hawaii, Inc. Four archaeological sites containing 5 components were identified. Two of these sites had been identified in the previous survey—the Haiku Ditch (Site 4092) and a roadway segment (Site 4095). The third site is a lithic scatter which extends westward from the adjacent property (Site 4094). The remaining site is another red ochre quarry (Site 4182) [Dunn and Spear, June 1996, Abstract]. This site

consists of an area excavated into a slope, which measures 2.8 by 2.26 meters wide by 1.1 meters high. A deposit c. 30 cm. thick of fine quality red ochre was observed. The site closely resembled the one found on the adjacent property (Site 4088) which produced similar material. The geology of the region appears to include veins of ochre that can be expected to be exposed throughout the area (Dunn and Spear, June 1996, pp. 12-13).

Previous archaeological work on the Marquard property

A limited archaeological inventory survey was undertaken on the western portion of the present study parcel on which the old Ho'olawa Landing Road is located. The area surveyed was approximately 1100 to 1200 square feet in size, and consisted of a cleared area leading to a drop-off of about 2 to 3 meters down to the roadway.

In the cleared area a number of Hawaiian artifacts (S1 through S8) were recovered. These included an adze blank (S1), 2 small and 2 large utilized basalt flakes (S2-5), a large piece of red ochre (S8), and one piece of utilized volcanic glass (S7). Further down the cleared area toward the old Ho'olawa roadway (Site 4167), some historic items, such as pieces of broken window glass, several pieces of brown bottle glass, and a porcelain sherd were found.

Site 4167, as it exists on the Marquard property, represents a flattened area overgrown with staghorn fern and brush, with an overstory of christmas berry, mango and Java plum trees. It is about 3.5 to 4.2 meters in width, and runs in a northerly direction for approximately 15 meters on the study parcel. The east face is made up of bedrock in several places that ranges from 1.5 to about 3 meters in height. In several locations, alignments of stones mark the inner edge of the roadway. Along the west side, or outer side, curb stones are apparent in several places as well. There are occasional large stones in the roadway which have most likely tumbled down from the bedrock face. The west side of the roadway drops off steeply to another section of the road which runs below, as part of the switchback system dropping down to the landing. There is fairly good pedestrian access down to the landing, although the road is overgrown in some places. The section of the road running *mauka* is completely overgrown and for the most part, impassable.

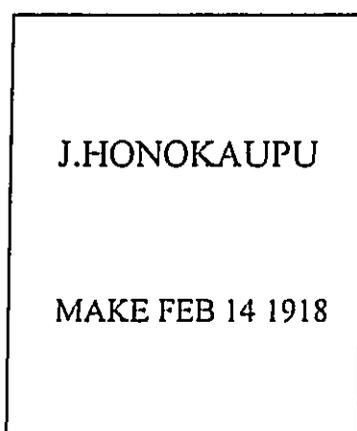
Several broken Maui Soda bottles with crown tops and a large "W" embossed on the bottom were found, probably dating from the 1920s or 1930s. A large hoop of rusting metal, 8 cm. wide by 2.5 cm. thick and 1.5 meters in diameter, lies partially buried in one section on the eastern side of the roadway. This may be an old wagon wheel rim. Pieces of rusting metal track were noted in several places along the roadway bank, as one descended to the landing.

Ho'olawa Landing (Site 2956) lies to the west of the cliff face and was documented because it was part of the historic complex associated with the Marquard property. It is located on an old exposed lava flow to the east of the Ho'olawa Stream

mouth. There is a rectangular concrete platform, 1.9 by 2.7 meters, and 0.8 to 1.5 meters in height. On it is a smaller brick footing covered with cement which measures c. 1.0 by 1.0 meter. Two other smaller concrete footings are still in place. Four large pieces of rusting machinery, perhaps part of the large crane, are present at the mouth of the stream. Two of these pieces have large cogs on one end measuring 81 cm. in diameter by 37.5 cm. in diameter. The teeth are 30 cm. wide by 7 cm. thick and are 8.5 cm. in depth. The entire length of the shafts are c. 2.9 to 3.0 meters. The other 2 pieces are large axles, c. 25 cm. in diameter and c. 2 meters in length. A set of narrow gauge (24 inches) railroad car wheels, still connected to the axle, were noted in the stream bed (Photo 10).

A large rock shelter, the mouth of which is ca. 5 to 6 meters wide and c. 2 meters high is located on the west side of the stream (Site 4239). The interior opens up into a huge dome-shaped cavern, 5 to 7 meters in height. It extends approximately 15 meters into the bedrock. We did not explore the interior extensively, but feel fairly certain that such an imposing feature would have been utilized in precontact, as well as historic times. Pieces of driftwood and other floating debris on the interior floor indicated that it was awash in times of high water. A ledge of soil covered rock at the back of the cave appeared to be above the maximum water level. Since this feature was not on the Marquard property, no subsurface testing was attempted.

About 40 meters to the northeast of the graded area in which precontact surface artifacts were recovered, an historic grave (Site 4196) was documented. It is an above ground concrete vault, with a tombstone on the *makai* side, on which a name and date of death are to be found:



The second letter, H and the last letter U have weathered so much that they are not clearly visible (Photo 6)¹. There are no plans for any activity in this area of the property, and Mr. Marquard has assured us that the grave will be preserved.

¹ In an interview with Mrs. Abby Ajifu on December 6, 1996, she reported that this was the grave of Jack Honokaupu. He had lived in a house nearby to the west, the location of which is marked by coconut and mango trees.

Historical Research

Site 50-50-06-4167 - Ho'olawa Road
Site 50-50-06-2956 - Ho'olawa Landing
Site 50-50-06-1505 - Huelo Sugar Mill Number Two
Site 50-50-06-1504 - Huelo Sugar Mill Number One

These four sites were part of the economic and commercial history of this part of Maui in the late 19th and early 20th centuries. They formed a complex that is historically significant because it linked the area with the outside world, both physically as well as commercially. The present study parcel contains a portion of this complex.

The Ho'olawa Road, approximately 50 feet of which runs along the westernmost edge of the study parcel, connected the Huelo Sugar Mills, numbers one and two, to Ho'olawa Landing. Information is sketchy about these sites. According to the Hawaii Register of Historic Places forms, dated March 1974, which were the result of a statewide survey of Historic Places conducted in 1973 and 1974, the ruins of the Huelo Sugar Mills Number One and Two are still in place.

According to the Register data form (Wright, 1974a), the site of Huelo Sugar Mill Number One lies between Honokala and Mokuapapa Points, west of Waipio Bay, about ¼ of a mile to the east of the present study parcel. While documentary sources for this mill are scarce, a list of plantations in the Hawaiian Annual of 1879 show it as being at "Hamakua, Maui" which is "obviously a printer's error". The report goes on to say:

"The year 1879, according to Peter Cushman Jones of C. Brewer, was one of the hardest and saddest of his business experience, and Huelo along with other interests of the company were 'cramped for funds'. The details of the company and its corporate structure at this time are at best hazy, as there is reference to a charter for Huelo Sugar Company in the Privy Council Records (Vol. 1-4). By about 1895, it appears the company went out of business, due mainly to the distance of the mill from the landing at Hoolawa."

Huelo Mill Number Two lies inland of the study parcel. The Register report (Wright, 1974b) on this site states:

"Although this mill was built later than Huelo Mill Number One (HRHP 1504), little seems to be known of it at present. The mill stack base has cast into it 'Huelo

Mill/erected 1901', yet standard lists of plantations, mills, and cane growers for the time do not include Huelo.....²

In March [1900], the MAUI NEWS mentioned a group formed in 1897 to lease 1,500 acres of land at Huelo to Huelo Sugar Company. It is not clear whether this refers to the first Huelo company or the second. Not until March, 1902, is the mill (the present mill) noted, and hailed as a success. That month, it appears, the mill equipment was completed, with the first cane in the rollers on March 20. Entirely new equipment from Risdon Iron Works, San Francisco, was 'an improvement over the old Huelo Sugar Company which had old-fashioned machinery, one set of rollers, one vacuum pan, not triple affects.' W.S. Akana was manager.

No further mention could be found. Mr. Tavares {John Tavares of Mokuapapa} believes the mill went out of operation about 1905, the exact reason being ambiguous.

This second mill was situated to utilize water from Hoolawa Stream and be close to the landing in Hoolawa Bay. Processed sugar in bags was sent down to the landing on a simple inclined tramway. A few pieces of rail may be found around the mill site, and only a few fragments indicating the landing site may be seen."

Apparently Huelo Sugar Company was an affiliate, or had a connection with Maui Sugar Company.

The article in *The Maui News* from the March 31, 1900 edition, identifies the group mentioned above as the "Hui Aina O Huelo, Maui". It states: "In 1897, a Hui was organized with J. R. Smyth as Trustee for a number of Hawaiians, who bought 1,500 acres of land at Huelo, Maui from Mr. Cotton the agent of Wm. Rainey Watson of Scotland.

Mr. Smyth, as trustee made a lease of this land to the Huelo Sugar Company, which lease was never ratified by the Hui. On the 21st of December a meeting of the shareholders was held at Huelo and was adjourned to March 8, 1900.

Between these two dates, Judge Keпоikai, representing the Hawaiian Commercial and Sugar Company bought a controlling interest in the shares of the Hui, thirty-six shares, which was one more than a majority of the stock.

On March 8th, the date to which the meeting was adjourned, another meeting of the shareholders was held at Huelo, at which meeting the president, secretary and treasurer resigned. The majority of the shareholders present immediately proceeded to elect a new set of officers, as the constitution of the Hui permits. Their names will be found in the notice now running in the News.

We received an interesting communication this week from one of the shareholders..... The writer is somewhat dissatisfied with the action of the shareholders in holding the meeting without giving a special notice to all the shareholders, but he states that it was an adjourned meeting to a fixed time. The names of the men at the head of the present Hui are a guarantee that nothing crooked has been done in the matter."

² The references may be to the Maui Sugar Company Mill, rather than Huelo Mill. It is so listed in The Index to The Maui News, 1900-1932 (Bartholomew, 1985).

In another article two years later from *The Maui News* (March 29, 1902), it was reported that the mill had finally been completed. After "long and impatient delay, the mill of the Huelo plantation has been completed and to day (Mar. 20) the first sticks of cane were put into the rollers by the hands of the agent Wong Kwai.....and "hearty congratulations for the success of Maui Sugar Co." were extended. It continues:

"The mill begin [sic.] to work perfectly and to the entire satisfaction Mr. G. M. Hancock who had the management of the erection of the mill.

The mill is an entirely new mill, being recently made by the Risdon Iron Works of San Francisco and consists of the best modern sugar-making machinery, which is quite an improvement compared with the mill of the old Huelo Sugar Co. which consisted of old fashioned machinery with one set of rollers, one vacuum pan and no triple effects.

The cane will be conveyed to the mill by means of mule carts and flumes.³

The plantation, having both the soil and water and a modern mill undoubtedly promises well, even though the plantation has lost its first crop and practically the second, but had it not been for the economical principles of Mr. W.S. Akana, the manager, and Mr. T Akana, the head overseer, the plantation undoubtedly would have gone to ruins."

A May 3 reference (Ibid., 1902) states that the average sugar output at the mill was 10 tons per day, and the first shipment of sugar, 1350 bags had been made.

Other references to the Huelo Sugar Mill are found in the June 14, 1902 issue (Ibid.), where an article laments the resignation of the manager, Mr. Akana. "Mr. Akanas' resignation is much to be regretted for his services in the plantation have been of indefinite value, and the plantations success is certainly indebted to his efforts. The chief cause of this resignation is that his health is failing, and it is stated that he will return to China."

By July of 1904 (Ibid., July 30, 1904), an editorial talks about the imminent possibility that sugar planting will be abandoned at Huelo Sugar Company's plantation. It goes on to suggest that this is an opportunity to secure the land for pineapple production, which could produce a crop in 18 months. With very little capital investment, this prime land could allow Huelo to develop a permanent and paying enterprise. In September, a short note (Ibid., September 17, 1904) announced: "The Huelo Mill is being taken apart by William South, Engineer of the Pacific Sugar Mill, for the purpose of removing it to Hawaii."

³ Another historic site (50-50-06-4165) crosses the easement to the study parcel. It is a cane rail track and tunnel which connected to the mill. The system relied on gravity to move the cane carts, thus requiring the construction of the tunnel to maintain a constant grade (Personal communication, Theresa Donham, April 24, 1996).

Land Tenure

According to the tax map and title documents supplied by Mr. Marquard, the subject property is comprised of the total land area of Grant 1083, to Nawelu. A partition action done and recorded in 1934 added a portion of Grant 1076 (to Wahahee) to the parcel. The land was conveyed to Yoshito Yamamoto, Solomon Yamamoto and William Yamamoto on July 21, 1934. An undivided 1/3 interest was conveyed to Mary Pereza, wife of Nelson Pereza, and Solomon Yamamoto, from Yoshito Yamamoto and Julia Yamamoto, on November 14, 1957. Mr. Marquard acquired the land from the Yamamoto/Pereza family in September of 1989.

Oral History

On December 6, 1996, a former resident of the subject property was interviewed. This was Mrs. Abby Ajifu, one of the Yamamoto family members, who had been previous owners of the property. She was one of 16 children of Julia Smyth and Yoshito Yamamoto. Her grandfather, Kalani Smyth gave the property to her mother, husband and children. Mary Pereza is one of her sisters. Solomon and William are 2 of her brothers. The land was never used for agriculture while she was growing up. She related that all of the Yamamoto children were born at home. At first, her mother's mother, who was pure Hawaiian, served as midwife, but as she grew older and children kept coming, she taught Yoshito how to aid his wife when she gave birth.

Mrs. Ajifu lived in the parcel *mauka*, or southward of the property, but the house in which she lived is no longer standing. She said that it was of double wall construction, and that bees had nested between the walls, making it uninhabitable, and it was demolished. The major usage of the property during her lifetime has been pasture land. Her mother was born in 1902, about the time the Huelo Mill located nearby was closing. The family did not farm the land because there was a lack of water. She said that she still has the water rights to the "first ditch" inland.⁴

She said that her grandfather, Kalani Smyth used to fish from canoes launched from Ho'olawa Bay. There is a small cave on the western side of the bay, which was used for the storage of the fishing canoes. The wooden pier associated with the Huelo Sugar Mill (Ho'olawa Landing, Site 4167) was gone when she was growing up. She said there were 2 large boilers left on the point near the landing, however. Her father cut an entrance into them and they used them as fishing shelters. During the tsunami in April of 1946, they were washed out to sea. She said that she and her family watched the waters recede, uncovering the stones on the bay floor, and then come rushing into the stream valley. They had planned on going fishing that day, but fortunately had not done so (she still likes to go fishing every morning when she can).

⁴ This appears to be the Haiku Ditch, as shown on the U.S.G.S. topographic map.

Land Use

Land in the area of the study parcel has been under agricultural use since the 1800s. As the information on the two Huelo Sugar Mills suggests, sugarcane was the first commercial crop cultivated in the Huelo area, and portions of the subject property may have been included in the Hui Aina O Huelo. Pineapple was another commercial crop grown in the area in the past, and may also have been produced on the parcel. Mrs. Abby Ajifu, a lifelong resident, said that they used the land for pastuage, because they did not have enough water for crops. More recently, in the 1970s and 1980s, portions of it were used by modern agriculturalists to produce a popular cash crop, prior to its acquisition by Mr. Marquard.

While no surface evidence of habitation structures is present on the parcel, the presence of a marked grave, a *noni* tree, several mango trees and coconut palms, along with several *ti* plants, suggest that habitation was another use.⁵

ARCHAEOLOGICAL FIELD METHODS

The field portion of the inventory survey consisted of 2 phases. A pedestrian surface reconnaissance of the c. 25 acre parcel was first conducted by archaeologists.⁶ Survey transects were oriented east-west and field personnel maintained a c. 5 m. spacing during this inspection. Surface visibility was generally poor due to dense *wainaku* grass and buffelgrass growth covering the majority of the property.. Archaeological sites were flagged and located on a plat map. No topographic map was available at the time of the survey. Where feasible, archaeological sites were cleared of vegetation and mapped with a hand-held electronic compass and metric survey tapes. Photographs were taken with black and white T-Max 400 film and color film. Hawaii State site numbers were subsequently assigned for the additional sites identified in the complete inventory survey.⁷

The second phase of the field investigation consisted of subsurface testing. A total of 6 manual test units and 12 backhoe trenches were excavated on the study parcel. All soil from the manual test units was sifted through nested one-quarter and one-eighth inch mesh screens. Test Units were excavated by natural stratigraphy and arbitrary levels in layers more than 10 cm. thick. Material culture remains were sorted in the field and

⁵ It was confirmed in an oral interview, that this was the location of the former residence of Jack Honokaupu, the individual buried in the grave (Site 4196).

⁶ Photos 1, 2, and 4 show general views of the parcel.

⁷ The State Inventory of Historic Places site designation system consists of four-digit site numbers which follow 50-50-06 (50 = State of Hawaii, 50 = Maui Island, 06 = USGS Haiku 7,5' quadrangle.)

placed in labeled bags. Profiles of completed excavations were recorded in the field as well.

Stratigraphic layer descriptions were recorded for test units and backhoe trenches in the field using Munsell (1975) and McRae (1988) as references. The excavation of each of the 12 backhoe trenches was monitored by 2 archaeologists. In addition, the back dirt from each trench was visually inspected and spot-checked with one-eighth inch screen. Finally, the profiles of the trenches were inspected, when personal safety was not in question.

Archaeological Laboratory Procedures

The sparse material culture remains were transported to the Xamanek Researches Laboratory on Maui for cataloging and analysis. All artifacts, except volcanic glass, were cleaned before examination. Artifacts were weighed and measured.

Floral remains consisted exclusively of charcoal. This material was cleaned, weighed, and recorded by provenience. One charcoal sample was sent to Beta Analytic, Inc. for radiocarbon dating analysis.

All material culture remains are presently curated by Xamanek Researches.

Pedestrian Survey Results

The walk-over portion of the inventory survey produced 5 sites (50-50-06-4234 through 4238). These include a burial (Site 4234), 2 surface scatters (Sites 4235 and 4236), a subsurface fire pit (Site 4237) and a rock alignment that includes a possible burial (Site 4238). A known historic burial, Site 4196 (Photo 6), was found in the earlier limited survey associated with an access road to Ho'olawa Road (Site 4167) [Fredericksen, 1996]. In addition, the rock shelter (Site 4239)[Photo 8] located on the western bank of Ho'olawa Stream c. 20 m. beyond the boundary of the present study area, which was also noted during the limited inventory survey, was assigned a site number. Ho'olawa Landing (Site 2956; Photo 9) had been documented during the previous survey, as was the Ho'olawa Landing Road (Site 4167; Photo 7)

As noted earlier, much of the subject parcel is covered by alien grass species. It looks as if portions of the study area have been bulldozed sometime in the relatively recent past. During the walkover survey, very few surface rocks were noted on the property. This lack of surface rocks may indicate that commercial agriculture once took place on suitable portions of the parcel (i.e. areas with little relief). Refer to Table 1 for a summary of surface collections recovered from the project area.

Site 50-50-06-4234

This site is located on a narrow headland which forms the northernmost part of the property. This headland is identified as Ho'olawa Point on the USGS Topographic Map. Steep sea cliffs of 30 to 40 m. fall away from this narrow point. Site 4234 consists of several exposed waterworn cobbles which appear to be arranged in an oval manner. However, the western half of the site is exposed while the eastern half is mostly covered with soil and grass. Overall dimensions are c. 2.2 m. N-S by 1 m. E-W (Photo 3).⁸

No subsurface testing was conducted at Site 4234 because it has been identified as a burial. The site is in fair condition. However, goats have caused a noticeable impact on the western surface, completely exposing 2 large waterworn cobbles in the period of about a 5 month time span (between the time of our limited inventory survey and the complete one reported upon herein).

Site 50-50-06-4235

This site is a remnant and has been impacted by past earthmoving activities on the study parcel. It is situated near the base of a relatively steep hill (Photo 5). It was initially exposed in a shallow bulldozer cut associated with the earlier placement of an access ramp to the old Ho'olawa Road (Site 4167). Vegetation in the general area consists of alien grasses and annuals, Java Plum and *noni* trees, and a lone coconut tree.

Material culture remains located on the surface of Site 4235 consisted of 3 utilized basalt flakes, 2 pieces of utilized basalt, a utilized flake of volcanic glass, a piece of red ochre and several waterworn pebbles c. 10 cm. in diameter (Photos 11-13).⁹ These artifacts were scattered throughout an area c. 30 square meters in size (Figure 1). There was no evidence of food midden remains on the surface. In addition, no architectural features were located. As noted earlier, Site 4235 is a site remnant which has been impacted by recent earthmoving activities, and is in poor condition.

Site 50-50-06-4236

Like Site 4235, this site is in poor condition. Site 4236 is also interpreted as a site remnant which consists of a surface scatter covering c. 4 square meters (Figure 2). It is located near the sea cliff face to the southwest of Site 4234. Vegetation in the general area is dominated by alien grasses and annuals. However, indigenous beach *naupaka*

⁸ In an oral history interview with Mrs. Abbie Ajifu, a former resident of the subject parcel, she stated that Site 4234 is a burial. Mrs. Ajifu also indicated that the person who is buried in the grave was named Malaiaku, and that the point was named after him. The name for the point which is given on the USGS map is Ho'olawa Point. However, Malaiaku Point is the local name, according to Mrs. Ajifu.

⁹ These materials were collected during a limited inventory survey during April 1996 (Fredericksen, 1996). They are assigned surface artifact numbers S1 through S8.

(*Scaevola sericea*) is relatively common. In addition, scattered *hala* (*Pandanus tectorius* - indigenous) trees, indigenous *'ulei* (*Osteomeles anthyllidifolia*), and endemic *ko'oko'olau* (*Bidens hillebrandiana* subsp. *polycephala*) were noted along the brink of the sea cliff.

Material culture remains were observed along the surface of an off-road vehicle track near the top of a ridge. Cultural materials found included 1 waste flake of volcanic glass (S9), 2 pieces of volcanic glass shatter (S10 and 11), and 1 unutilized basalt flake (S12). There was no surface evidence of architectural features or food midden remains present at Site 4236.

Site 50-50-06-4237

This site consists of a subsurface fire pit. It contains no visible surface evidence of material culture remains. It was discovered when the area in which it is located was chosen for a backhoe test trench because it was a level area overlooking the ocean and part of Ho'olawa Bay.

Vegetation in the general area is dominated by alien grasses and annuals. Native plants observed consisted of beach *naupaka* (*Scaevola sericea*) and *'ulei* (*Osteomeles anthyllidifolia*). Surface visibility at Site 4237 is poor.

Site 50-50-06-4238

This site lies near the eastern border of the study area and is located along a stream cut valley slope. Observed vegetation is dominated by an overstory of Java Plum trees. The understory consists of young *noni* (*Morinda citrifolia*) trees, guava trees, and at least 2 types of fern, including *maile*-scented fern (*Phymatosorus scolopendria*).

Site 4238 is in fair condition. It is composed primarily of waterworn cobbles and boulders ranging from c. 0.2 to nearly 1 m. in diameter (Figure 3). In addition, several porous basalt cobbles were noted at the site. Site 4238 measures a maximum of 11 m. N-S by up to 6 m. E-W. The site lies along the sloping valley's side and is relatively level. Evidence of bulldozing parallels the property fence line some 8 m. to the east. In addition, 2 areas of probable bulldozer push are adjacent to the site.

Site 4238 may contain a burial within Feature 1, which consists of piled cobbles in a roughly oval shape. This feature measures c. 2.1 m. E-W by 1.3 m. N-S by a maximum of 0.4 m. high. The upslope portion of Feature 1 is partly covered by soil deposits.

This site may be associated with past agricultural activities on the subject parcel. One possible pecking stone (S13) composed of dense basalt was located during the

TABLE 1

Summary of Surface Collections From Site 50-50-06-4235,
Site 4236 and Site 4238

Site 50-50-06-4235			
ARTIFACT #	PORTABLE REMAINS	L x W x H (mm.)	WEIGHT (g.)
S*1	Basalt adze blank	85.0 x 31.1 x 23.0	84.2
S2	Utilized basalt flake	44.5 x 38.0 x 9.5	17.5
S3	Utilized basalt flake	54.5 x 47.0 x 9.6	34.9
S4	Utilized basalt flake	54.6 x 34.6 x 15.5	43.4
S5	Utilized basalt flake	49.3 x 17.8 x 11.8	12.4
S6	Utilized basalt	69.0 x 51.2 x 37.0	130.4
S7	Utilized volcanic glass flake	12.5 x 8.6 x 4.1	0.4
S8	Red ochre	-	5.7
Site 50-50-06-4236			
S9	Volcanic glass flake	11.7 x 7.8 x 4.1	0.3
S10-11	Volcanic glass shatter	2 pieces	0.1
S12	Unutilized basalt flake	59.3 x 43.7 x 15.8	46.3
Site 50-50-06-4238			
S13	Possible basalt pecking stone	61.0 x 333.5 x 21.0	106.7

S* denotes surface

surface inspection of the site. This small waterworn cobble (106.7 g.) appears to represent a low-use tool. No other material culture remains other than an old truck tire and 2 recent aluminum beverage cans were located in the vicinity of Site 4238. Surface visibility is fair in the area around this site.

Site 50-50-06-4239

As noted earlier in this report, Site 4239 lies on the west bank of Ho'olawa Stream, just off the subject parcel. The site consists of a sizable rock overhang shelter which has an entrance c. 5 m. wide by a maximum of 2 m. high (Photo 8). The cave extends back c 12 to 14 m. and is roughly circular. Its maximum height is in excess of 4 m. The cave is likely seasonally wet due to increased winter stream flows and/or tidal extremes.¹⁰ However, it is interpreted as a temporary habitation site which contains evidence of current use. No further work was performed on this site because it is not located on the subject parcel.

¹⁰ This was confirmed by Mrs. Ajifu. She said that the cave flooded when the stream rose, and people could be trapped inside until the waters receded.

Subsurface Results

A total of 6 Test Units (TU) and 12 Backhoe Trenches (BT) were placed on the study area. Of these, all 6 TUs and BTs 9 and 12 were excavated at or near archaeological

TABLE 2

Summary of Subsurface Artifacts, Site 50-50-06-4235,
4237 and 4238

SITE 50-50-06-4235					
TEST UNIT	DEPTH	ART. #	PORTABLE REMAINS	L x W x H (mm.)	WEIGHT (g.)
TU 1 (0.5 x 1m.)	L1/ L 2	1	Utilized volcanic glass flake	12.5 x 7.0 x 3.5	0.3
		2	Utilized basalt flake	52.0 x 44.0 x 9.0	23.7
		-	Charcoal	scattered	0.3
		-	Rusted metal	3 pieces	2.8
TU 2 (0.5 x 1 m.)	L1/ L 2	3	Poss. utilized basalt flake (fire-cracked)	81.0 x 61.0 x 27.0	134.2
		4	Poss. fish hook tab (Conus sp.)	49.5 x 34.0 x 2.5	10.8
		-	Charcoal	-	1.2
TU 3 (0.5 x 0.5 m.)	L1/ L 1	-	Fig bone	-	43.8
Site 50-50-06-4237					
TU 1 (0.5 x 1 m.)	L1/ L 1	-	Rusted metal	2 pieces	3.7
		-	Waterworn pebble	-	470.0
		-	Fire-cracked rock	1 piece	-
TU 1 F-1	10-20 cmbs	-	Fire-cracked rock	21 pieces	-
		5	Unutilized basalt flake	1 piece	3.4
		6-14	Volcanic glass debitage	9 pieces	3.1
		-	Waterworn pebble	6 pieces	1258.0
		25 cmbs	15	Utilized basalt flake	46.0 x 35.0 x 7.0
35 cmbs	16	Pecking stone	105.0 x 52.0 x 46.0	512.0	
Site 50-50-06-4238					
BT 12	L1/ L1	-	Modern bottle glass	1 piece	28.2
	L1/ L 3	17	Utilized basalt	49.5 x 38.0 x 18.0	88.5
	28 cmbs	-	Waterworn pebbles	scattered	-

sites, while the remaining BTs sampled the general survey area. No intact subsurface cultural layer was located in any test instance. A total of 17 indigenous artifacts were recovered during subsurface inventory level testing. Subsurface results are presented first for tested sites and then for the study area as a whole. Refer to Table 2 for a summary of recovered portable remains, and Table 3 for a summary of backhoe trench results.

Site 50-50-06 4235

A total of 3 test units were placed in the area of this site remnant (Figure 1). Subsurface results indicate that no *in situ* cultural deposits are associated with this surface scatter.

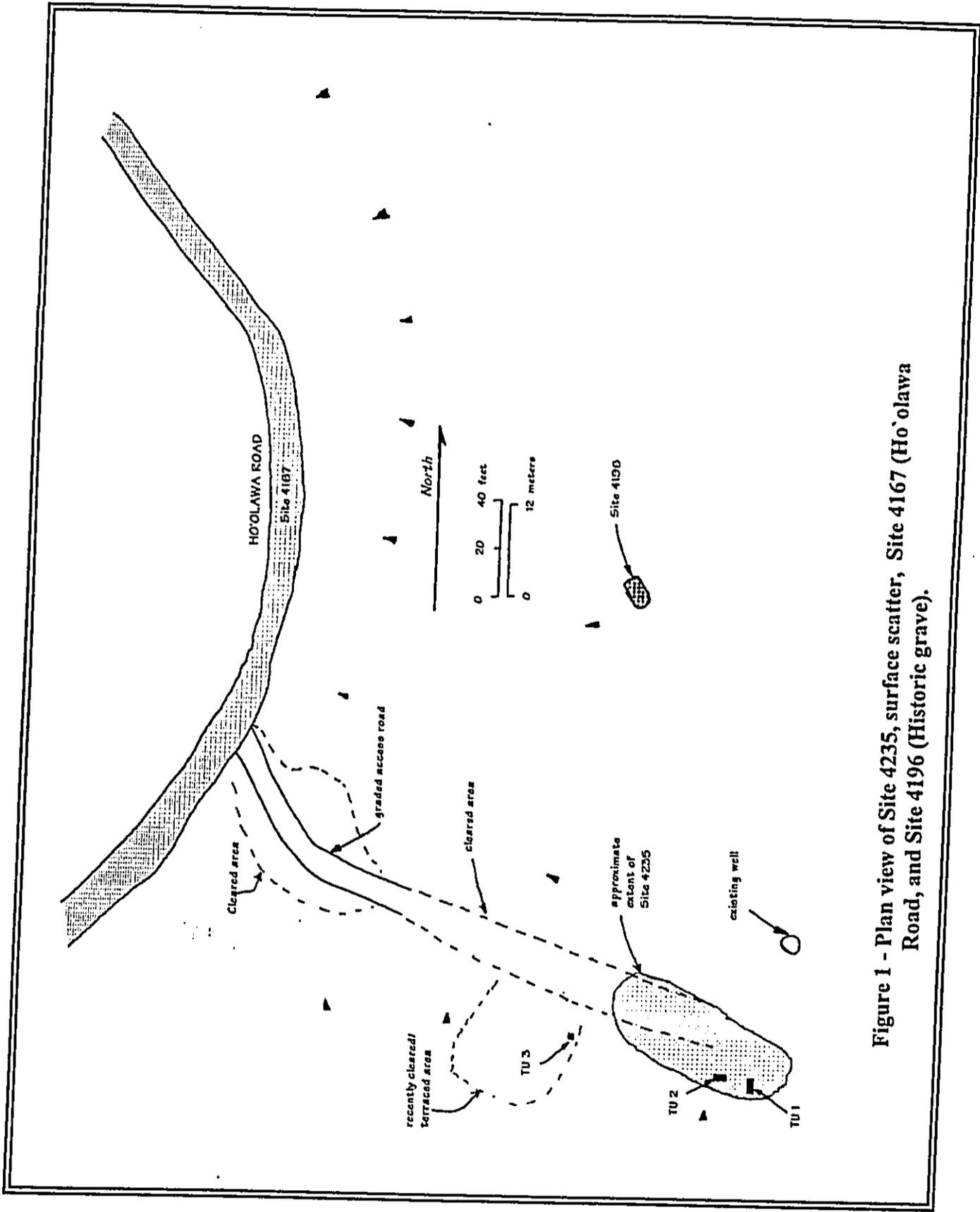


Figure 1 - Plan view of Site 4235, surface scatter, Site 4167 (Ho'olawa Road, and Site 4196 (Historic grave).

Test Unit 1

This 0.5 by 1 m. unit (TU 1) was excavated next to an unutilized basalt flake earlier noted on the surface. Unit orientation was N-S. Two stratigraphic layers were located before TU 1 was halted due to difficult digging conditions.

Layer I was c. 7 cm. thick. This brown to dark brown (7.5 YR 4/2) clay loam layer was somewhat weathered. It contained common basalt pebbles (c. 10% by volume), and had a moist, friable consistency. This soil had a medium crumb structure.

While no *in situ* cultural deposit was located during testing, 2 indigenous artifacts were recovered in the screen from Layer I. These consist of 1 utilized basalt flake and 1 utilized volcanic glass flake. The volcanic glass flake is made from good quality material which is black in color with few inclusions. The flake of volcanic glass (#1) weighs 0.3 g., while the basalt artifact (#2) weighs 23.7 g. Both artifacts possess usewear which suggests that they were single- or low-use tools. In addition, a small amount of scattered charcoal (0.3 g.) was collected throughout Layer I.

Layer II consisted of compact yellowish red (5 YR 5/6) silty clay. This sterile stratum contained common pieces of weathered rock and decayed bedrock (c. 25% by volume). Layer II extended to the bottom of TU 1 at c. 27 cmbs.

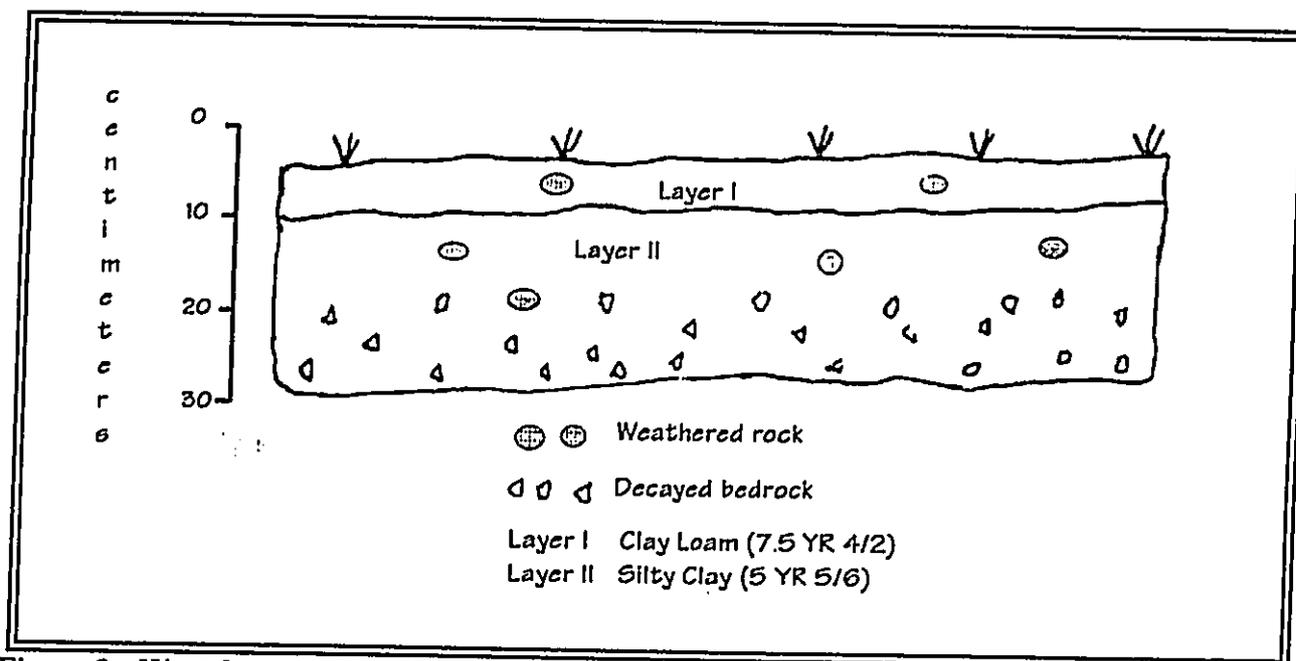


Figure 2 - West face profile of Test Unit 1, Site 4235.

Test Unit 2

Test Unit 2 was excavated 3 m. west of TU 1 in an effort to further test for any intact cultural deposits. This unit was a maximum of 32 cm. deep by 0.5 by 1 m. Test Unit 2 was oriented E-W. Stratigraphy encountered was the same as that found in TU 1 (see Figure 2).

Layer I was up to 9 cm. thick. This brown to dark brown (7.5 YR 4/2) clay loam was also weathered. It contained common basalt pebbles (c. 10% by volume), and had a moist, friable consistency. Like Layer I in TU 1, this stratum had a medium crumb structure.

No intact cultural deposit was located in TU 2. However, 2 indigenous artifacts and 1.28 g. of scattered wood charcoal were recovered from the screen. The first artifact, a large basalt flake (#3), weighs 134.2 g. The flake may be the by-product of fire heating. However, there is some slight use-wear visible along its distal edge. The second artifact consists of a worked piece of cone (*Conus sp.*) shell (#4). This shell fragment is rectangular in shape and possesses what appear to be reduction scars along its perimeter. It weighs 10.8 g. and is interpreted as a possible fish hook tab (Photo 14). No other portable remains were found in Layer I.

Layer II was composed of compact, yellowish red (5 YR 4/6) silty clay. This stratum contained common pieces of weathered rock and decayed bedrock (c. 25% by volume). Layer II was sterile and continued to the bottom of TU 2 at 30 cmbs.

Test Unit 3

This unit was excavated in order to identify a crushed bone which was exposed in the profile of a cut bank c. 15 m. west of TU 2 (Photo). Test Unit 3 was 0.5 by 0.5 m. by 0.4 m. deep. Both stratigraphic layers found in TUs 1 and 2 were present in this unit.

Layer I consisted of brown to dark brown (7.5 YR 4/2) clay loam. It contained numerous basalt pebbles (c. 10% by volume). The soil had a firmer consistency than Layer I in TUs 1 and 2. However, this difference may be due to exposure to the elements. A total of 43.8 g. of weathered pig bone was recovered from Level 2 (10 to 17 cmbs) of Layer I. It was not possible to ascertain the age of this bone. However, based upon inspection of the material, it appears probable that the pig bone is relatively recent (i.e. likely less than 50 years old). No other cultural materials were found in Layer I.

Layer II was sterile and consisted of the common compact, yellowish red (5 YR 4/6) silty clay. The layer was rocky (c. 25% by volume), and proved to be sterile. Test Unit 3 was terminated at a maximum depth of 40 cmbs.

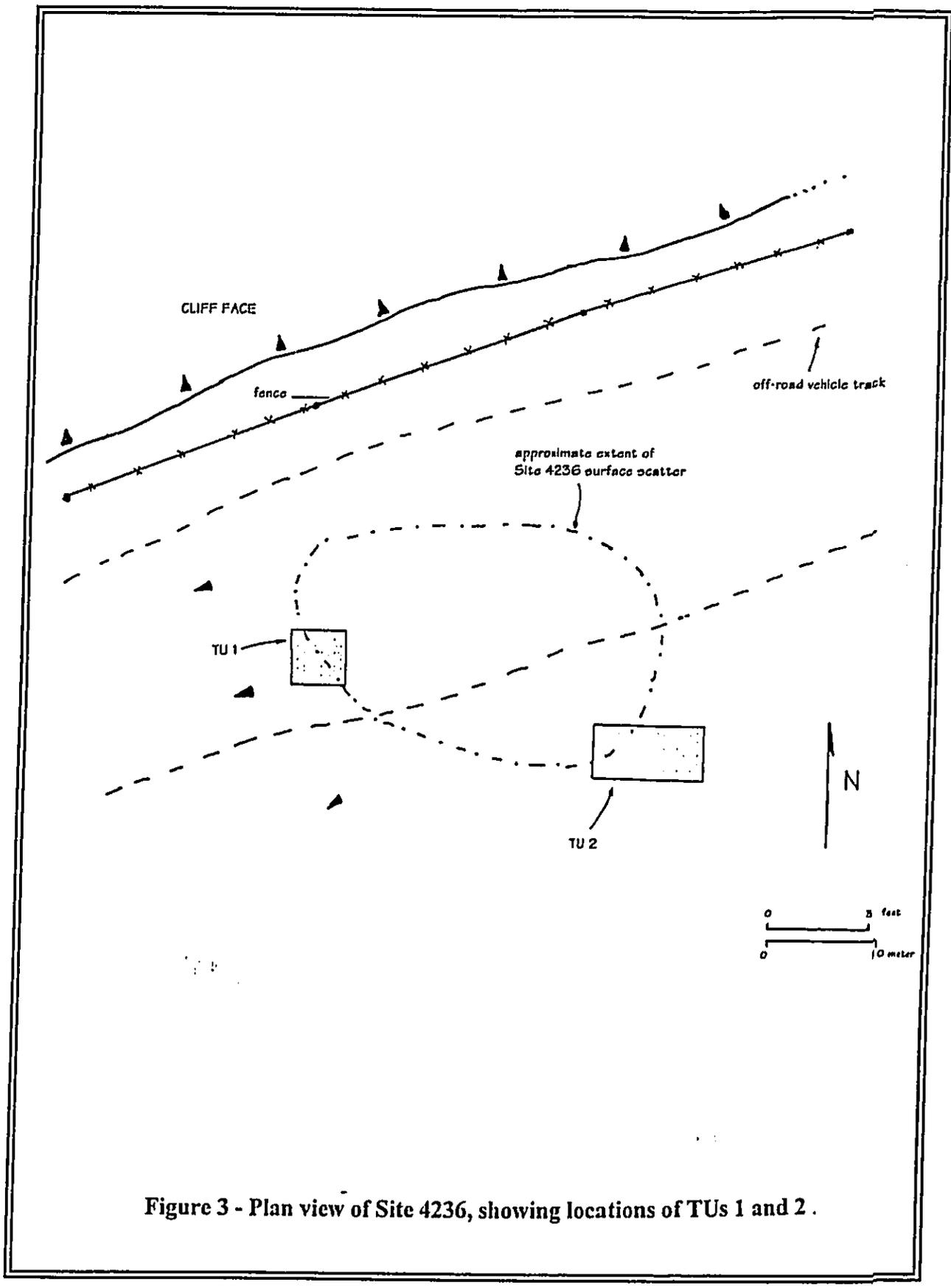


Figure 3 - Plan view of Site 4236, showing locations of TUs 1 and 2 .

Discussion

Site 50-50-06-4325 is interpreted as an indigenous site remnant. Site 4235 has been disturbed by post-contact activities on the study parcel. These activities were most likely associated with agriculture and, most recently, grubbing. Portable remains present in the subsurface sample consist solely of indigenous materials. The lack of any intact cultural deposit suggests that post-contact activities on the study parcel may have destroyed Site 4235.

Site 50-50-06-4236

Two excavation units were placed at Site 4236 in order to identify any intact subsurface cultural deposits (Figure 3). Subsurface testing indicates that this site is composed only of a small surface scatter.

Test Unit 1

This 0.5 by 0.5 m. unit was excavated near the top of a rise. As noted earlier, an off-road vehicle track had exposed the Site 4236 surface scatter.

Both common soil layers found in Test Units 1 through 3 at Site 4235 were present in TU 1. Both soil layers were sterile. Layer I consisted of brown to dark brown (7.5 YR 4/2) clay loam. It was somewhat eroded and only 3 to 5 cm. thick. Layer II was composed of yellowish red (5 YR 5/6) silty clay. The unit was excavated to the top of decayed bedrock at c. 12 to 16 cmbs and no profile was prepared.

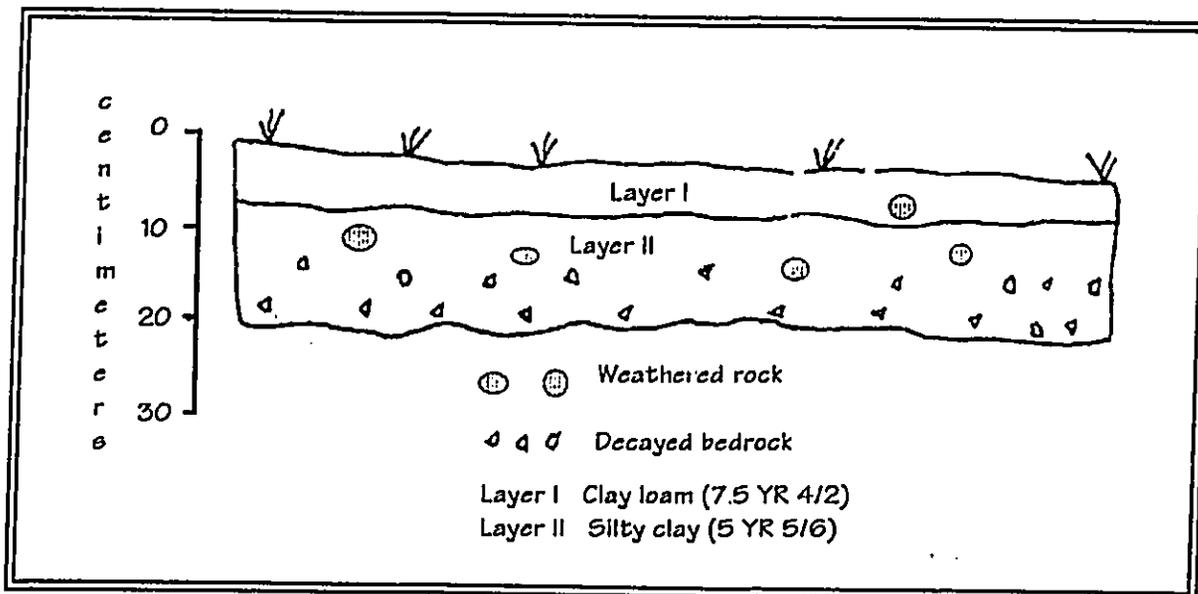


Figure 4 - North face profile of Test Unit 2, Site 4236.

Test Unit 2

Dimensions of TU 2 were 0.5 by 1 m., and unit orientation was E-W. Test Unit 2 was excavated c. 6 m. east of TU 1 and was stratigraphically similar to the first unit. Layer I brown to dark brown (7.5 YR 4/2) clay loam and Layer II yellowish red (5 YR 5/6) silty clay were both sterile. Layer I was a maximum of 8 cm. thick, while Layer II extended to decayed bedrock at the bottom of TU 2 c. 20 cmbs (Figure 4).

Discussion

Excavation of both TUs 1 and 2 at Site 4236 indicates that there is no intact cultural deposit associated with this low density surface scatter. Further visual inspection of the general area failed to produce additional portable remains.

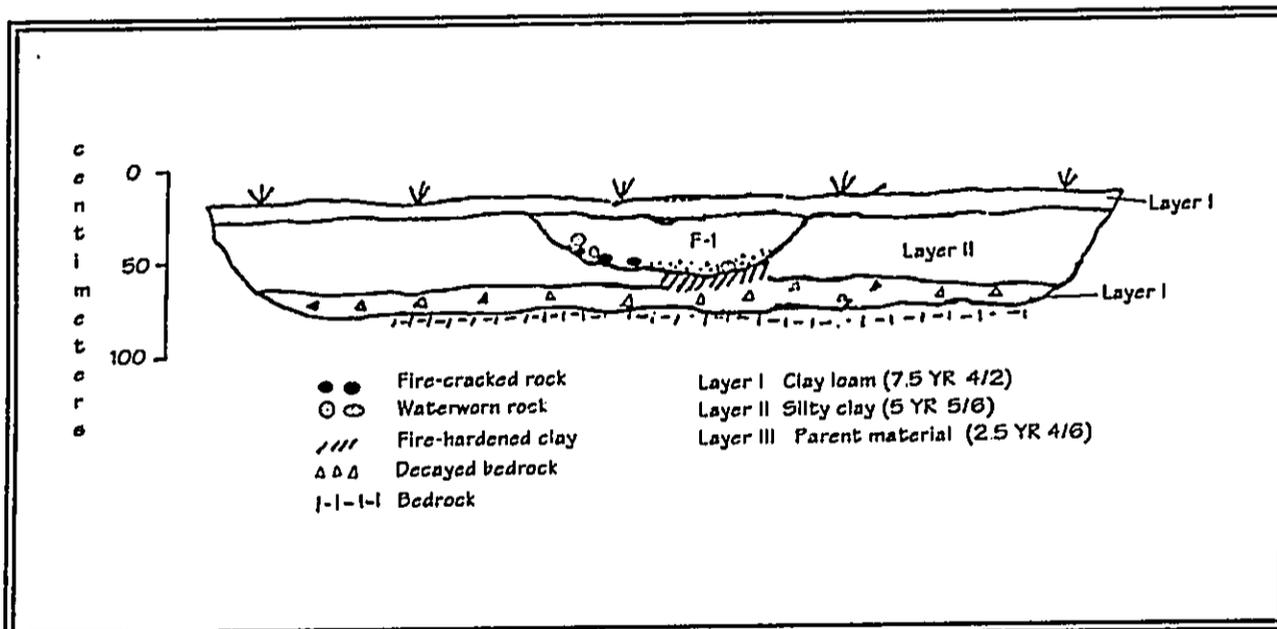


Figure 5 - North face profile of Backhoe Trench 9, including Feature 1 fire-pit (Site 4237).

Site 50-50-06-4237

Subsurface testing was performed at Site 4237 because it is a level area which overlooks both Ho'olawa Bay and the Hana Coast. A backhoe trench (BT 9) was originally placed here in order to assess subsurface conditions. This trench cut across a fire pit which was over 1 m. in diameter. This subsurface pit is designated Site 4237. Subsequently, a 0.5 by 1.0 m. test unit (TU 1) was excavated in this feature in order to gain further information about it.

Backhoe Trench 9

This backhoe trench was oriented E-W, and was 0.8 m. wide by 5 m. long by a maximum of 0.7 m. deep. A total of 3 soil layers and 1 cultural feature were encountered in BT 9 (Figure 5).

Layer I consisted of the common brown to dark brown (7.5 YR 4/2) clay loam. This layer was about 10 cm. thick. One piece of rusted metal was noted in the back dirt of this layer. The soil boundary with Layer II was relatively smooth and abrupt.

Layer II was up to 40 cm. thick and was composed of yellowish red (5 YR 5/6) silty clay. It had a weakly developed subangular blocky structure. This slightly moist soil had a firm consistency. This stratum contained common pieces of weathered rock

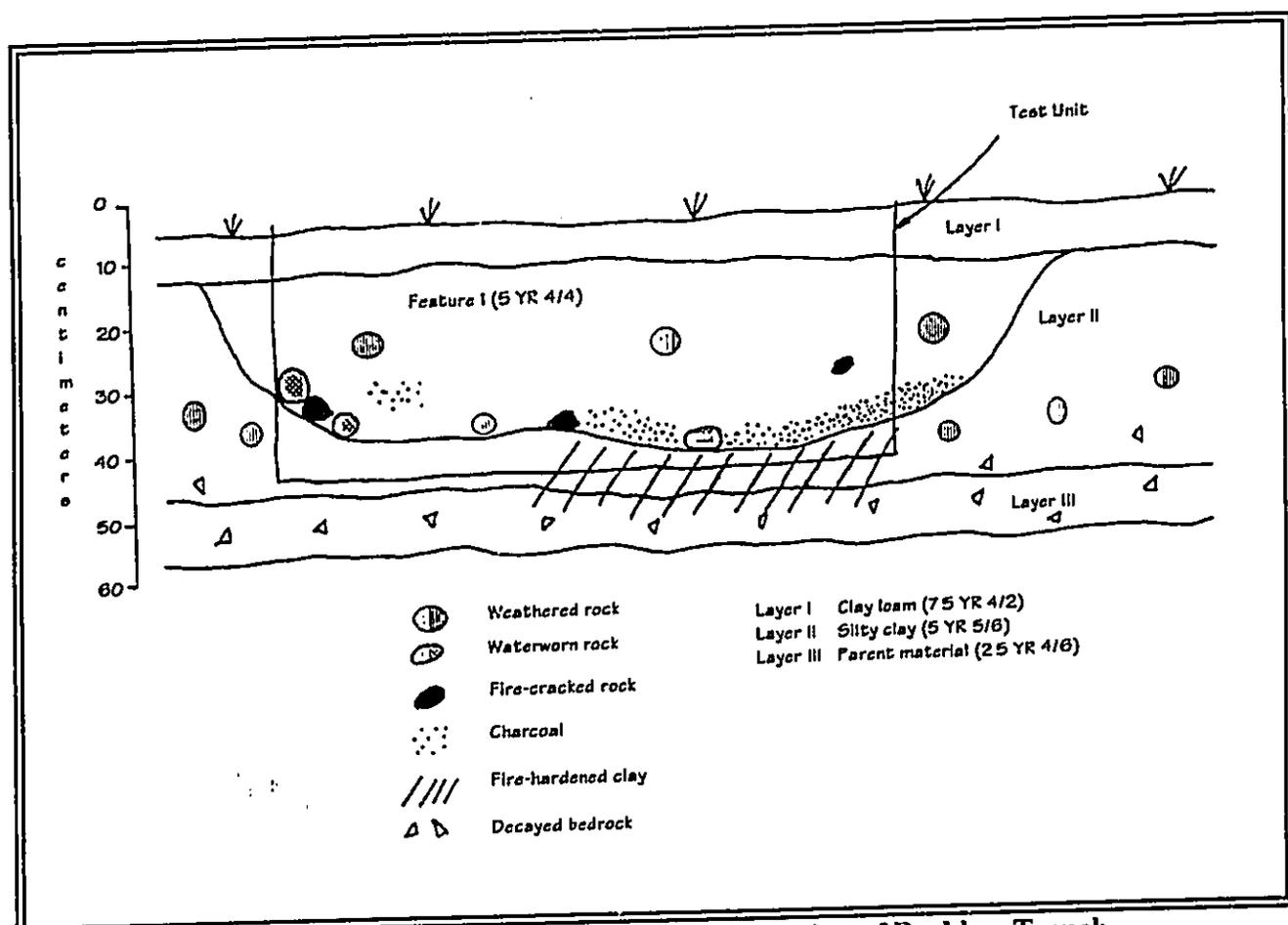


Figure 6 - North face profile of Test Unit 1, including a portion of Backhoe Trench 9, prior to excavation (Site 4237).

and some decayed bedrock. Layer II appeared to be sterile. However, an apparent fire pit was located in this stratum and was visible in the north face profile of BT 9.

This feature did not appear to be associated with the overlying Layer I. Rather, the feature appeared to have been impacted by the overlying layer. The fire pit was over 1 m. in diameter and contained several fire-cracked rocks and charcoal staining. In addition, 1 piece of coral and 2 waterworn pebbles were recovered from the backdirt associated with this feature. This fire pit was designated Site 4237 and further investigated by the placement of TU 1. It is discussed in the Test Unit 1 results section below.

The soil boundary with Layer III was relatively clear and smooth. Layer III was composed of red (2.5 YR 4/6) parent material with pockets of silty clay of the same color. This layer contained common fragments of decayed bedrock and overlaid bedrock. Excavation of BT 9 was halted at bedrock c. 60 to 70 cmbs.

Test Unit 1

Dimensions of TU 1 were 0.5 by 1 m. by 0.4 m. deep. Test Unit 1 was placed adjacent to the north face of BT 9 in order to investigate the fire pit (see Figure 6). Two soil layers, along with the feature were excavated.

Layer I was up to 12 cm. thick and was composed of the common brown to dark brown (7.5 YR 4/2) clay loam. This layer contained organic matter and common rootlets. Two pieces of rusted metal were recovered from the screen. It was not possible to determine their function. In addition to the metal, 1 waterworn pebble (470.0 g.) and 1 fire-cracked rock were found near the interface with the Site 4237 fire pit. It appears possible that these materials were displaced from the pit by activities associated with Layer I.

This fire pit was present in all of TU 1 below Layer I. Based on examination of the BT 9 profile and results of the trench, it is likely that the feature is a semi-circular pit.

The Site 4237 pit is essentially composed of Layer II material, mixed charcoal staining, and some brownish (7.5 YR 4/4) clay loam. Portable remains recovered from the feature consisted of 9 waste flakes of volcanic glass, 1 utilized basalt flake, 1 basalt pecking stone, 1 unutilized basalt flake (#5), and 6 waterworn pebbles. The waste flakes of volcanic glass (#6 through #14) are of generally poor quality. The utilized basalt flake (#15) weighs 16.7 g. and was located *in situ* in the fire pit at 35 cmbs (Photo 14). This utilized flake is composed of fine quality dark gray (5 YR 4/1) basalt. Use wear is evident on its distal end. The medium grained basalt pecking stone (# 16) is waterworn and oblong in shape and was found *in situ* at 25 cmbs. It possesses fine pecking scars and/or polishing which have flattened both ends (Photo 15).

In addition, 21 fire-cracked rocks and 34.1 g. of wood charcoal were recovered. A charcoal sample was obtained from between 32 and 36 cmbs and placed in aluminum

foil. It was subsequently cleaned of visible rootlets and submitted to Beta Analytic, Inc. in Florida for radiocarbon analysis. This sample returned a measured radiocarbon (C14) age of 360 +/- 60 BP, and a 2 sigma calibrated date of AD 1435 to 1660 (95% probability). The intercepts of the radiocarbon age with the calibration date curve were at AD 1505, AD 1595, and AD 1620.

The pit feature extended to a maximum depth of 37 cmbs. Charcoal and charcoal flecking were concentrated along the eastern bottom 5 to 10 cm. of the pit. No food midden remains were recovered during excavation. In addition, no post-contact materials were located in Feature 1 soil, supporting the precontact radiocarbon date.

As noted earlier, the Site 4237 pit is intrusive to Layer II. From 6 to 15 cm. (25 to 40 cmbs) of Layer II soil was present in TU 1, while the bulk of it was displaced by the pit. Layer II consisted of the common, sterile, yellowish red (5 YR 5/6) silty clay. This stratum contained some decayed bedrock (c. 5 to 10% by volume). In addition, red (2.5 YR 5/6) fire-hardened clay was present in the eastern portion of the unit underlying the Feature 1 charcoal concentration (see Figure 6). No cultural materials were found in Layer II, and excavation was halted at a maximum depth of 40 cmbs.

Discussion

Site 4237 consists of a single feature, a semicircular subsurface fire pit which is over 1.2 m. in diameter. The sampled portion of this pit yielded indigenous materials and waterworn manuports. These materials are composed primarily of artifacts. The unutilized waste flakes of volcanic glass suggest limited tool production, as do the utilized basalt flake, the unutilized basalt flake, and the basalt pecking stone. The lack of food midden remains indicates that this feature was probably not used as a cooking pit.

Layer I overlies Site 4237 and was most likely deposited after activities associated with Site 4237 ceased. Layer I yielded low amounts of post-contact materials most likely from the 20th century.

Site 50-50-06-4238

This site is located on a sloping portion of the study area near the eastern boundary. The owner of the parcel does not intend to develop this area. Because a possible burial (Feature 1) is part of Site 4238, preservation of this site is recommended. Subsurface testing was limited to 1 backhoe trench, BT 12, placed just upslope of the site (see Figure 7).

Backhoe Trench 12

This trench was oriented N-S and was excavated just to the south of Site 4238 and c. 2 m. southwest of Feature 1, the possible burial. Backhoe Trench 12 was c. 5 m. in

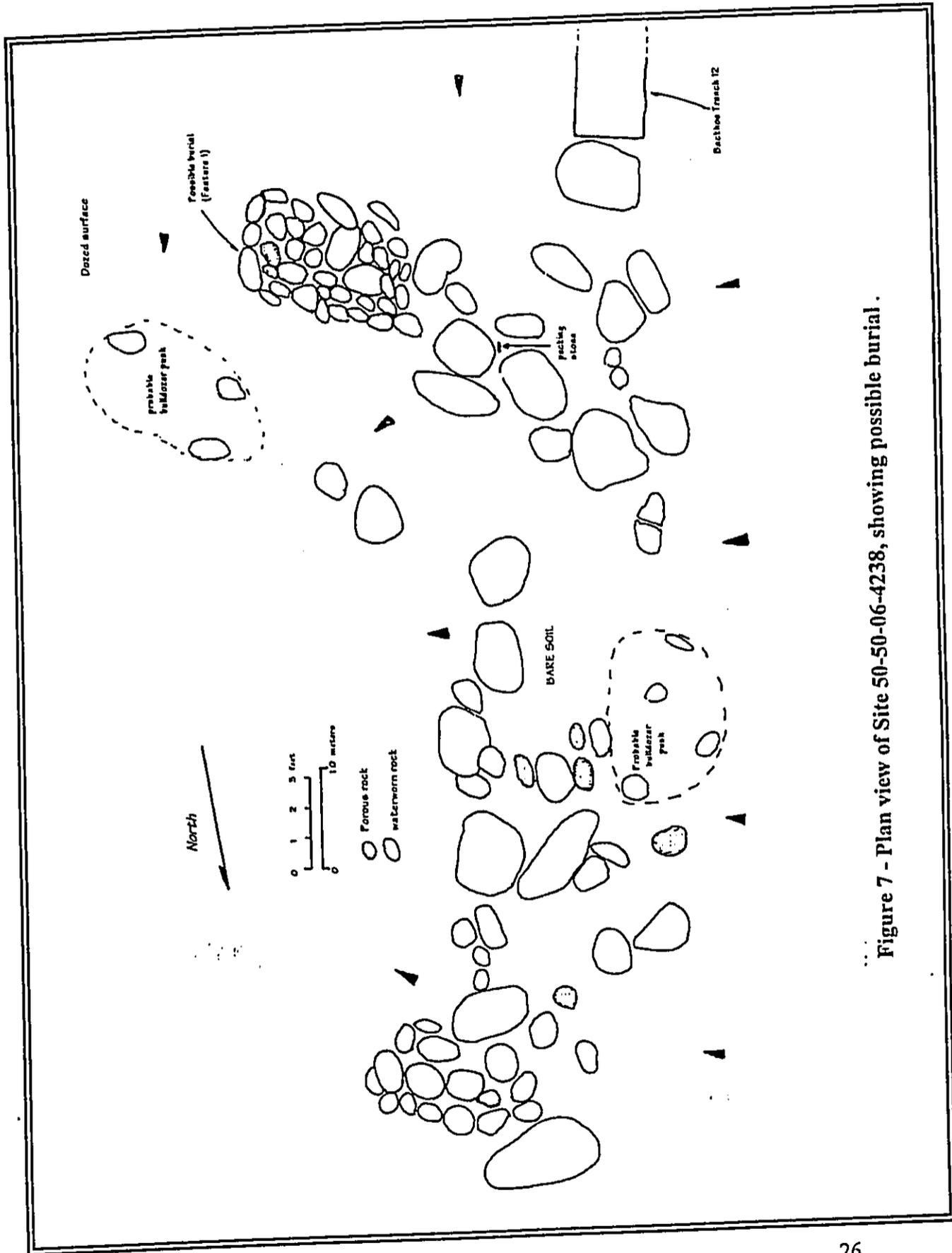


Figure 7 - Plan view of Site 50-50-06-4238, showing possible burial.

length by 0.8 in width by a maximum of 2.7 m. in depth. Three soil layers were encountered before decayed bedrock and bedrock were reached near the bottom of the trench (Figure 8).

Layer I was c. 0.3 m. thick and consisted of moist, friable, dark brown (10 YR 3/3) loam. This soil had a medium crumb structure. Layer I contained low amounts of waterworn pebbles and cobbles throughout. A piece of modern, clear bottle glass was located near the surface of BT 12. Several scattered waterworn pebbles were present between c. 10 to 30 cmbs. In addition, one indigenous artifact, a piece of utilized basalt (#17), weighing 88.5 g., was recovered from the east face profile at c. 28 cmbs. Inspection of the profile and spot-checking with 1/8 inch mesh screen did not produce additional portable remains. The boundary with Layer II was somewhat indistinct and wavy.

Layer II was composed of brown to dark brown (7.5 YR 4/4) clay loam. The soil had a medium crumb structure. Layer II was moist and had a somewhat friable consistency. A few waterworn pebbles and cobbles were noted in the back dirt. Layer II

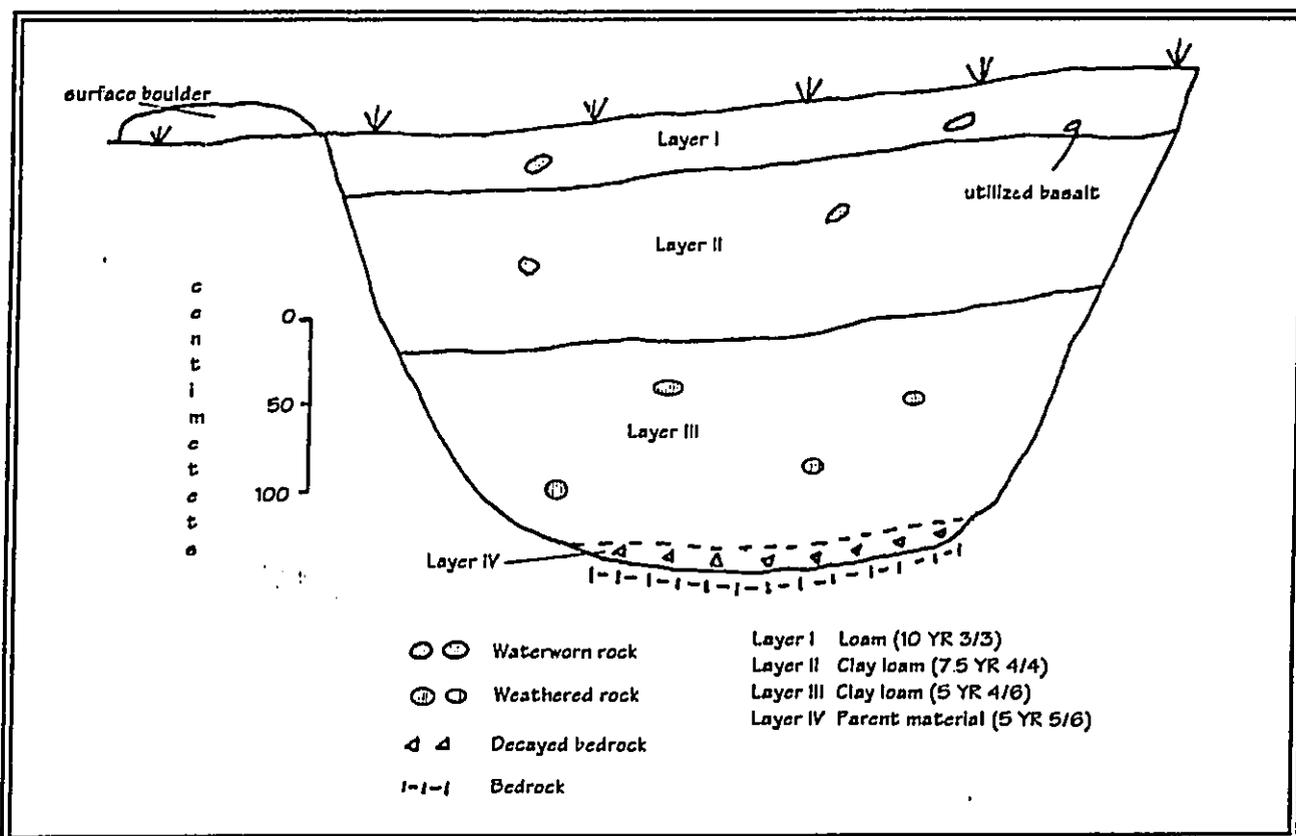


Figure 8 - East face profile of Backhoe Trench 12, Site 4238.

appeared to be sterile. This stratum extended from c. 0.3 to 1.4 mbs. The boundary with Layer III was generally clear and smooth.

Layer III consisted of yellowish red (5 YR 4/6) silty clay loam. This layer had a generally fine to medium granular structure. Layer III was somewhat moist and had a firm consistency. Small amounts of weathered rocks were noted in Layer III. This stratum was sterile and graded into decayed bedrock between 2.4 and 2.7 mbs. Excavation was terminated on bedrock.

Discussion

Subsurface investigation at Site 4238 was limited due to its location on the property and the presence of a possible burial (Feature 1). Excavation of BT 12 suggests that indigenous activities took place at the site. However, only 1 artifact was recovered from BT 12, and it is not possible to determine site function based on this single discovery. It is possible that Site 4238 is an indigenous site associated with agriculture which has been partly impacted by past earthmoving activities on the subject parcel.

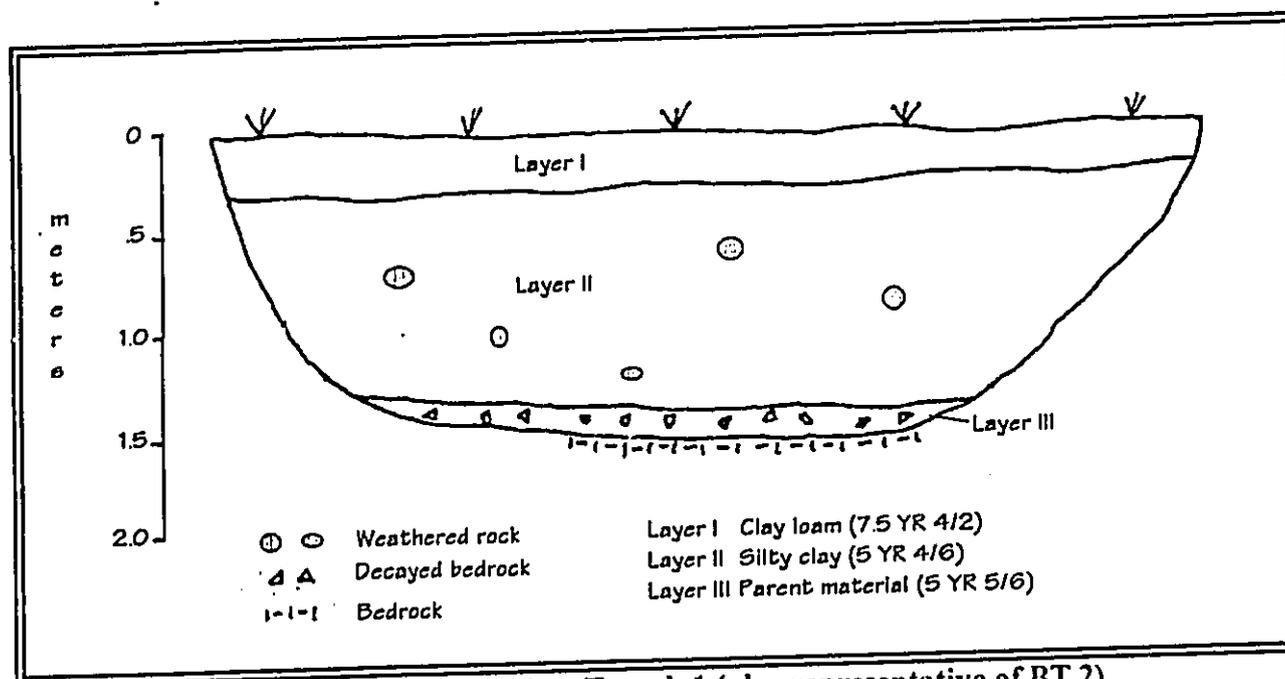


Figure 9 - South face profile of Backhoe Trench 1 (also representative of BT 2).

BACKHOE TRENCHES

As noted earlier, Backhoe Trenches 9 and 12 were excavated at Sites 4237 and 4238, respectively. The remaining trenches (BTs 1 through 8, 10 and 11) were placed at various locations on the subject parcel (see Map 3). None of these 10 trenches produced

any precontact cultural materials. Table 3 summarizes subsurface results for all 12 backhoe trenches. Backhoe Trenches 1 through 8, 10 and 11 are briefly discussed below.

Backhoe Trench 1

This trench was excavated in a relatively flat location near an area that had been recently graded, c. 60 m. north of the southern boundary of the subject parcel. Trench orientation was E-W and its dimensions were c. 0.8 m. wide by 5 m. long by a maximum of 1.4 m. deep. A total of 3 soil layers were encountered before excavation was halted on bedrock at a maximum depth of 1.5 mbs (Figure 9).

Layer I consisted of brown to dark brown (7.5 YR 4/2) clay loam. This stratum was up to 0.35 m. thick and contained organic matter and common rootlets. In addition, there were occasional weathered rocks (less than 15 cm. in diameter) scattered throughout the layer. Layer I soil had a medium crumb structure and a friable consistency. Two pieces of rusted metal were located in this layer. Both of these pieces of metal appear to be from some sort of heavy equipment, possibly a plow or tractor.

Layer II was c. 1 meter thick and extended from 0.3 to 1.3 mbs. This stratum consisted of yellowish red (5 YR 4/6) silty clay. Layer II had a weakly developed subangular blocky structure, and a slightly moist, firm consistency. Both weathered rock and decayed bedrock increased with depth. No evidence of material cultural remains was noted in this layer. The soil boundary with Layer III was relatively clear and smooth.

Layer III was composed of yellowish red (5 YR 5/6) parent material and silty clay of the same color. This stratum contained common fragments of decayed bedrock and graded to bedrock by 1.4 to 1.5 mbs. Backhoe Trench 1 was halted at bedrock at a maximum depth of 1.5 mbs.

Backhoe Trench 2

This trench was placed over 50 m. east of BT 1 in an area that had been recently graded, and stratigraphy encountered was the same as that found in BT 1 (see Figure 9). Trench orientation was E-W and BT 2 dimensions were c. 0.8 m. wide by 5 m. long by a maximum of 1.1 m. deep.

Layer I was composed of brown to dark brown (7.5 YR 4/2) clay loam. It was up to 0.2 m. thick and appeared to have had its upper portion graded. This stratum contained occasional weathered rocks generally less than 10 cm. in diameter. Layer I soil had a medium crumb structure and a generally friable consistency. Several pieces of modern clear bottle glass were present in this layer.

Layer II extended from 0.2 to 0.9 mbs. It consisted of the same common yellowish red (5 YR 4/6) silty clay found in BT 1. This soil had a weakly developed subangular blocky structure and a slightly moist, firm to very firm consistency. This stratum appeared to be sterile. The boundary with Layer III was generally clear and smooth.

Layer III consisted of the common yellowish red (5 YR 5/6) parent material and silty clay. This sterile layer graded to bedrock by 1.1 mbs and excavation was abandoned. No trench profile was prepared.

Backhoe Trenches 3, 4 and 5

These 3 trenches were placed on the northeastern quadrant of the study area. Stratigraphy encountered in these 3 trenches was the same. Refer to Figure 10 for representative stratigraphy for these 3 trenches. Backhoe Trench 3 was oriented N-S, while BTs 4 and 5 were oriented E-W. Trenches were all c. 0.8 m. wide by 5 m. long by 1.1 m. (BT 5) to a maximum of 1.6 m. (BT 3) deep.

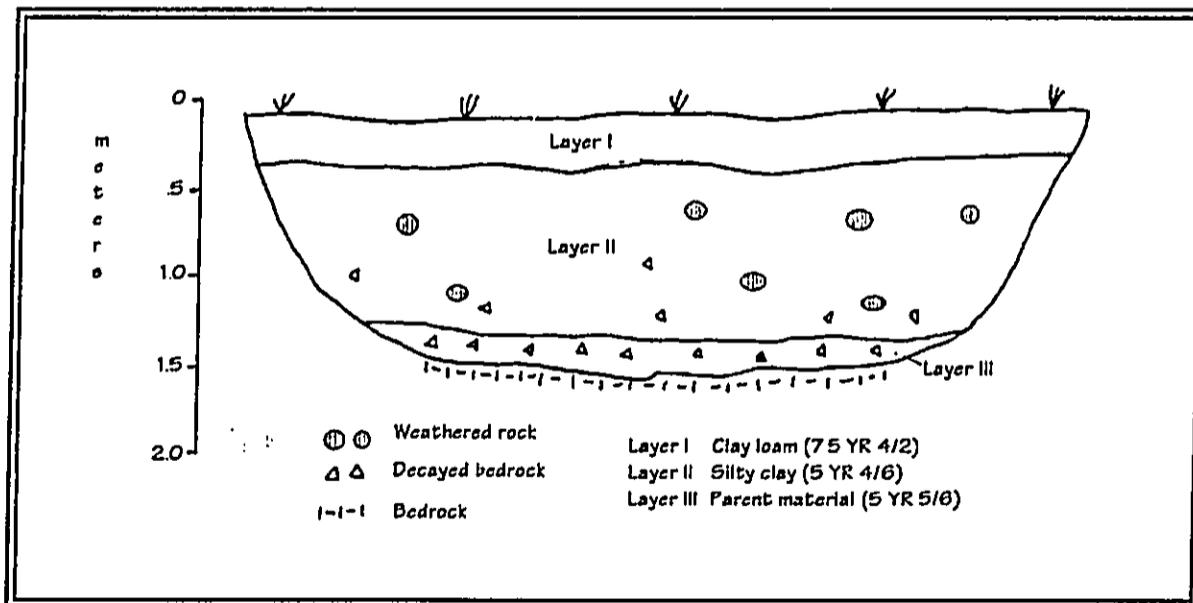


Figure 10 - West face profile of Backhoe Trench 3 (also representative of BTs 4 and 5)

Based upon inspection of unit profiles, back soil, and spot checking with 1/8 in. mesh screen, it appeared that all 3 trenches were sterile. Three common soil layers were encountered in these subsurface tests.

Layer I was composed of the common brown to dark brown (7.5 YR 4/2) clay loam. This sterile stratum ranged from 0.25 to 0.35 m. in thickness. It contained organic matter and common rootlets, as well as weathered rocks (less than 15 cm. in diameter). This stratum had a medium crumb structure and a friable consistency. It had a clear, smooth soil boundary with Layer II.

TABLE 3

Summary of Backhoe Trench Results, Ho'olawa Ranch Project

BT	DEPTH (mbs)	STRATA	RESULTS
1	1.5	L I - clay loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6) L III - parent material (5 YR 5/6)	L I - rusted metal L II and L III - apparently sterile
2	1.1	L I - clay loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6) L III - parent material (5 YR 5/6)	L I - modern glass L II and L III - apparently sterile
3	1.6	L I - clay loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6) L III - parent material (2.5 YR 5/6)	L I, L II and L III apparently sterile
4	1.2	L I - clay loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6) L III - parent material (2.5 YR 5/6)	L I, L II and L III - apparently sterile
5	1.1	L I - clay loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6) L III - parent material (2.5 YR 5/6)	L I, L II and L III apparently sterile
6	1.1	L I - loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6)	L I - rusted metal, modern glass, fire-cracked rocks L II - apparently sterile
7	1.2	L I - clay loam (7.5 YR 4/2) L II - silty clay (7.5 YR 4/6) L III - parent material (5 YR 5/6)	L I - rusted metal L II and L III - apparently sterile
8	1.4	L I - clay loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6) L III - parent material (5 YR 5/6)	L I, L II and L III - apparently sterile
9	0.5	L I - clay loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6) L III - parent material (2.5 YR 4/6)	L I - rusted metal L II - apparently sterile, except for intrusive pit (Site 4237) L III - apparently sterile
10	1.8	L I - clay loam (7.5 YR 4/2) L II - silty clay (5 YR 4/6) L III - parent material (5 YR 5/6)	L I - rusted metal L II and L III - apparently sterile
11	2.4	L I - loam (7.5 YR 4/4) L II - silty clay loam (7.5 YR 4/6) L III - parent material (2.5 YR 4/6)	L I, L II and L III apparently sterile
12	2.5	L I - loam (10 YR 3/3) L II - clay loam (7.5 YR 4/4) L III - clay loam (5 YR 4/6) L IV - parent material (5 YR 5/6)	L I - modern glass near surface, scattered waterworn pebbles and indigenous artifact near L II interface L II, L III and L IV - apparently sterile

Layer II was encountered between 0.2 and 1.1 mbs. This layer consisted of yellowish red (5 YR 5/6) silty clay. This stratum had a weakly developed subangular blocky structure with a slightly moist, firm consistency. Weathered rocks and pieces of decayed bedrock increased with greater depth. The boundary with Layer III was relatively smooth and clear.

Layer III was composed of red (2.5 YR 5/6) parent material with pockets of silty clay of the same color. This layer contained common pieces of decayed bedrock and graded into bedrock between 1 and 1.3 mbs. As noted earlier, no evidence of material culture remains was encountered.

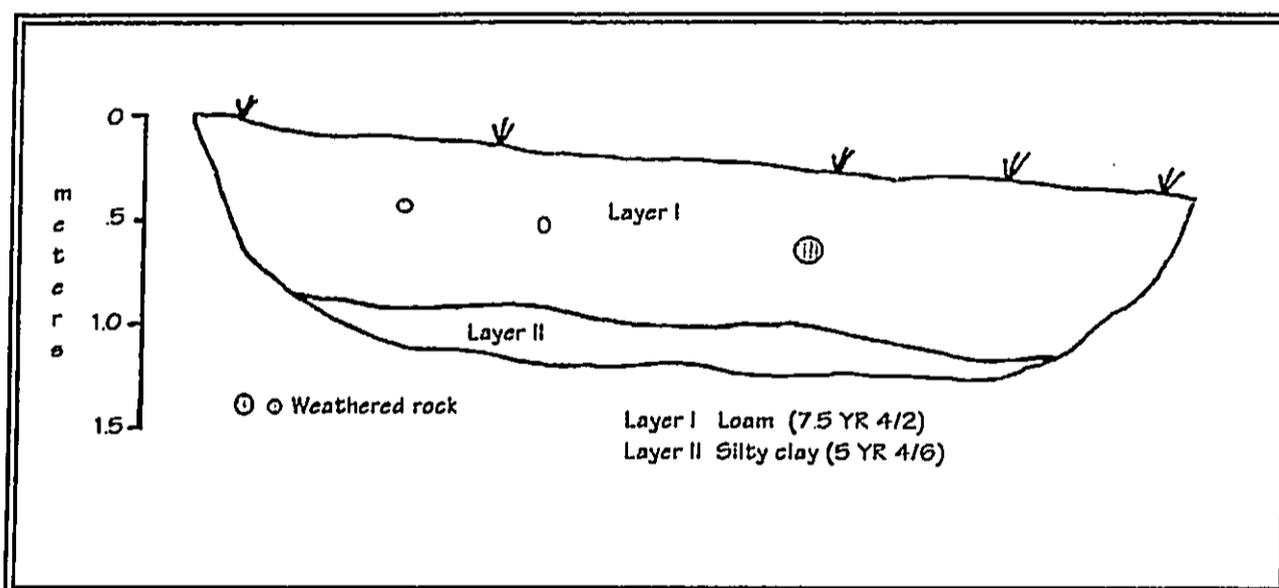


Figure 11 - East face profile of Backhoe Trench 6.

Backhoe Trench 6

This trench was excavated on a bank of a c. 20 degree slope near the western boundary of the subject parcel, some 30 m. from the old Government Road (Site 4167). Backhoe Trench 6 was also located just north of a vegetated area containing several *nii* (*Cocos nucifera*) trees c. 10 to 20 years old. Trench orientation was about 40 degrees magnetic and its dimensions were c. 0.8 m. wide by 5 m. long by 1.1 m. deep. In general, stratigraphy was similar to most other sampled portions of the study parcel. However, Layer I in BT 6 was thicker and was composed of loam soil rather than clay loam (see Figure 11).

Layer I was up to 0.8 m. thick. It consisted of brown to dark brown (7.5 YR 4/2) loam. This moist soil had a fine to medium crumb structure and a very friable

consistency. Several pieces of rusted metal and modern window glass were noted in this layer. In addition, several fire-cracked rocks were found. Inspection of the trench profiles and back dirt, and spot-checking with 1/8 inch screen suggests that these fire-cracked rocks are associated with post-contact, rather than indigenous activities on the subject parcel. No evidence of indigenous materials was located in Layer I. The soil boundary with Layer II tended to be smooth and clear.

Layer II was composed of the common yellowish red (5 YR 4/6) silty clay. This stratum extended from 0.7 to the bottom of BT 6 at 1.1 mbs. Layer II had a weakly developed subangular blocky structure, with a moist, firm consistency. This layer also contained weathered rock and decayed bedrock. It appeared to be sterile. Excavation was halted at 1.1 mbs, due to unstable soil conditions and the steep slope.

Backhoe Trench 7

This trench was located c. 10 m. north of the Site 4235 surface scatter and 8 m. west of the well which supplies water to the property. This trench was oriented N-S and was c. 0.8 m. wide by 5 m. long by 1.2 m. deep. Stratigraphy encountered in this trench was similar to most other sampled portions of the study area. However, Layer II was slightly browner. This difference is due to moister soil conditions likely associated with the nearby well which appeared to be leaking. The soil 3 common layers were encountered before BT 7 was abandoned.

Layer I was up to 0.4 m. thick and was composed of the common brown to dark brown (7.5 YR 4/2) clay loam. The soil was moist and had a medium crumb structure and a friable consistency. Three unidentifiable pieces of flat rusted metal were found in Layer I. The boundary with Layer II was smooth and clear.

Layer II was up to 0.6 m. thick and extended from c. 0.3 to 0.9 mbs. thick. It consisted of brown (7.5 YR 4/6) silty clay. This stratum had a weakly developed subangular blocky structure, with a moist generally firm consistency. Layer II was moister than it was in other trenches. This difference is likely due to the leaking well. Weathered rock and decayed bedrock were present and increased in quantity with depth. This layer appeared to be sterile and had a generally smooth and clear boundary with Layer III.

Layer III was made up of the common yellowish red (5 YR 5/6) parent material and silty clay. It contained abundant fragments of decayed bedrock and graded to bedrock by 1.2 mbs. Excavation was terminated at a maximum depth of 1.2 mbs and no trench profile was recorded.

Backhoe Trench 8

This trench was the northernmost one located on the study parcel. It was excavated c. 20 m. south of the Site 4234 burial on Ho'olawa Point. This subsurface test was oriented N-S, and its dimensions were c. 0.8 m. in width by 5 m. in length by a maximum of 1.4 m. in depth. The 3 common soil layers were encountered before the trench was abandoned at a maximum depth of 1.4 mbs.

Layer I was sterile and consisted of brown to dark brown (7.5 YR 4/2) clay loam. This stratum was up to 0.8 m. in thickness. The soil was slightly moist and had a medium crumb structure along with a friable consistency. Few weathered rocks were present in this layer. The boundary with Layer II was generally smooth and clear.

Layer II extended from 0.7 to 1.2 mbs and was composed of yellowish red (5 YR 4/6) silty clay. This soil had a weakly developed subangular blocky structure, with a slightly moist, firm consistency. Like Layer I, this stratum was sterile, and graded to Layer III between 1 and 1.2 mbs.

Layer III was made up of yellowish red (5 YR 5/6) parent material and silty clay. It contained common fragments of decayed bedrock and graded to bedrock by 1.4 mbs. Backhoe Trench 8 was abandoned on bedrock at a maximum depth of 1.4 m. and no profile was prepared.

Backhoe Trench 10

This trench was excavated in a level area near the southwestern corner of the study area, c. 60 m. northeast of an access gate. Trench orientation was E-W and its dimensions were c. 0.8 m. in width by 5 m. in length by a maximum of 1.8 m. in depth. The 3 common soil layers were encountered before excavation was halted at bedrock.

Layer I was up to 0.4 m. thick. It was composed of brown to dark brown (7.5 YR 4/2) clay loam. This stratum contained several pieces of rusted flat metal. It was not possible to determine with what they were formerly associated.

Layer II had a generally smooth and abrupt boundary with the overlying Layer I. This stratum extended from c. 0.3 to 1.1 mbs. This common yellowish red (5 YR 4/6) silty clay was sterile.

Layer III consisted of yellowish red (5 YR 5/6) parent material and silty clay. As in other test instances, this stratum contained common fragments of decayed bedrock and graded to bedrock between 1.5 and 1.8 mbs. Backhoe Trench 10 was abandoned at a maximum depth of 1.8 mbs and no unit profile was drawn.

Backhoe Trench 11

This trench was excavated on the side of a small and shallow gully which was vegetated primarily by Java Plum trees. Backhoe Trench 11 was oriented E-W and was 0.8 m. wide by 5 m. long by 2.4 m deep. Soils encountered in BT 11 tended to be less compact, with the exception of BT 12, than elsewhere in the study area. However, the soil layers present in BT 11 are essentially the same as the 3 common ones found on the subject parcel. Three layers were encountered before BT 11 was terminated at bedrock at a maximum depth of 2.4 mbs.

Layer I consisted of brown to dark brown (7.5 YR 4/4) loam. This soil had a medium crumb structure and a very friable consistency. No evidence of material culture remains was encountered. Layer I was up to 0.6 m. thick. Its boundary with Layer II was generally smooth and abrupt.

Layer II consisted of strong brown (7.5 YR 4/6) silty clay loam. This stratum extended from c. 0.5 to 1.8 mbs. This layer had a very weakly developed subangular blocky structure, with a generally friable consistency. Layer II appeared to be sterile and graded to Layer III between 1.6 and 1.8 mbs.

Layer III was composed of red (2.5 YR 4/6) parent material and silty clay. This layer graded to bedrock by a maximum depth of 2.4 mbs. Layer III was sterile. It was not possible to obtain a profile of BT 11 due to unstable subsurface conditions.

SUMMARY AND CONCLUSIONS

Work at this phase of the inventory level has identified 5 archaeological sites (Sites 4234 through 4238), and 1 site, Site 4239, just west of the study area. In addition, a known historic burial, Site 4197, was noted during an earlier study on the parcel by Xamanek Researches, along with Site 4167, a portion of the old Ho'olawa Road which went down to Ho'olawa Landing (Site 2956). The present investigation of the survey area and the 5 sites found on it, suggests that portions of this c. 25 acre parcel have been impacted by historic agricultural and recent earthmoving activities.

Sites 4235 through 4238 were found to have been directly impacted by post-contact activities on the study parcel. In particular, Sites 4235 and 4236 are interpreted as site remnants manifested in surface scatters. Both are in poor condition and do not appear to have any intact subsurface deposits associated with them. The few indigenous artifacts found at Site 4235 were recovered from the surface and from Layer I—a stratum that yielded post-contact materials on several portions of the project area. A single, large piece of high quality red ochre was found on the surface (S8). Two inventory surveys

within 2 km. to the west produced 2 supposed red ochre mines (Sites 4088 and 4095) containing large deposits of fine quality ochre (Dunn and Spear, 1995; Dunn, Burgett and Spear, 1996). Apparently, veins of ochre are not uncommon in this region of Maui.

Site 4237, the subsurface fire pit, does not appear to have been heavily impacted by post-contact activities on the parcel. This site yielded the only material suitable for radiocarbon dating, which returned a conventional radiocarbon age of 360 +/- 60, and a 2 sigma calibrated date between AD1435 and 1660. In addition, no post-contact artifacts were found in this site. The Layer I deposit has disturbed the upper portion of the fire pit feature. Ho'olawa Bay, which lies to the west of the study parcel was a traditional canoe landing known as Huelo Landing (Personal communication, T. Donham, April 1996). The location of a large fire pit on the plateau above this landing may suggest that the fire in this feature could have served as a beacon for night navigation. The absence of food midden associated with the pit feature seems to preclude a cooking function.

Site 4238 also did not appear to have been heavily impacted by post-contact earthmoving activities. However, recent bulldozer push was evident in the direct vicinity of Site 4238.

Portions of the parcel were probably utilized for sugar cane production during the relatively short run of the sugar cane mills in the Huelo area. Pineapple production may also have occurred, as this was the typical crop grown as the replacement for sugar cane in this area. However, the lack of a deep plow zone indicates that any post-contact agriculture on the subject parcel was likely of short duration and not heavily mechanized. Pasturage was the primary usage in the 20th century.

While no intact cultural deposit, other than the subsurface fire pit (Site 4237), was located during the present inventory survey, the indigenous artifact assemblage suggests that Hawaiians utilized the project area for possible habitation and/or resource exploitation in the past. The lithic artifacts suggest that limited tool production may have taken place on the subject parcel as well. However, post-contact activities on the project area may well have destroyed surface evidence of precontact habitation. The presence of 2, or possibly 3 burials on the study parcel reflect the habitation use through the first half of the 20th century.

Site Significance Evaluations

Based upon field inspection and an oral history interview, Site 4234 is interpreted as a burial. This site is deemed significant under both Criterion "C" and Criterion "D" of Federal and State historic preservation guidelines. Preservation in place is the recommended mitigation for Site 4234. In addition, the site needs to be stabilized and protected from the impact of the domestic goats which currently traverse the study area. The grave may be stabilized by the placement of a barrier such as a fence or the removal

of the goats. In addition, dirt may need to be placed on the somewhat eroded western flank of the grave.¹¹

Subsurface investigations at Site 4235 indicate that it is a site remnant. Nevertheless, it is deemed significant under Criterion "D" of the Federal and State historic preservation guidelines. However, adequate information at the inventory survey level has been obtained for this site. Consequently, no further archaeological work is recommended for Site 4235.

Site 4236 is also interpreted as a site remnant. It, too, is deemed significant under Criterion "D" of the Federal and State historic preservation guidelines. No further work is recommended for Site 4236 and it is no longer considered significant for its information content.

Like both Sites 4235 and 4236, Site 4237 is interpreted as a site remnant. Site 4237 also qualifies for significance under Criterion "D" of the Federal and State guidelines. However, this site is no longer considered significant for its information content. No further work is recommended.

Site 4238 appears to be largely intact and visible above ground. This site may have had a possible agriculture function. However, the presence of a potential burial (Feature 1) may qualify this site for significance under Criterion "C" as well as Criterion "D" of the Federal and State guidelines. Given the location of Site 4238, preservation in place is the recommended mitigation.

While Site 4239 is not directly on the subject parcel, the presence of such a large and conveniently located cave shelter would not have gone unnoticed by past inhabitants of the project area. This site is deemed significant under Criteria "C" and "D" of the Federal and State historic preservation guidelines.

Site 4196, a known historic grave site, located during the earlier limited inventory survey work is recommended for preservation in place, as it qualifies for significance under both Criterion "C" and "D".

¹¹ In a phone conversation with Mr. Michael P. Marquard on November 26, 1996, it was reported that this area had been fenced off so that goats could not further damage the grave. Stabilization of the stones with a covering of soil is still recommended.

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1900, 1902, and 1904 – Selected articles

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March 1974a Hawaii Register of Historic Places, Site Short Form for
Site 50/06/1504, DLNR Files.

March 1974b Hawaii Register of Historic Places, Site Short Form for
Site 50/06/1505, DLNR Files.

APPENDIX A

Calibration of Radiocarbon Age to Calendar Years Site 50-50-06-4237, Feature 1, 32-36 cmbs.

(Variables: C13/C12=-26.7; lab mult.=1)

Laboratory Number: Beta-98362

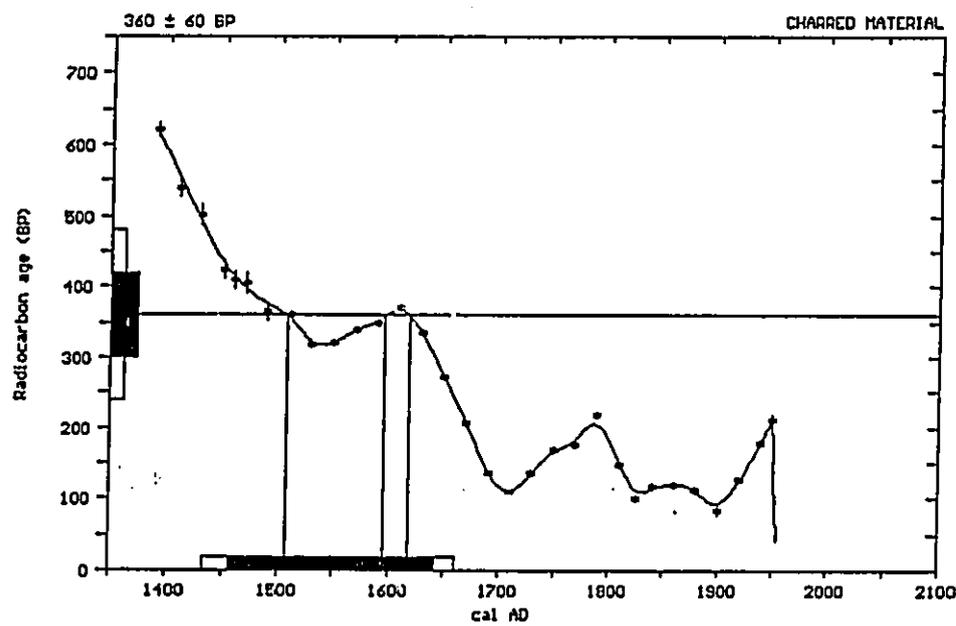
Conventional radiocarbon age: 360 ± 60 BP

Calibrated results:
(2 sigma, 95% probability) cal AD 1435 to 1660

Intercept data:

Intercepts of radiocarbon age
with calibration curve: cal AD 1505 and
cal AD 1595 and
cal AD 1620

1 sigma calibrated results:
(68% probability) cal AD 1455 to 1640



References:

- Pretoria Calibration Curve for Short Lived Samples*
Vogel, J. C., Fuls, A., Visser, E. and Becker, B., 1993, *Radiocarbon* 35(1), p73-86
- A Simplified Approach to Calibrating C14 Dates*
Talma, A. S. and Vogel, J. C., 1993, *Radiocarbon* 35(2), p317-322
- Calibration - 1993*
Stuiver, M., Long, A., Kra, R. S. and Devine, J. M., 1993, *Radiocarbon* 35(1)

Beta Analytic Radiocarbon Dating Laboratory

4985 S.W. 74th Court, Miami, Florida 33155 ■ Tel: (305)667-5167 ■ Fax: (305)663-0964 ■ E-mail: beta@radiocarbon.com

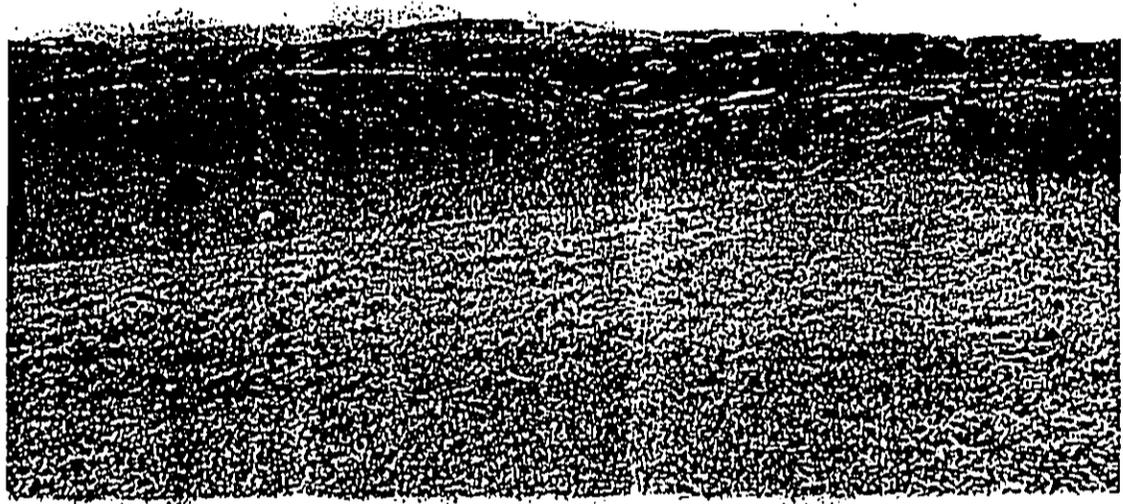


Photo 1 - General view of project area, looking *mauka*, or south.

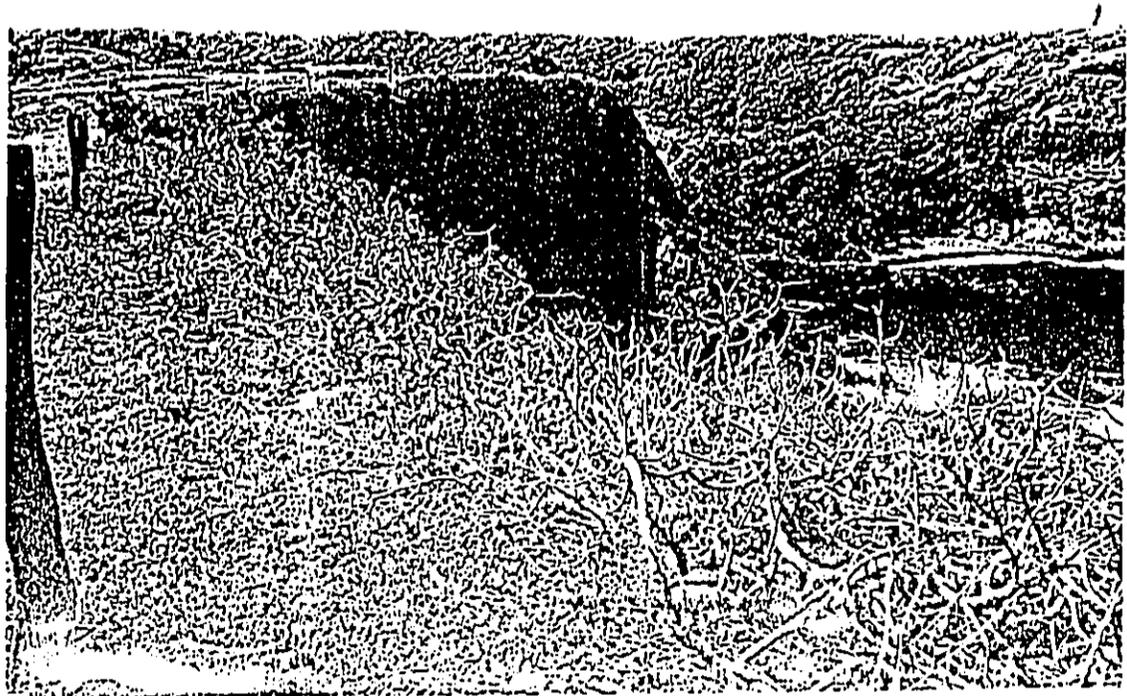


Photo 2 - Cliff face along western border. Ho'olawa Landing is on the peninsula to the right.

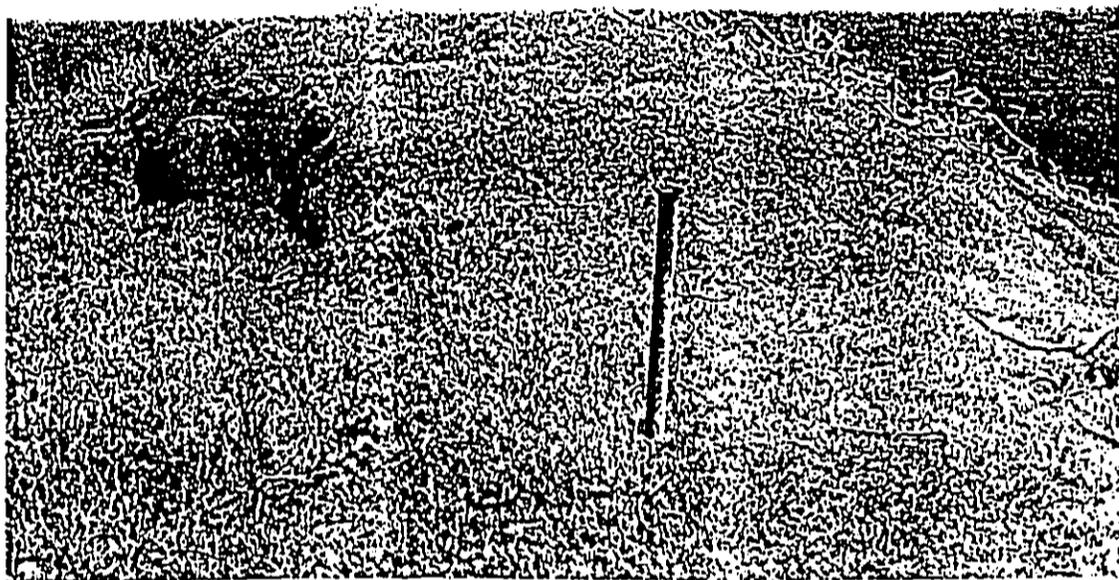
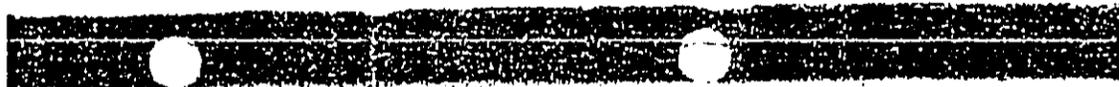


Photo 3 - Site 4234, a reported grave, on the extreme northern point.
On the west or left side, a goat trail has exposed waterworn stones



Photo 4 - Site 4234, a reported grave, on the extreme northern point.
On the west or left side, a goat trail has exposed waterworn stones

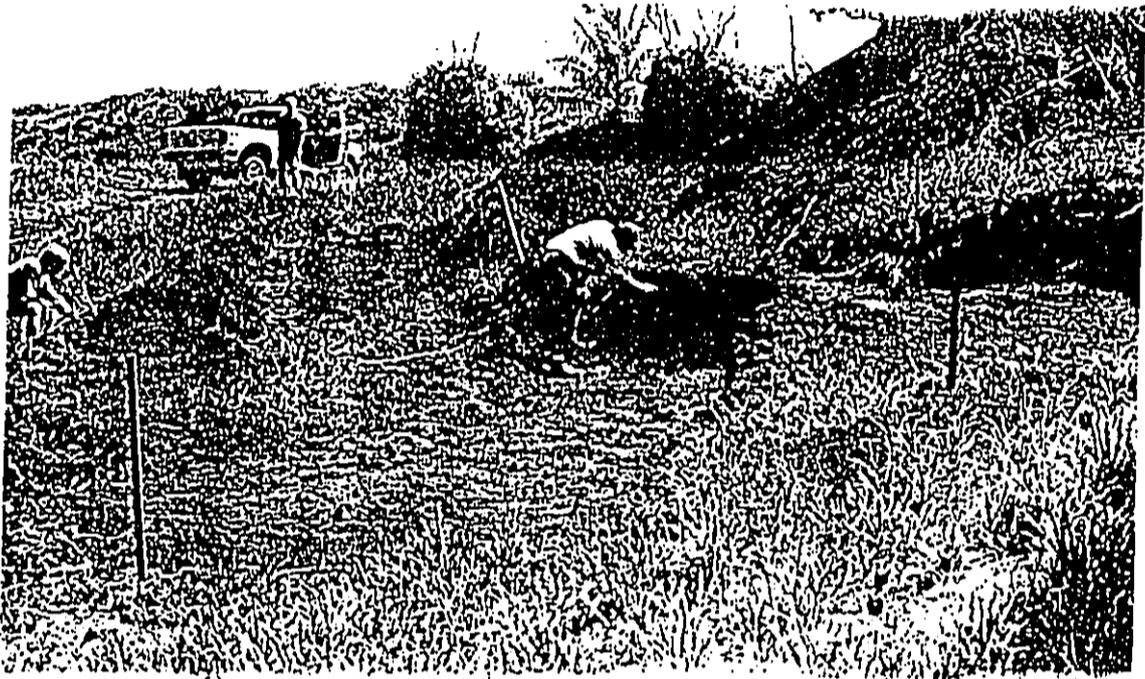


Photo 5 - Recent clearing in vicinity of Site 4235, located near the parked truck.



Photo 6 - Site 4196—historic grave.

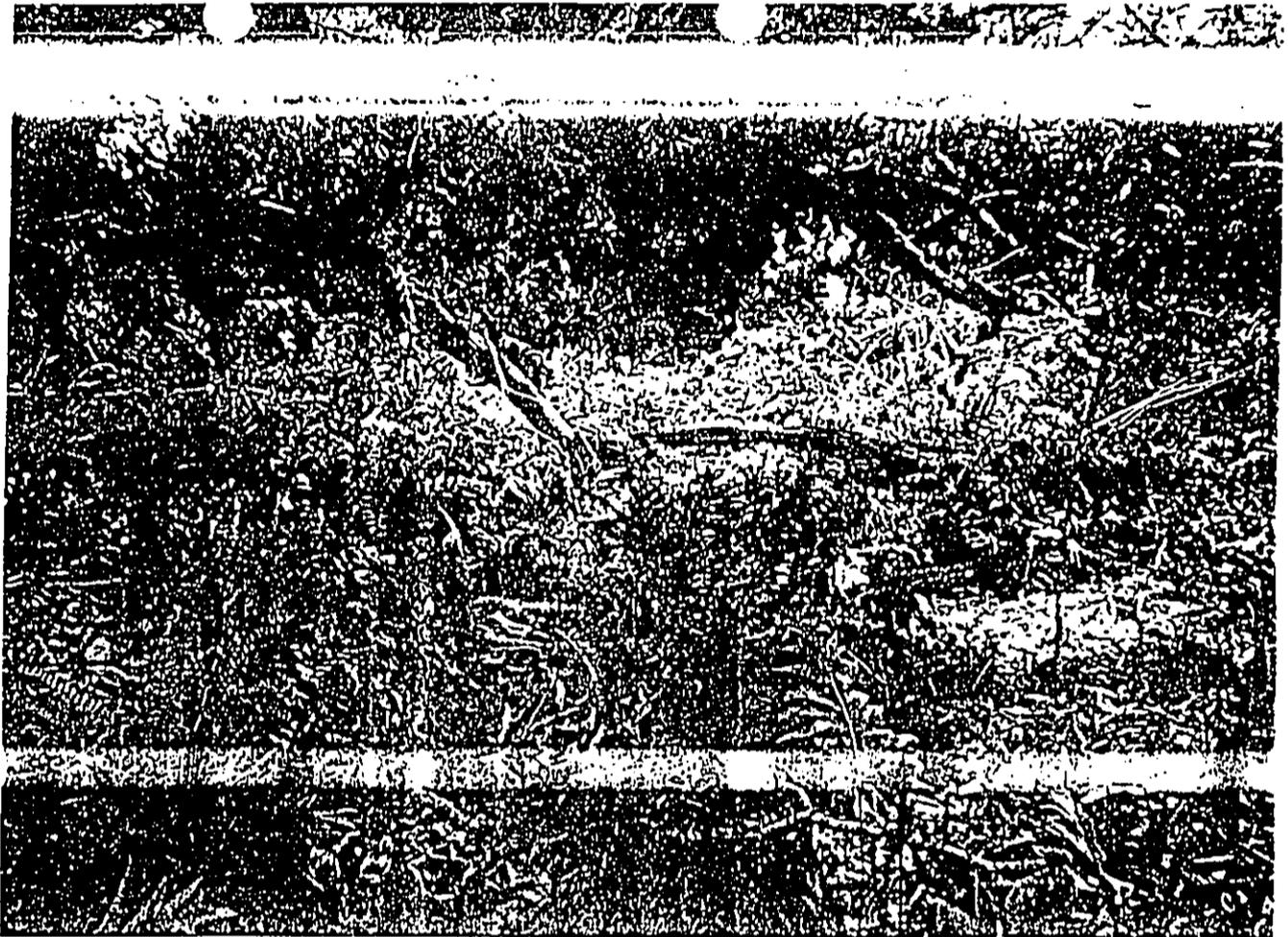


Photo 7 - View of Ho'olawa Landing Road on the Marquard property, looking south (Site 4167).

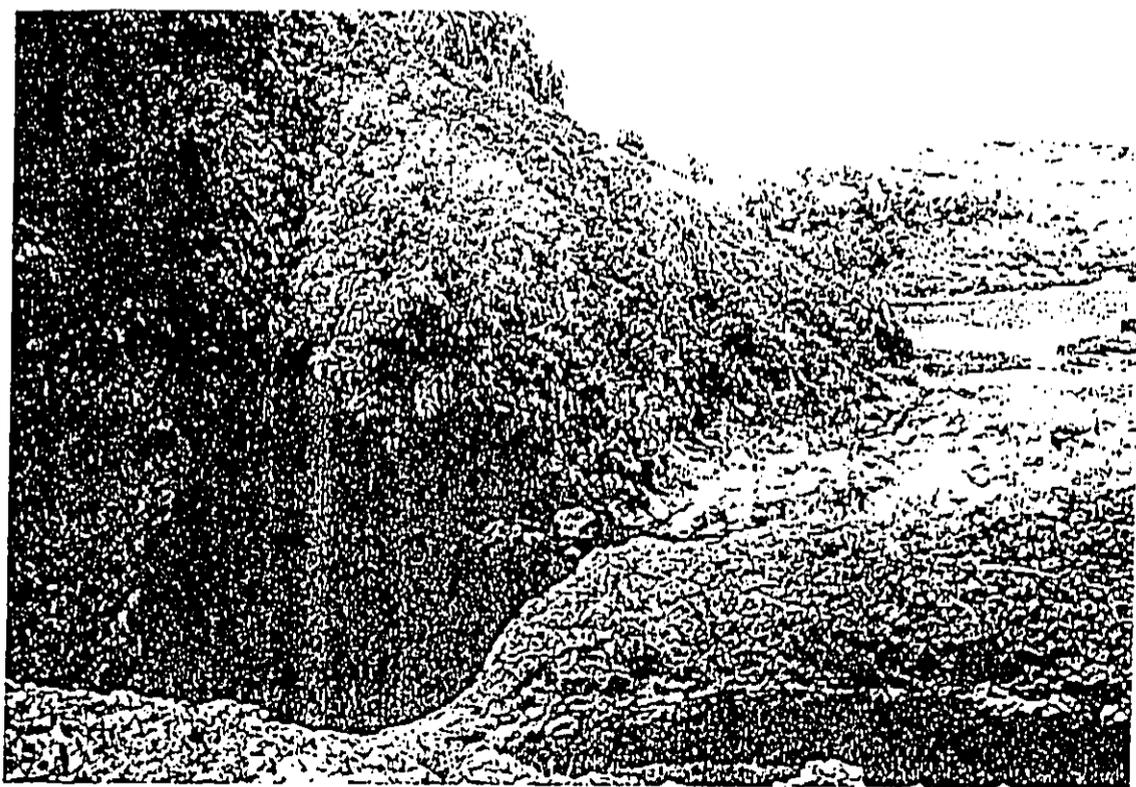


Photo 8 - Site 4239—large rock shelter in Ho'olawa Stream. Ho'olawa Landing is in the extreme upper right.



Photo 9 - Site 2956, Ho'olawa Landing as viewed from Marquard property.

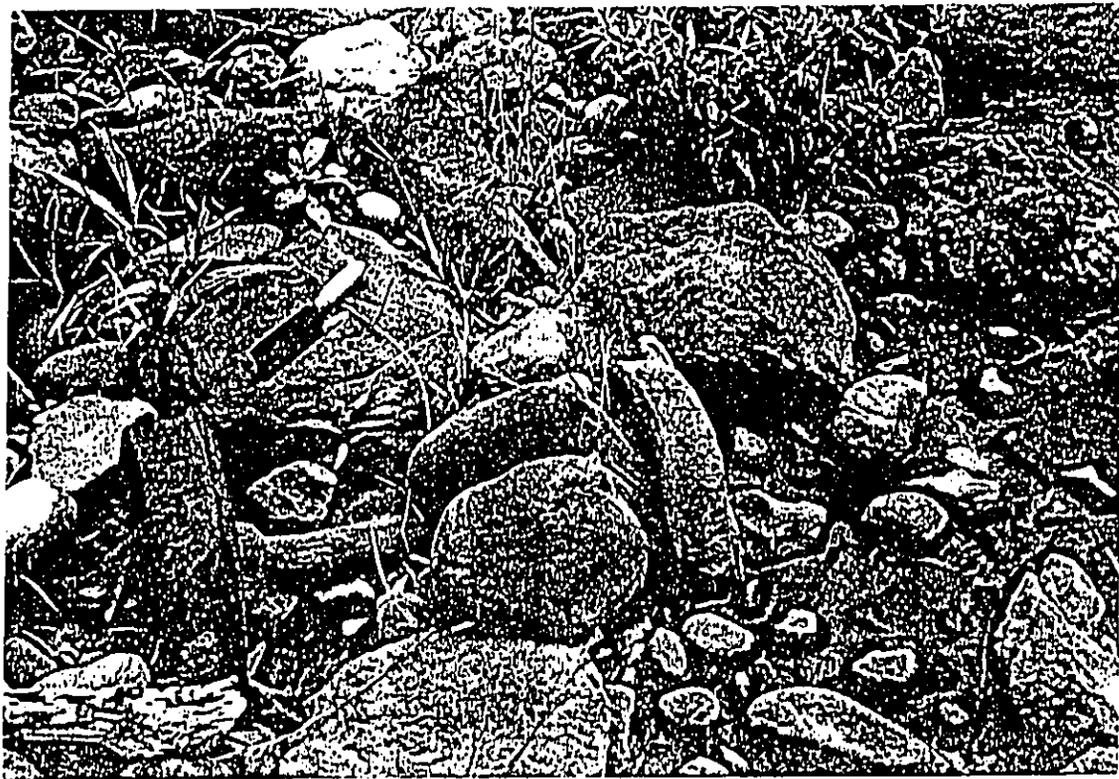


Photo 10 - Narrow gauge rail car wheels in Ho'olawa Stream bed.

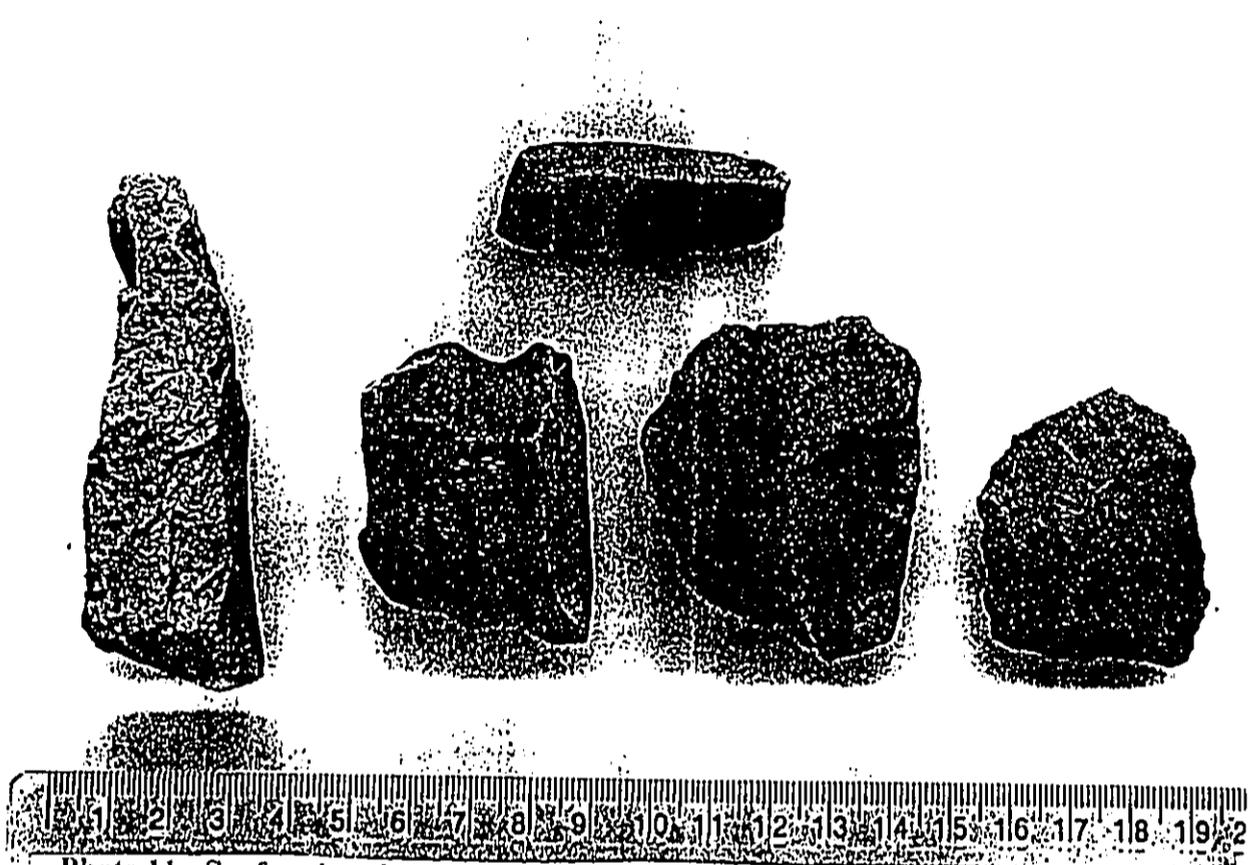


Photo 11 - Surface basalt artifacts from Site 4235—(left to right) S1 adze blank, S6 utilized basalt, S4 utilized flake, S2 utilized flake, and (above) S5 utilized flake.



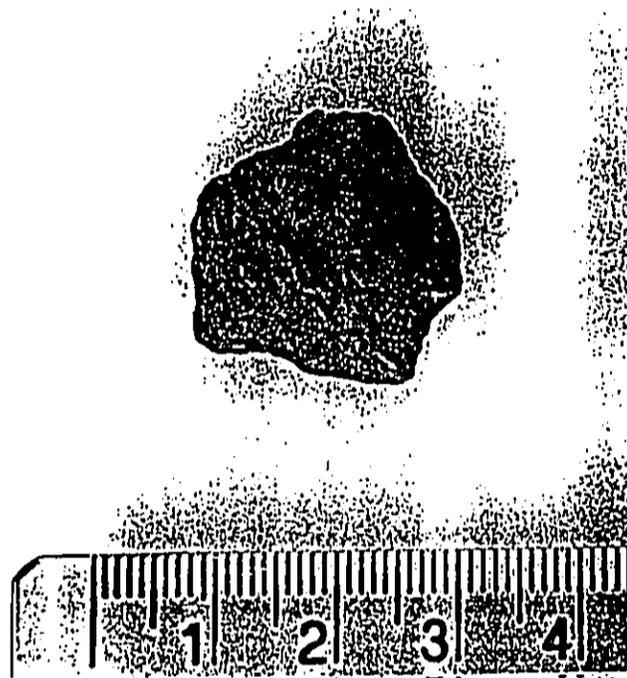
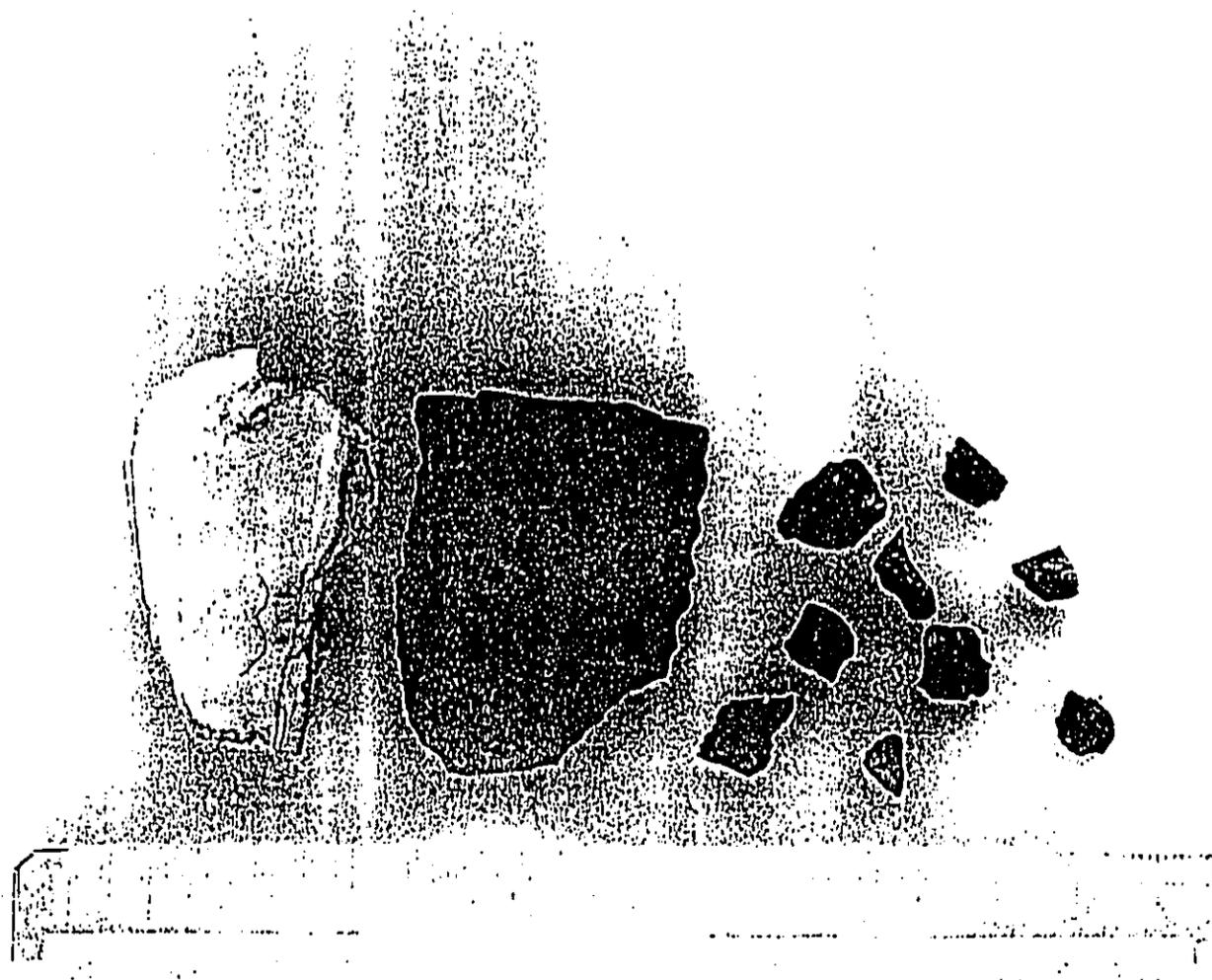


Photo 13 - Red ochre sample from Site 4235.



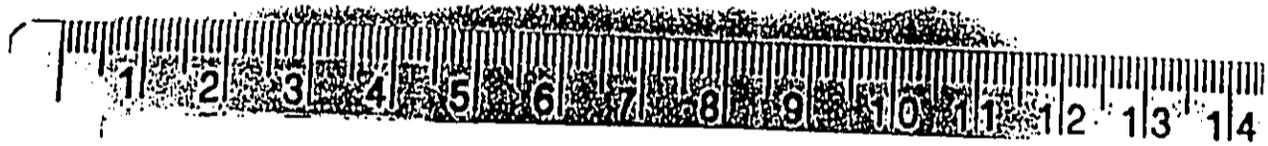
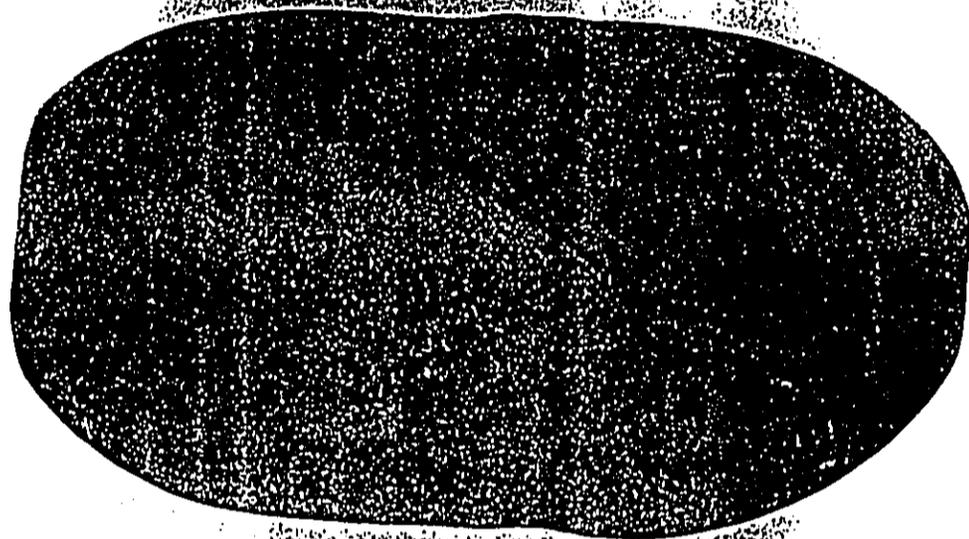
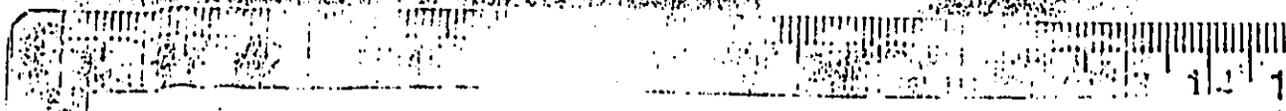


Photo 15 - Large pecking stone with flattened ends (#16) from Site 4237.



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CONSERVATION AGREEMENT

This Agreement is made this _____ day of _____, 1998 by and between Michael P. Marquard in his individual capacity, Michael P. Marquard in his capacity as Custodian for Michelle Marquard, Michael P. Marquard in his capacity as Trustee under the Alexandra Morrow 1992 Irrevocable Property Trust dated December 28, 1992 (hereinafter collectively referred to as "the landowner") and the Department of Land and Natural Resources of the State of Hawaii (hereinafter referred to as "DLNR").

WITNESSETH

WHEREAS the landowner is the owner of a certain parcel property consisting of 24.980 acres located at Hoolawa Point at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii and identified in the tax maps of the State of Hawaii as TMK II 2-9-02:14 (hereinafter referred to as the "Hoolawa Property") which runs to the top of the sea cliffs above the ocean; and

WHEREAS the landowner is seeking governmental approval to subdivide the Hoolawa Property into three parcels for the purpose of creating a three lot family subdivision; and

WHEREAS the majority of the Hoolawa Property is in the State Agricultural District with the remainder of the property being a narrow

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strip along the top of the sea cliffs being in the State Conservation District;
and

WHEREAS an old Hawaiian fishermen trail has been identified which runs along the top of the sea cliff within the Conservation District portion of the Ho'olawa Property which provides access to a steep shoreline access trail over property owned by the State of Hawaii leading from Ho'olawa Point to the shoreline and which also provides access to the two confirmed burial sites located on or near the top of the sea cliff on the makai boundary of the Ho'olawa Property; and

WHEREAS the landowner desires to perpetually preserve and protect the Conservation District Portion of the Hoolawa Property; and

WHEREAS the preservation and protection of Conservation District land fulfills a public purpose; and

WHEREAS part of the subdivision procedure requires a Conservation District Use Permit in order to subdivide the Conservation District portion of the Hoolawa Property;

NOW THEREFORE, in consideration of the mutual covenants and conditions herebelow described and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. This Agreement will go into effect upon the final approval of

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the subdivision of the Hoolawa Property pursuant to the pending subdivision application of the landowner. If for any reason the pending subdivision is not completed then this Agreement will be null and void and of no effect.

2. This Agreement will govern that portion of the Ho'olawa Property that is within the State Conservation District as determined by the Land Use Commission of the State of Hawaii and as may be changed from time to time by the appropriate governmental agency.

3. The landowner will refrain from building any structure or dwelling on the Conservation District portion of the Hoolawa Property.

4. The landowner will have the right to maintain, repair or replace the existing pole and wire fence within the Conservation District portion of the Hoolawa Property.

5. The landowner will have the right to continue ranching and livestock grazing activities within the Conservation District portion of the Hoolawa Property to the extent that has been done over the past fifty years.

6. The landowner will have the right to plant trees, bushes and shrubs up to the edge of the sea cliff for esthetic and wind break purposes within the Conservation District portion of the Hoolawa Property and will have the right to install and maintain an above-ground irrigation system for said plants.

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7. The landowner will have the right to place signs warning of the possibility of severe injury or death resulting from the use of the steep dangerous access trail that runs from the top of the sea cliff to the shoreline below.

8. Except for the uses described in paragraphs 4 through 7, above, there will be no other use of the Conservation District portion of the Hoolawa Property.

9. The landowner will allow access to the Hawaiian fishermen trail along the top of the sea cliff, the burial sites and the access trail over state property from Ho'olawa Point to the shoreline below to the full extent mandated by the Constitution of the State of Hawaii, the statutory law of the State of Hawaii and the case law of the State of Hawaii.

10. The DLNR will support the landowner's application for a Conservation District Use Permit to allow the subdivision of the Hoolawa Property.

11. The landowner and DLNR hereby agree that the provisions herein shall operate as a covenant running with the Hoolawa Property and the resulting lots following the subdivision of the Hoolawa Property and shall bind all parties hereto and their respective heirs, executors, personal representatives, successors and assigns and that this agreement will be recorded in the Bureau of Conveyances of the State of Hawaii.

12. The parties hereto covenant that they have full authority to

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enter into this Agreement.

13. Except as specifically set forth herein, none of the parties, nor anyone on their behalf, has made a representation of fact, opinion, or promise to any other party to this agreement to induce this agreement, and the parties are not relying upon any statements, representations, opinions, or promises made by any person as consideration for entering into this agreement.

14. This agreement shall not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by all of the parties to this agreement or their successors.

15. The parties hereto each agree to execute any further documents that any of the other parties may reasonably request in order to carry out the provisions of this agreement.

16. This agreement and all terms, provisions, and covenants contained herein are binding on, and shall inure to the parties hereto, their heirs, executors, personal representatives, successors and assigns.

17. This agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this agreement, it shall not be necessary to produce or account for more than one counterpart.

18. This agreement shall be governed by and construed pursuant to the laws of the State of Hawaii and if any litigation shall ever arise from this agreement, jurisdiction will be exclusive in the Circuit Court of the Second Circuit of the State of Hawaii.

IN WITNESS WHEREOF, the parties hereto have fully executed this Agreement on the date first above written.

DRAFT

DATED: Honolulu, Hawaii _____
Dept. of Land and Natural Resources

by:
its:

DATED: Wailuku, Hawaii _____
The Landowner

Michael Marquard



JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 3, 1999

Director
Office of Environmental Quality Control
State of Hawaii
235 South Beretania Street, Suite 702
Honolulu, Hawaii 96813

Re: Your Letter Dated November 23, 1998 Containing Comments to August 1998 Draft Environmental assessment for "Subdivision of Conservation District Land, Ho'olawa, Hamakualoa, Makawao, Maui, Hawaii, TMK II 2-9-02-14"

Dear OEQC Director:

I am in receipt of your letter addressed to the Applicant, Mr. Michael Marquard, dated November 23, 1998. Pursuant to your comments, the following actions have been taken:

- 1) Section 5 of the Environmental Assessment has been modified to include a synopsis of the information provided to the Applicant and his responses to the U.S. Fish and Wildlife Service letter dated September 21, 1998 concerning federally endangered dark-rumped petrels; the Rene Sylva letter dated September 3, 1998; and the Paul Horikawa letter dated September 1, 1998.

- 2) Section 5 of the Environmental Assessment has been modified to include a description of the Ho'olawa Stream / Bay complex using information gathered via consultation with personnel from the Commission on Water Resource Management of the Department of Land and Natural Resources and the Division of

Director, Office of Environmental Quality Control
February 3, 1999
Page Two

Aquatic Resources of the Department of Land and Natural Resources. This section has also been modified to describe potential impacts on the Ho'olawa Stream / Bay complex.

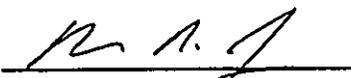
- 3) Section 5 of the Environmental Assessment has been modified to include a description of cultural impacts resulting from the proposed subdivision of the Conservation District Land with regard to the extent that Ho'olawa Stream / Bay complex is used for traditional native gathering practices. In this regard, the attorney for the Applicant met with Hawaiian cultural specialist, Charles Keau, and Ms. Lynn Lee of the Land & Natural Resources Division of the Office of Hawaiian Affairs of the State of Hawaii and escorted them on a site visit to the subject property so that their comments and recommendations could be included in the Environmental Assessment.
- 4) Section 5 of the Environmental Assessment has been modified to include a description of what can be built on agriculturally zoned property pursuant to the new agricultural zoning bill that was enacted in January of 1999. The Applicant has attached the new agricultural zoning bill as Appendix 4 to the Environmental Assessment.
- 5) The Applicant's response to the U.S. Fish and Wildlife Service letter mentioned in your letter has been included in Appendix 3 of the Environmental Assessment as well as letters received during the public review process and the Applicant's response to those letters.

Director, Office of Environmental Quality Control
February 3, 1999
Page Three

- 6) Section 11 has been modified to reflect that the Applicant no longer needs to obtain a change in zoning from the Planning Department of the County of Maui due to the recent enactment of the new Agricultural Zoning Bill which established automatic agricultural zoning on the subject property.

Thank you for your comments on the Draft Environmental Assessment.

Sincerely,
Brumbaugh & Jenkins



Brian R. Jenkins

xc: Michael Marquard

BENJAMIN J. CAYETANO
GOVERNOR



GARY GILL
DIRECTOR

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

236 SOUTH BERETANIA STREET
SUITE 702
HONOLULU, HAWAII 96813
TELEPHONE (808) 588-4186
FACSIMILE (808) 588-4186

November 23, 1998

Mr. Michael Marquard
c/o Brumbaugh and Jenkins
2065 Main Street, Suite 101
Wailuku, Hawai'i 96793-1693

Dear Mr. Marquard:

Having reviewed the August 1998, draft environmental assessment (DEA) for "Subdivision of Conservation District Land, Ho'olawa, Hamakualoa, Makawao, Maui, Hawai'i, TMK: II, 2-9-02-14" we submit the following comments for your response required by Section 11-200-9.1(d), Hawai'i Administrative Rules.

1. **DESCRIBE ENVIRONMENTAL SETTING.** In the final EA, please include the following.
 - (A) A revision of the text of Section 5 (Environmental Setting) to include a synopsis of the information provided to you (and your responses to that information) by the following:
 - * The U. S. Fish and Wildlife Service on September 21, 1998, concerning federally endangered dark-rumped petrels (*Pterodroma phaeopygia sandwichensis*) and future impacts (which, as noted above, include direct, indirect and cumulative impacts), to the nearby coastal environment;
 - * Rene Sylva of Paia, in the letter dated September 3, 1998, concerning; a botanical survey; nesting sites for the Wedge-tail Shearwater and other avifauna at Ho'olawa point; electric cattle fencing; and, tree planting; and,
 - * Paul Horikawa, in a letter dated September 1, 1998.
 - (B) A description of the Ho'olawa Stream/Bay Complex (see more below in item 3).
2. **CULTURAL IMPACTS.** Please consult with the Office of Hawaiian Affairs and any identifiable community informants as to the extent to which the Ho'olawa Stream/Bay complex is used for traditional native gathering practices. Copies of the Environmental Council's "Guidelines for Assessing Cultural Impacts" and a "Directory of Cultural Impact Assessment Providers" is enclosed for your information.
3. **IMPACTS ON HO'OLAWA STREAM AND BAY.** Figure 2 depicts the Ho'olawa Stream near the western property boundary. We were unable to find a discussion of the Ho'olawa Stream resource in the environmental setting for this project. Section 11-200-2, Hawai'i Administrative Rules defines "effects" and notes that they may be direct, indirect, or cumulative, therefore the environmental assessment must describe impacts to Ho'olawa Stream and Bay complex.

The land is zoned agricultural and is currently used for pasturage. Please consult with the Department of Land and Natural Resources, the Commission on Water Resource Management and the Division of Aquatic Resources on flora and fauna in and near the Ho'olawa Stream and Bay complex.
4. **POTENTIAL DEVELOPMENT.** Please describe what can be built on an agriculturally-zoned lot (e.g., corrals, barns, feedlots, multi-family homes, etc.). Please also describe the likely impact of any development on the new lots.

Mr. Michael Marquard
c/o Brumbaugh and Jenkins
November 23, 1998
Page 2 of 2

5. MISSING LETTER. We note that you provide the information in "Supplemental Responses to Appendix 3." As required by Section 11-200-10, Hawai'i Administrative Rules, this section should contain "[w]ritten comments and responses to comments under the early consultation provisions ... [underscoring supplied]." We are unable to find a response to the U. S. Fish and Wildlife Service letter.

Thank you for the opportunity to comment. If there are any questions, please call Leslie Segundo, Environmental Health Specialist, at 586-4185.

Sincerely,



GARY GILL
Director

Enclosures

c: Mr. Tom Eisen, Department of Land and Natural Resources

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 11, 1999

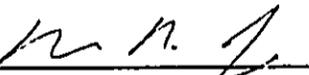
Colin Kippin, Jr.
C. Sebastian Aloat
State of Hawaii
Office of Hawaiian Affairs
711 Kapi'olani Boulevard, Suite 500
Honolulu, Hawaii 96813

Re: MA-2904. Michael Marquard's Conservation District Use Application
for property at Ho'olawa, Hamakualoa, Maui, TMK: (2) 2-9-02:14

Dear Messrs. Kippin and Aloat:

Thank you for your letter dated February 8, 1999 which has been included in the Final Environmental Assessment for the above-referenced CDUA. The Applicant acknowledges two known and one possible burial site as well as an access trail, used by fishermen, within the Conservation District portion of the Ho'olawa Property. As part of the CDUA, the Applicant is proposing a Conservation Agreement with the State of Hawaii that would expressly acknowledge and allow continued pedestrian access to both of the burial sites and the shoreline to the full extent mandated by the Constitution of the State of Hawaii, existing Hawaii statutory law and Hawaii case law. The comments of the Office of Hawaiian Affairs are appreciated. Thank you.

Sincerely,
Brumbaugh & Jenkins


Brian R. Jenkins

xc: Michael Marquard

PHONE (808) 594-1888

FAX (808) 594-1885



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

February 9, 1999

Brian Jenkins, Esq.
Brumbaugh & Jenkins
2065 Main Street, Ste. 101
Wailuku, Maui, Hawaii'i 96793-1693

(Ref. PA#158)

Re: MA-2904. Michael Marquard's Conservation District Use Application for property at Ho'olawa, Hamakualoa, Maui, TMK: (2) 2-9-02:14

Dear Mr. Jenkins:

Thank you for the opportunity to review this project. The property owners anticipate subdividing the current 24.980 parcel into three lots, of 14.831, 5.099 and 5.050 acres each. In addition, a narrow strip of land along the top of the pali will be set aside in a conservation easement.

Two known and one possible burial as well as an access trail, currently used by fishermen, exist within the conservation easement area. The property owners have proposed the creation of a conservation easement, in part, to allow continued pedestrian access to both the burial areas and the shoreline.

If a conservation easement and assurance of continued access to both the burial sites and the shoreline resources are included in the CDUP, our concerns will have been addressed.

If you have any questions concerning our comments, please contact Lynn Lee, EIS Planner, at 594-1936.

Sincerely,

Handwritten signature of Colin Kippen, Jr.

Colin Kippen, Jr.
Deputy Administrator

Handwritten signature of C. Sebastian Aloit.

C. Sebastian Aloit
Land and Natural Resources Division Officer

RECEIVED

cc: Board of Trustee
OHA Maui Community Affairs Office
Dean Uchida, DLNR

FEB 9 1999

BRUMBAUGH & JENKINS

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 4, 1999

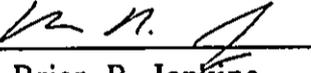
Mr. Charles Jencks, Director
Department of Public Works and Waste Management
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Re: Comments On Draft Environmental Assessment for Michael Marquard
Subdivision, Hoolawa-Mokupapa, Hamakualoa, Makawao, Maui,
Hawaii: TMK II 2-9-002:014; LUCA File No. 2.2361

Dear Mr. Jencks:

Thank you for your comments on the above-referenced environmental assessment which were contained in your letter dated September 17, 1998. The Applicant will fully comply with conditions No. 13 and 14 contained in the preliminary subdivision approval dated August 26, 1996 concerning the Applicant's need for a Conservation District Use Permit and delineating the Conservation District / Agricultural District and the zoning sub-areas on the final plat. Please contact me if you have any questions.

Sincerely,
Brumbaugh & Jenkins


Brian R. Jenkins

xc: Michael Marquard

LINDA LINGLE
Mayor

CHARLES JENCKS
Director

DAVID C. GOODE
Deputy Director

Telephone: (808) 243-7845
Fax: (808) 243-7955



COUNTY OF MAUI
**DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT**
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

RALPH NAGAMINE, L.S., P.E.
Land Use and Codes Administration

EASSIE MILLER, P.E.
Wastewater Reclamation Division

LLOYD P.C.W. LEE, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

Solid Waste Division

September 17, 1998

Mr. Brian Jenkins
Brumbaugh & Jenkins
2065 Main Street, Suite 101
Wailuku, Hawaii 96793

Dear Mr. Jenkins:

SUBJECT: EARLY CONSULTATION FOR DRAFT ENVIRONMENTAL
ASSESSMENT - MICHAEL MARQUARD SUBDIVISION
TMK (2) 2-9-002:014

We reviewed the subject submittal and have the following comments.

1. A subdivision application was submitted for the subject parcel and preliminary approval was granted on August 26, 1996. Conditions #13 and #14 of the preliminary approval letter refer to the subdivision of the portion within the Conservation District and read as follows:
 13. Our records indicate a portion of this subdivision is located within the Conservation district. A Conservation District Use Application (CDUA) may be required from the Department of Land and Natural Resources (DLNR) for this subdivision. If a CDUA is required, submit a copy of the approved permit. If a CDUA is not required, submit written confirmation from DLNR.
 14. Delineate the Conservation District/Agricultural District and the zoning sub-areas on the final plat.

If you have any questions, please call David Goode at 243-7845.

Sincerely,


CHARLES JENCKS,
Director of Public Works
and Waste Management

DG:co/mt
S:\LUCA\CZM\MARQUARD.WPD

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 4, 1999

Bruce S. Anderson, Ph.D.
Deputy Director for Environmental Health
Department of Health
State of Hawaii
P.O. Box 3378
Honolulu, Hawaii 96801

Re: Your Letter Dated October 5, 1998 Containing Comments to August 1998 Draft Environmental assessment for "Subdivision of Conservation District Land, Ho'olawa, Hamakualoa, Makawao, Maui, Hawaii, TMK II 2-9-02-14"

Dear Dr. Anderson:

Thank you for your comments to the above-referenced environmental assessment. Your comment dealt with the observation that the subject property was located in a critical wastewater disposal area, as determined by the Maui County Wastewater Advisory Committee and below the Underground Injection Control (UIC) Line.

You stated that Treatment individual wastewater systems will be required for any future residences and that preconstruction approval would be required. You stated that plans and specifications for these systems must be submitted to the Maui District Health Office for new and approval.

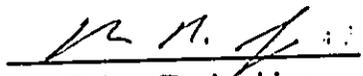
The Applicant acknowledges that the subject property is located in a critical wastewater disposal area, as determined by the Maui County Wastewater Advisory Committee and below the Underground Injection Control (UIC) Line.

The Applicant agrees to abide all applicable rules and regulations governing Treatment individual wastewater systems and will obtain preconstruction approval from the Maui District Health Office. Thank you

Bruce S. Anderson, Ph.D.
February 4, 1999
Page Two

for your comments.

Sincerely,
Brumbaugh & Jenkins


Brian R. Jenkins

xc: Michael Marquard

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



LAWRENCE MIKE
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:

October 5, 1998

98-176/epo

Mr. Brian R. Jenkins
Brumbaugh & Jenkins
Attorneys at Law
Wailuku Business Plaza
2065 Main Street, Suite 101
Wailuku, Hawaii 96793-1693

Dear Mr. Jenkins:

Subject: Pre-Consultation for a Draft Environmental Assessment
Subdivision of Conservation District Land
Hoolawa, Hamakualoa, Makawao, Maui
Mr. Michael Marquard: Owner
TMK: 2-9-02: 14

Thank you for allowing us to review and comment on the subject permit application. We have the following comments to offer:

The proposed project is located in a critical wastewater disposal area, as determined by the Maui County Wastewater Advisory Committee and below the Underground Injection Control (UIC) Line. Treatment individual wastewater systems will be required for any future residences. Preconstruction approval is also required. Plans and specifications for these systems must be submitted to the Maui District Health Office for review and approval.

Any questions regarding these comments should be directed to Mr. Herb Matsubayashi of the Maui District Health Office at 984-8230.

Sincerely,

Handwritten signature of Bruce S. Anderson.

BRUCE S. ANDERSON, Ph.D.
Deputy Director for
Environmental Health

RECEIVED

OCT 8 - 1998

BRUMBAUGH & JENKINS

c: MDHO

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 4, 1999

John E. Min
Director of Planning
Department of Planning
County of Maui
250 South High St.
Wailuku, Hawaii 96793

Re: Draft Environmental Assessment for the Marquard Family
Subdivision at TMK II 2-9-02: 14, Ho'olawa, Makawao, Maui, Hawaii

Dear Mr. Min:

This letter is in response to the letter from former Director Lisa m. Nuyen dated October 29, 1998 regarding your department's comments to the above-referenced environmental assessment.

In that letter, Ms. Nuyen acknowledged that the Applicant had applied to the County of Maui for a Change in Zoning in order to establish County Agricultural District Zoning on the portion of the subject property located within the State Agricultural District in order to subdivide the property. By letter dated January 28, 1999, a copy of which is enclosed, you stated that on December 31, 1998, the County of Maui adopted Ordinance No. 2749 which had the effect of establishing County Agricultural District zoning on the subject property. You informed me that the application for Change in Zoning described in the letter dated October 29, 1998 from Ms. Nuyen was made moot by the new Ordinance and that your department was, therefore, closing the application file.

In Ms. Nuyen's letter of October 29, 1998, she also stated that the Paia-Haiku Community Plan adopted on May 17, 1995 identified the subject property as Agricultural and Conservation and stated that the property is currently used for agricultural purposes.

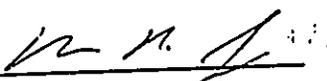
The Applicant thanks your Department for its comments on the Draft

John E. Min
February 4, 1999
Page Two

Environmental Assessment. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.



Brian R. Jenkins

xc: Michael marquard

JAMES "KIMO" APANA
Mayor

JOHN E. MIN
Director

CLAYTON I. YOSHIDA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

January 28, 1999

Brian R. Jenkins, Esq.
Brumbaugh & Jenkins
P. O. Box 640
Wailuku, Hawaii 96793-0640

Dear Mr. Jenkins:

RE: Change in Zoning Request for the Marquard Family Subdivision
at TMK: 2-9-002:014, Hoolawa, Island of Maui, Hawaii
(CIZ 970008)

On December 31, 1998, the County of Maui adopted Ordinance No. 2749 which established Chapter 19.30A Agricultural District in Title 19 of the Maui County Code, 1980, as amended. The ordinance included a provision that zoned lands designated as Agriculture by the Maui County General Plan and Community Plans as County Agricultural District. Pursuant to Ordinance No. 2749, the portion of the property located in the State Agricultural District and designated as Agriculture on the Paia-Haiku Community Plan is zoned County Agricultural District. Your application for a Change in Zoning is moot and, therefore, the Maui Planning Department is closing your application file.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 243-7735.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John E. Min".

JOHN E. MIN
Director of Planning

Brian R. Jenkins, Esq.
January 28, 1999
Page 2

JEM:CMS:osy

c: Clayton Yoshida, A.I.C.P., Deputy Planning Director
Aaron Shinmoto, P.E., Planning Program Administrator (2)
Colleen Suyama, Staff Planner
LUCA (2)
Project File
General File
(S:\CMS\97ciz8m)

LINDA LINGLE
Mayor

LISA M. NUYEN
Director

DONALD A. SCHNEIDER, II
Deputy Director



CLAYTON I. YOSHIDA
Planning Division

AARON H. SHINMOTO
Zoning Administration and
Enforcement Division

COUNTY OF MAUI
DEPARTMENT OF PLANNING

October 29, 1998

Mr. Dean Uchida, Administrator
Department of Land and Natural Resources
Land Division
P. O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Uchida:

RE: Draft Environmental Assessment for the Marquard Family
Subdivision at TMK: 2-9-002:014, Hoolawa, Makawao, Island
of Maui, Hawaii.

The Maui Planning Department (Department) has reviewed the Draft Environmental Assessment Report for the Marquard Family Subdivision and has the following comments:

1. The Department confirms that the applicant has applied to the County of Maui for a Change in Zoning in order to establish County Agricultural District Zoning on the portion of the property located within the State Agricultural District in order to subdivide the property.

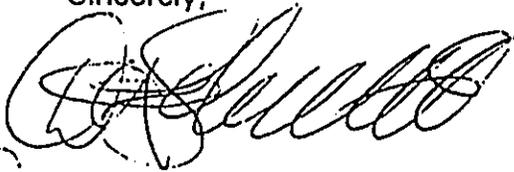
As part of the Department's review process, the Department transmitted the application to various agencies for comment and recommendation. Enclosed for your information are copies of the letters received by the Department. The application is currently being held in abeyance pending resolution of concerns raised in some of the agency comments and resolution of the permitting requirements of the conservation district lands. The letters received from the agencies should be included in the Environmental Assessment with appropriate responses from the applicant addressing concerns raised.

Mr. Dean Uchida, Administrator
October 29, 1998
Page 2

2. The Paia-Haiku Community Plan adopted on May 17, 1995 identifies the property as Agriculture and Conservation. The property is currently used for agricultural purposes, such as, grazing lands for cattle and goats and cultivation of Christmas trees.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 243-7735.

Sincerely,



for LISA M. NUYEN
Director of Planning

LMN:CMS:osy
Enclosures

c: Clayton Yoshida, A.I.C.P., Planning Program Administrator
Colleen Suyama, Staff Planner
Brian Jenkins, Esq., Brumbaugh & Jenkins
Project File
General File
(S:\CMS\97ciz8)

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 4, 1999

Michael E. Baker
Trails & Access Manager-Maui
Na Ala Hele
Division of Forestry and Wildlife
Department of Land and Natural Resources
State of Hawaii
54 South High Street
Wailuku, Hawaii 96793

Re: Your Letter Dated November 4, 1998 Containing Comments to August 1998 Draft Environmental Assessment for "Subdivision of Conservation District Land, Ho'olawa, Hamakualoa, Makawao, Maui, Hawaii, TMK II 2-9-02-14"

Dear Mr. Baker:

Thank you for your comments to the above-referenced environmental assessment. In your letter dated November 4, 1998, you stated that a determination was made that the road providing access to Ho'olawa Landing was a government road in its entirety as it was depicted in Registered Map No. 862 as surveyed by James Gay for Brewer and Co. and dated 1881. As such, the roadway was in existence prior to the passage of the Highways Act of 1892 which basically made all roads then in existence government roads. As you pointed out, a small portion of this road passes through the Ho'olawa Property at its extreme Western Boundary.

Your letter contained two recommendations regarding the government road: 1) there should be "in-place preservation of the road surface and grade, and 2) a ban on the placement of any signs, fences, barriers, or other structures in the vicinity that would dissuade, block, or otherwise impede public access along the roadway."

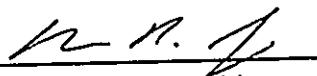
As the road is owned by the State of Hawaii, the Applicant has no legal right to alter or do any other action that would adversely affect the preservation of the road surface and grade. Likewise, the Applicant has no

Michael E. Baker
February 4, 1999
Page Two

legal right or ability to dissuade, block, or otherwise impede public access along a roadway owned by the State of Hawaii. The Applicant, as a member of the public, does have a right to traverse the government road just as other members of the public do.

As a determination has been made regarding the ownership of the roadway, I do not believe that it is appropriate to have conditions in the Applicant's Conservation District Use Permit that pertain to land which is not owned by the applicant and which is, in any event, outside of the Conservation District. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins


Brian R. Jenkins

xc: Michael Marquard

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
54 SOUTH HIGH ST., ROOM 101
WAILUKU, HAWAII 96793-2108

November 4, 1998

Department of Land and Natural Resources
Division of Land Management
1151 Punchbowl St., Room 220
Honolulu, HI 96813
Attn: Tom Eisen

MICHAEL D. WILSON
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
DEPUTY DIRECTOR
GILBERT S. COLOMA-AGARAN

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONSERVATION
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

Subject: Conservation Easement - Marquard Family Subdivision TMK: 2-9-2:14,
Hoolawa, Maui

Na Ala Hele is submitting the following comments and attached information on the subject action in response to notification in the October 23, 1998 *Environmental Notice*.

A public road to Hoolawa Landing has been determined by the Division of Land Management to be public land owned in fee simple by the State of Hawaii (see January 5, 1996-letter attached).

Representatives of the Marquard property were apprized of this and a series of recommendations were made in our letter of February 13, 1996 (also attached) to the Maui Planning Department.

We believe although public use of the original roadway is presently problematic, this will not always be the case. Appropriate stewardship would be to include it within the proposed Conservation Easement. Conditions for granting the Easement should include: 1) in-place preservation of the road surface and grade, and 2) a ban on the placement of any signs, fences, barriers, or other structures in the vicinity that would dissuade, block, or otherwise impede public access along the roadway.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Baker".

Michael E. Baker
Trails & Access Manager - Maui

Attachments

c: C. Cottrell, DDFAW-NAH
P. Ohta, DLM-Maui

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P.O. BOX 821
HONOLULU, HAWAII 96809

AGRICULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT
WATER RESOURCE MANAGEMENT

REF:EMC

January 5, 1996

NAH (M) 0004/re

TO: Mike Baker, Na Ala Hele Specialist, Maui

FROM: Mahoe Collins, Na Ala Hele Abstractor *MC*

SUBJECT: Clarification of LM-ABS 8537(M) and NAH (M) 0004 ,
regarding the Road to Hoolawa Landing, situate at
Hoolawa, Hamakualoa, Maui and traversing over and across
various parcels in TMK (M) 2-9-01.

The Land Management Staff Abstractor reported, under LM-ABS 8537 dated July 23, 1985 that portions of the Honokala Road, traversing over the Ahupuaa of Hoolawa and Honokala were government-owned and the remaining portions of the subject roadway were private.

Under date of July 12, 1993, the Na Ala Hele Abstractor, by NAH (M) 0004, reported, as to the ownership of the road to the Hoolawa Landing, that the ownership in and to the subject road, "outside of the Government owned parcels, is undeterminable" and therein recommended that an opinion of the Attorney General be sought.

At the request of the Attorney General to further research the existence and creation of the subject road, Registered Map No. 862 as surveyed by James Gay for Brewer and Co. and dated 1881 was discovered.

Said map delineated and identified a "trail" to the Hoolawa Landing. Said "trail" was not the subject roadway under search of either of the prior abstracts, which agreed in conclusion as to the ownership of the road to Hoolawa landing.

Hence, in view of the 1881 "trail" to Hoolawa landing delineated on Registered Map No. 862 and pursuant to the Highways Act of 1892, the trail to the Hoolawa landing, in existence at the enactment of the Act, was declared a public highway owned in fee by the government.

DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Maui District
54 South High St., Room 101
Wailuku, HI 96793

MEMORANDUM

February 13, 1996

TO: David Blane, Director - Maui Planning Department
Attn: Joseph Alueta

FROM: Mike Baker, Trails & Access Specialist *MAB*

SUBJECT: Special Management Area Minor Permit for Grading, TMK: 2-9-02:14,
Hoolawa, Maui.

We have a January 5, 1996 letter (attached) from Mr. Mahoe Collins, Na Ala Hele Abstractor with the DLNR Division of Land Management clarifying the issue of public access to Hoolawa Landing. It describes a public trail to Hoolawa Landing merging with the old roadway within the subject property.

We have also received a January 18, 1996 letter from Mr. Stacy Otomo of Otomo Engineering, Inc., describing and depicting a revised grading plan for the subject project. The new plan sharply reduces the project scope. It does not eliminate anticipated impacts to the historic road bed containing the public access trail.

On February 7, 1996 we participated in a site visit with Mr. Otomo, Attorney Jenkins, and Mr. Marquard, the property owner. Mr. Marquard said he intends to clear vegetation within his property and State lands (TMK: 2-9-02: parcel 20) along the historic road. He stated his intent to launch inflatable watercraft from the Landing.

Preserving the road bed structure and public access rights to the shoreline concern Na Ala Hele. Mr. Marguard's plan to connect a private drive-way to the old road and intent to clear vegetation from it would not conflict with these concerns so long as: a) public access along the trail within the historic road bed to the shoreline is not discouraged nor impeded in any way, b) construction and grading of the drive-way, clearing of vegetation, and presumed vehicular use of the historic road bed does not in any way erode, destabilize or otherwise cause bury or degrade it.

We recommend the DLNR Divisions of Land Management and Historic Preservation be given the opportunity to review and comment on any specific alterations to the existing landscape containing the historic road bed within State-owned TMK parcels: 2-9-02: 20, 21, and 33. We also recommend that Mr. Marquard consult the Halku

Memorandum to Joseph Alueta
February 13, 1996
Page -2-

Community Association before proceeding with plans to clear and use the road for personal use. Na Ala Hele is available to advise Mr. Marquard in these matters.

The road to Hoolawa Landing contains the public access trail within the Marquard property. The trail additionally affects TMK parcels: 2-9-01: 20, 21, 32, 33 and, 2-9-02: 10, 12 and 13 where it leaves Hoolawa (public) Road at Waikakulu Stream.

Thank you for the opportunity to comment. If you require any further information, please call me at 871-2831.

c: W. Wong, Maui District Manager
P. Ohta, Maui Land Agent
D. Chang, Deputy Attorney General
C. Cottrell, NAH Program Manager
T. Donham, Historic Preservation Division

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 4, 1999

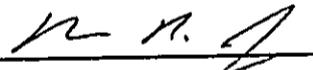
Michael G. Buck, Administrator
Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawaii 96813

Re: CDUA File#MA-2904, Request to Subdivide 24.980 acre parcel into
three lot family Subdivision, Ho'olawa, Hamakualoa, Makawao, Maui,
Hawaii TMK 112-9-02:14

Dear Mr. Buck:

I am in receipt of your memorandum dated October 28, 1998 regarding your comments on the Draft Environmental Assessment that was mailed to you as part of the above-referenced CDUA. Thank you for your comments and your statement of no objection to the project.

Sincerely,
Brumbaugh & Jenkins


Brian R. Jenkins

Division of Forestry & Wildlife

1151 Punchbowl Street, Rm. 325 • Honolulu, HI 96813 • (808) 587-0166 • Fax (808) 587-0160

October 28, 1998

MEMORANDUM

TO: Tom Eisen, Planner
Division of Land Management

THRU: Dean Uchida, Administrator
Division of Land Management

FROM: Michael G. Buck, Administrator
Division of Forestry and Wildlife



SUBJECT: CDUA File #MA-2904, Request to Subdivide 24.980 acre parcel into three lot family Subdivision, Hoolawa, Hamakualoa, Makawao, Maui, Hawaii TMK 2-9-02:14.

We have reviewed this CDUA with respect to its impacts on our natural resources management programs and endangered species in particular. Majority of the property is in the Agriculture District and the ocean-front boundary of the property is in Conservation District. We understand that the planned residential homes will be constructed within the Agriculture District land and no development will occur on the Conservation District portion. The applicant maintains that there will be no change of use, construction or development activity within the Conservation District portion of the property subsequent to the subdivision. Therefore, we have no objections to the proposed request to subdivide 24.980 acre parcel into three lot family subdivision on State Conservation District land designated as Limited subzone.

C: Maui DOFAW

OCT 30 3 03 PM '98

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 3, 1999

Robert P. Smith
Pacific Islands Manager
Pacific Islands Ecoregion
Fish and Wildlife Service
United States Department of the Interior
300 Ala Moana Boulevard, Room 3-122
Box 50088
Honolulu, Hawaii 96850

Re: Preliminary Draft Environmental Assessment for the Subdivision of
Conservation District Land at Ho'olawa, Maui, Hawaii; TMK II 2-9-
02:14

Dear Mr. Smith:

I am in receipt of your letter dated September 21, 1998 with your Service's comments on the above-referenced draft environmental assessment. You stated two areas of concern:

The first area of concern was that federally endangered dark-rumped petrels (*Pterodroma phaeopygia sandwichensis*), which occur on Maui and nest in Haleakala Crater, may be present at the site intermittently as they transit between the ocean feeding grounds and upland roosts. You stated that young dark-rumped petrels are inexperienced flyers and have a natural attraction to bright lights. When flying at night they can be temporarily blinded by bright lights and fly into unseen objects such as utility wires, trees, buildings and automobiles. Therefore, the Service recommends that all artificial lighting at the project sites be shielded and oriented toward the ground and away from the coast in order to help protect this sensitive species.

The Applicant has agreed to follow all of your Service's recommendations regarding all artificial lighting at the project sites.

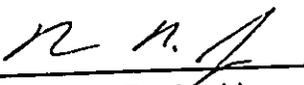
The second area of concern stated in your letter was that future construction at the proposed project site may cause adverse impacts to the nearby coastal environment. Therefore, you recommended that

Robert P. Smith
February 3, 1999
Page Two

measures to minimize the degradation of water quality and impacts to fish and wildlife resources, including coral reefs, be incorporated into the project. Such measures should result in the revegetation of cleared ground as soon as possible after the clearing.

The Applicant has agreed to use erosion and runoff control methods that will result in the revegetation of cleared ground as soon as possible after the clearing. As the proposed farm dwellings in the Agricultural District portion of the subject property will have minimal impact on the project site and as the soil in the project area has a high clay content, it is anticipated that any erosion or runoff would be extremely slight to non-existent. However, the Applicant will use control measures such as replanting any cleared area around the future farm dwellings to reduce or eliminate any impact to the nearby coastal environment. Thank you for your comments on the draft environmental assessment.

Sincerely,
Brumbaugh & Jenkins


Brian R. Jenkins

xc: Michael Marquard



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Ecoregion
300 Ala Moana Boulevard, Room 3-122
Box 50088
Honolulu, Hawaii 96850

SEP 21 1998

In Reply Refer To: MR

Brian R. Jenkins
Brumbaugh & Jenkins
P. O. Box 640
Wailuku, HI 96793-0640

Re: Preliminary Draft Environmental Assessment for the Subdivision of Conservation District Land at Hoolawa, Maui, Hawaii; TMK II 2-9-02:14

Dear Mr. Jenkins:

The U.S. Fish and Wildlife Service (Service) has reviewed the preliminary Environmental Assessment (EA) for the Subdivision of Conservation District Land at Hoolawa, Maui. The proposed project sponsor is Mr. Michael Marquard. The Service offers the following comments for your consideration.

The applicant proposes to subdivide approximately 25 acres of private oceanfront land into three lots. A majority of the land is zoned as Agricultural District and a strip along the ocean boundary is in the Conservation District. The land has been used for cattle grazing for many years and the intent of the subdivision is to create three separate family lots upon which farm dwellings may be constructed.

Based on the information provided in the EA and our own geographical information system, federally endangered dark-rumped petrels (*Pterodroma phaeopygia sandwichensis*), which occur on Maui and nest in Haleakala Crater, may be present at the site intermittently as they transit between ocean feeding grounds and upland roosts. Young dark-rumped petrels are inexperienced fliers and have a natural attraction to bright lights. When flying at night they can be temporarily blinded by bright lights and fly into unseen objects such as utility wires, trees, buildings, and automobiles. Therefore, the Service recommends that all artificial lighting at the project sites be shielded and oriented toward the ground and away from the coast in order to help protect this sensitive species.

Aside from potential impacts to petrels, the Service does not anticipate significant adverse impacts to fish and wildlife resources to result from the proposed project. However, we are concerned that future construction at the proposed project site may cause adverse impacts to the nearby coastal environment. Therefore, we recommend that measures to minimize the degradation of water quality and impacts to fish and wildlife resources, including coral reefs, be incorporated into the project. Such measures should result in the revegetation of cleared ground as soon as possible after clearing.

The Service believes incorporation of these measures into the project will greatly minimize the potential for project related adverse impacts to fish and wildlife resources. We appreciate the opportunity to comment on the proposed project. If you have questions regarding these comments, please contact Fish and Wildlife Biologist Mike Richardson by telephone at 808/541-3441 or by facsimile transmission at 808/541-3470.

Sincerely,

Robert P. Smith, Acting
Robert P. Smith,
Pacific Islands Manager

**Brunbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUNBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

September 22, 1998

Rene Sylva
P.O. Box 218
Paia, HI 96779

Re: Draft Environmental Assessment for the Subdivision of Conservation
Land, Hoolawa, Hamakualoa, Makawao, Hawaii; TMK II 2-9-02:14

Dear Mr. Sylva:

I am in receipt of your letter dated September 2, 1998. I was on the mainland from September 5 through September 20 so I was not able to respond to your letter until today. First, I wish to thank you for your comments. Second, I wish to respond to some of the concerns raised by you.

Attached to the pre-consultation Draft Environmental Assessment that you have in your possession is a copy of the archaeological inventory survey that was prepared by the Applicants for the Conservation District Use Permit. This survey was prepared by Xamanek Researches. On pages 1 and 2 of this survey is the list of native plants that were observed by the persons preparing the Survey. The Hoolawa Property is quite large and it is certainly possible that some of the additional plants listed in your letter are present on the property. However, there would be no reason not to include any plants that were observed. As such, if the plants listed in your letter are present, it was not a deliberate act on the part of the Applicants or the persons working for Xamanek Researches to not include them in the survey.

On pages 6 through 10 of the archaeological survey is a history of the use of the Hoolawa Property since the last century. The Hoolawa property was used for agricultural and grazing purposes for over 100 years. This may account for the lack of the plants listed in your letter that you say are growing on the adjacent properties which may not have been subject to the same extensive agricultural and grazing use for the past century.

As you are aware, the sought for permit allowing the subdivision of

Rene Sylva
September 22, 1998
Page Two

the Hoolawa Property is not sought for the purpose of developing the Conservation District portion of the Hoolawa Property. The sought for permit is strictly for the legal subdivision of the property. The Applicants could have sought for the subdivision of the Hoolawa Property into 4 legal lots of record which would have preserved their ability to build a structure on the fourth lot which would include all of the conservation zoned property. The Applicants chose not to go that route but are seeking instead to offer enhanced protection for the land.

The Applicants are proposing a conservation agreement with the State of Hawaii that will enhance the protection that the land currently has under State law. A copy of a draft conservation agreement is attached to the draft environmental assessment in your possession. As you can see, the draft agreement explicitly sets forth the restriction that no structure or dwelling will be built on the Conservation District property. Furthermore, while retaining the right to continue the grazing to the extent of the past 100 years, the Applicants are expressly ensuring their ability to maintain, repair and replace the fence within the Conservation District that keeps the livestock away from the sea cliff.

In your letter, you state that there are two endangered species of plants growing at the base of the sea cliff. By maintaining the fence at the top of the sea cliff, the Applicants will be able to keep any livestock away from these plants. It was unclear as to whether you had personally seen these plants or if you are relying on the statements of other persons. If you have personally seen any endangered species of plants on the Hoolawa Property, it would be greatly appreciated to have knowledge of the exact location of these plants to ensure that appropriate safeguards are taken to preserve them.

As to your comments regarding the bird life on the Hoolawa Property, the use that the Applicants propose is no different than has been in effect for the last century. The only change is that the Applicants will give the land greater legal protection by way of the proposed Conservation Agreement. As such, the bird life that may occur within the Conservation District property will be safer after the execution of the agreement than they currently are.

With regard to your comments about creating a new fence line 100 feet inland from the crest of the sea cliff, this seems to be an unduly

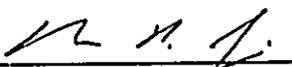
Rene Sylva
September 22, 1998
Page Three

burdensome request. Most of the land along the coastline in this area has the conservation district begin at the crest of the sea cliff. For whatever reason, this particular property has the conservation district inland from the sea cliff. However, as the property has been used for livestock grazing and agricultural purposes for approximately 100 years, the land has already been impacted to the same extent as the surrounding properties up to the crest of the sea cliff. There is no reason to treat the Hoolawa Property any differently than the surrounding properties. However, the proposed conservation agreement will provide greater protection than the Hoolawa Property would enjoy if the Applicants did not seek to subdivide the land and the Applicants have every intention of maintaining the fence along the Makai boundary.

I am somewhat confused about your reference to goats on the Hoolawa Property. I believe that there may have been goats raised on the property in the past but the last two times that I have personally inspected the property, the livestock consisted of cattle. The Draft Environmental Assessment expressly states that the "property is currently fenced and is used for grazing of cattle and other livestock." This is at the end of the third paragraph on page 13 of the Draft Environmental Assessment.

Finally, with regard to your suggestions of the appropriate types of trees to be planted on the Hoolawa Property, I will forward your suggestions and the reasons for your suggestions to the Applicants. If possible, I would like to have the Applicants discuss planting methods and species with you at the appropriate time if that would be agreeable with you. Once again, I thank you for a well informed and thoughtful response to the Draft Environmental Assessment.

Sincerely,
Brumbaugh & Jenkins


Brian R. Jenkins

xc: Michael Marquard

September 2, 1998

Brian R. Jenkins
Brumbaugh & Jenkins
P.O. Box 640
Wailuku, Hawaii 96793-0640

RECEIVED

SEP 3 1998

BRUMBAUGH & JENKINS

RE: Draft Environmental Assessment
for the Subdivision of Conservation Land
Hoolawa, Hamakualoa, Makawao, Maui, Hawaii
TMK: II 2-9-02:14

Dear Mr. Jenkins:

I have reviewed a copy of your Draft Environmental Assessment for the above mentioned parcel, in my opinion, it is inadequate with regard to the following issues:

1. No botanical survey has been performed for this project, and this should be performed by a qualified botanist. To my knowledge there are at least two endemic plant species, listed by the U.S. Fish and Wildlife Service as endangered species presently growing at the bottom of the cliff on conservation land. A perennial herb *Hedyotis littoralis* and a grass *Ischaemum byrone*. I am also aware that there are other native plants species growing on either side of the property, these include:

Botanical Name	Hawaiian Name	Botanical Name	Hawaiian Name
<i>Artemisia australis</i>	'Āhinahina	<i>Lysimachia mauritiana</i>	
<i>Bacopa monniera</i>		<i>Mariscus javanicus</i>	'Ahu awa
<i>Bidens hillebrandiana</i>	Ko'oko'olau	<i>Mariscus phleoides</i>	
<i>Carex wahuensis</i>		<i>Osteomeles anthyllidifolia</i>	U'ulei
<i>Chamaesyce degeneri</i>	'Akoko	<i>Pandanus odoratissimus</i>	Hala
<i>Dianella sandwicensis</i>	'Uki'uki	<i>Sadeleria cyatheoides</i>	Ama'uma'u
<i>Fimbristylis cymosa</i>	Mau'u'aki'aki	<i>Scaevola sericea</i>	Naupaka
* <i>Hedyotis littoralis</i>		<i>Sesuvium portulacastrum</i>	'Akulikuli
<i>Ipomoea pes-caprae</i>	Pōhuehue	<i>Vigna marina</i>	Nanea
* <i>Ischaemum byrone</i>		<i>Vitex rotundifolia</i>	Pōhinahina
<i>Lipocheata succulenta</i>	Nehe	<i>Wikstroemia oahuensis</i>	'Ākia
<i>Lycium sandwicense</i>	'Ohelo kai		

The presence of these plants on the bordering properties suggest they may also grow on the property in question. I am aware that goats are allowed to graze over the cliff face to the shoreline. There is a chance that the goats grazing on this property have already eradicated and severely damaged some of the native plants growing on this site. The goats should not be allowed to graze on Conservation District zoned land.

2. Wedge-tailed Shearwater (*Puffinus pacificus*) nesting sites have been observed on both sides of Maliko Gulch, also below Kamahina State Park, Mokumana, Pawalu Point and Hana. I have been informed by a reliable source that shearwater nesting burrows were once observed among naupaka shrubs on Ho'olawa Point. They appear to nest on prominent Points, possibly because the Points have a better wind uplift than the nearby Bays. Three other sea birds, the white-tailed tropicbird (*Phaethon lepturus*), the black noddy (*Anous minutus*) and the brown noddy (*Anous stolidus*) also nests on the cliff faces.
3. There is no mention of the electric cattle fencing used by your client to contain his goats. This method of fencing is entirely inadequate. The goats have no problem coming through the fence to graze down the cliff on Conservation Land. In my opinion, adequate fencing should entirely separate the conservation zone from the agricultural zone, and no grazing should be permitted on Conservation land. This fence should run the length of the cliff contour 100 feet mauka, thereby preserving wildlife and plant habitats. It is possible to fence goats by using goat-proof hog wire fencing with barbed wire at the top and bottom. The Draft Environmental Assessment does not mention the goats presently on the property.
4. With regards to tree planting, I would enthusiastically recommend that no "anti-social" trees such as ironwood be planted. By anti-social, I mean that no other plants can live where ironwoods are planted and are killed where ironwoods grow. Some native plant species which grow in this area and which I would recommend for planting include *Pandanus odoratissimus* (Hala) and *Metrosideros polymorpha* (Ohia lehua).

If there are questions regarding this letter or if I may be of additional assistance, please feel free to contact me.

Sincerely,


Rene Sylva
P.O. Box 218
Paia, HI 96779
579-9616

RS/ap
Enclosure
cc Lisa Nuyen, Director of Planning, Maui County
U.S. Fish & Wildlife Service
Land Use Commission
Larry Ing

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

September 25, 1998

Paul L. Horikawa, Esq.
Ing, Horikawa & Kuwada
2145 Wells Street, Suite 204
Wailuku, Hawaii 96793-2222

Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii:
TMK II 2-9-002: 014

Dear Mr. Horikawa:

I am in receipt of your letter dated September 1, 1998. As I was on vacation from September 5 through September 20, I was not able to respond to your letter until today.

As you are aware, the sought-for Conservation District Use Permit is for the subdivision of that part of the Hoolawa Property which is in the State Conservation District. The so-called Ho'olawa Tunnel is not in the Conservation District but on your clients' property. As such, I do not believe that concerns that your client may have with the Ho'olawa Tunnel are appropriate for this particular proceeding. Furthermore, your clients had a full disclosure of all aspects of the easement when they purchased the property from the Edwards. I have an agreement signed by the Edwards and members of the Yamamoto family stating that the Marquard easement is the historical access to the Hoolawa Property which the Edwards undoubtedly disclosed to your clients. As such, I believe that your clients cannot now state that the easement is in the wrong place.

In your letter, there are a number of inaccurate statements and assumptions regarding the Tunnel. As an initial matter, the Applicants and their invitees as well as their predecessors in title have used the access crossing over the Hoolawa Tunnel for decades. To date, there have been no negative affects on the Tunnel as a result of decades of vehicular use which included heavy trucks and machinery. If there has been no damage to

Paul L. Horikawa, Esq.
September 25, 1998
Page Two

the Tunnel after decades of use, why does your client assume that continued use will damage the tunnel?

You also state that the roadway used by the Applicants is not the traditional roadway. This is not true. The roadway was used by the Applicants' predecessors in title for decades. If you take a walk along the access road, you will see the remains of a 1930s vintage truck that obviously broke down along the roadway years before the Applicants or your clients were ever in the Hoolawa area. Furthermore, long time resident Abbie Ajifu, whose mother was born on your clients' property in 1902 states that the roadway is the access to the Hoolawa property owned by the Applicants.

With regard to your clients' claim that there are graves of the Yamamoto family on the access road, that is absolutely not true. The Applicants purchased the Hoolawa Property from the Yamamoto family with the existing access road. It strains belief that the Yamamoto family ever used the access road to their former property as a burial site. I believe that members of the Yamamoto family who are still on the Islands of Maui and Oahu would find your clients' assertion quite offensive.

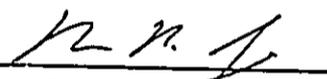
With regard to your assertion that the Hoolawa Government Road is not adequate for the Applicants' subdivision, that is also not true. The Hoolawa Property is currently owned by the same people who will own it after the subdivision. There will be no significant increase in use that will have any effect on the government road.

With regard to your objection to the archaeological survey, the survey is an extensive survey of the property conducted by highly qualified persons. It may be that a "full" survey would require the hand sifting of the soil of the entire 24 acre parcel. However, the archaeological survey that was performed was extensive and the entire property was inspected and certainly adequate for the bare legal subdivision of the Conservation District portion of the Applicants' property where there will be no development or change of use for that portion of the Hoolawa Property.

Paul L. Horikawa, Esq.
September 25, 1998
Page Three

Finally, your clients question whether the property will be occupied by Maui residents. The property will be occupied by the Applicants who have resided on Maui for years. I hope that this letter satisfies the concerns that your clients may have. Thank you.

Sincerely,
Brumbaugh & Jenkins



Brian R. Jenkins

xc: Michael Marquard

LAWRENCE N.C. ING
PAUL L. HORIKAWA
JEFFREY T. KUWADA
DAVID M. JORGENSEN

2145 WELLS ST., STE 204
WELLS STREET PROFESSIONAL CENTER
WAILUKU, MAUI, HI 96793-2222
(808) 242-4555 • FAX (808) 244-6964

LAW OFFICES OF
ING, HORIKAWA & KUWADA

September 1, 1998

RECEIVED

SEP 3 1998

Brian R. Jenkins, Esq.
Brumbaugh & Jenkins
Wailuku Business Plaza
2065 Main Street, Suite 101
Wailuku, Hawaii 96793

BRUMBAUGH & JENKINS

Re: Draft Environmental Assessment for Subdivision of
Conservation District Land at Ho'olawa, Hamakualoa, Makawao,
Maui, Hawaii,
T.M.K. No. (2) 2-9-002-014

Dear Mr. Jenkins:

The undersigned represents Chester Zywicki, Helen Zywicki and Robert C. Zywicki, hereafter collectively "Zywickis", regarding the above-captioned matter. We offer the following comments to the Draft Environmental Assessment as follows:

1. Ho'olawa Tunnel.

The Ho'olawa Tunnel, which is located under the twenty-four (24) foot easement located on the property identified as Tax Map Key No. (2) 2-9-002-013, hereafter "Zywicki Property", is a historic site and is listed in the State Inventory Historic Places (SIHP Site 50-50-06-4165). The Report Soils Report dated March 27, 1996, prepared by Soils International an updated April 1, 1996, recommended that ". . . vehicular traffic over the tunnel should be limited to vehicles having a gross vehicle weight of 5 tons or less." Report at 1. The Draft Environmental Assessment states that "[t]here are no County water or wastewater systems in this area". Draft Environmental Assessment at 3. Applicant will presumably use a septic tank to dispose of wastewater. In addition, construction traffic to built dwellings on the Marquard property and service trucks will cross over Ho'olawa Tunnel.

The Zywickis are concerned that the septic tank(s) will be pumped by trucks weighing more than 5 tons. Further, construction traffic and services trucks may weigh more than 5 tons. The Zywickis are concerned that Ho'olawa Tunnel will be damaged by heavy vehicular traffic. The Zywickis note that Applicant's easement is not the traditional access to the Marquard property. The Applicants graded the easement approximately four years ago. Prior to that time, the traditional access to the Marquard property and the ocean was located approximately one hundred and fifty yards east of the existing easement.

Brian R. Jenkins, Esq.
Brumbaugh & Jenkins
Page 2
September 1, 1998

The Zywickis are willing to grant Applicant a new easement that will not cross over Ho'clawa tunnel. In exchange for the new easement, the existing easement would be canceled.

2. Yamamoto Graves

The Archaeological Inventory Survey dated October 7, 1996, prepared by Scientific Consultants, Inc., provides as follows:

The results of the testing reported above make it seem unlikely that the burials being sought are within the tested areas. Backfilling of burial excavations would have resulted in a somewhat homogenous mixture of soil and decomposing bedrock. An intact bedrock layer would not have been present in the burial area, but it was identified in the tests. It would seem reasonable to speculate that the burials are in the area now under the driveway easement, or in a different location along the easement. If further explorations are to be undertaken it is recommended that the upper soil layer(s) be removed to expose the decomposing bedrock. Archaeological Inventory Survey at 3. (Emphasis supplied).

The Archaeological Inventory Survey of Ho'olawa Ranch Property, Ho'olawa Ahupua'a dated December 1966, prepared by Xamanek Researches, hereafter "Xamanek Survey", states that the Marquard property was owned by the Yamamoto family since 1934.

The desecration of the Yamamoto graves justifies relocation of Applicant's access easement.

The Zywickis note that Applicants' access easement was never subdivided pursuant to Maui County's Subdivision Ordinance.

3. The Subdivision.

Applicants proposes to subdivide the Marquard property into three lots. As an option, Applicants state that the Marquard property could have been subdivided into four (4) lots with the fourth lot being located exclusively within the Conversation District.

Applicants should only be allowed to create three lots with one lot located exclusively within the Conservation District. Ho'olawa Road is inadequate for the traffic that will be generated by Applicants' subdivision.

Brian R. Jenkins, Esq.
Brumbaugh & Jenkins
Page 3
September 1, 1998

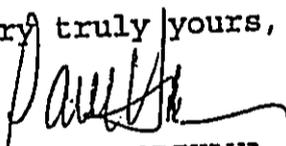
4. Comments Regarding Inaccurate Information Contained In The Environmental Assessment.

The Draft Environmental Assessment states that a "full archaeological inventory survey" of the Ho'olawa Property was completed by Xamanek Researches. Draft Environmental Assessment at 3. The Xamanek Report, which is included as an exhibit to the Draft Environmental Assessment, expressly states that it is a "limited inventory survey". Xamanek Report at 1.

The Draft Environmental Assessment states that project promotes the goal of the Maui County General Plan to provide affordable homes for Maui residents. The Zywickis question whether the Marquard property will be occupied by Maui residents.

Please contact me if you have any questions concerning the aforementioned.

Very truly yours,


PAUL L. HORIKAWA

cc: Mr. Robert Zywicki

zywikea.n39/98-484/2720.13/ph/kk

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

February 4, 1999

Edward Reinhardt
Manager, Engineering
Maui Electric Company, Ltd.
P.O. Box 398
Kahului, Hawaii 96733-6898

Re: Your Comments on the Draft Environmental Assessment for
Subdivision of Conservation District Land at Ho'olawa, Hamakualoa,
Makawao, Maui, Hawaii; TMK II 2-9-02: 14

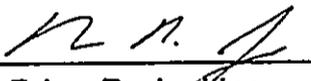
Dear Mr. Reinhardt:

I am in receipt of your letter dated August 31, 1998 containing your comments to the above-referenced draft environmental assessment. Thank you for your statement that you have no objections to the proposed project.

You state that the closest existing power lines to the subject property are approximately 1-2 miles away and you encouraged the Applicant to meet with you to plan for the project's electrical requirements.

The Applicant is aware that the closest lines are a considerable distance from the subject property. For the foreseeable future, however, the Applicant will rely on alternative energy sources located on the subject property. Thank you for your comments.

Sincerely,
Brumbaugh & Jenkins


Brian R. Jenkins

xc: Michael Marquard

Maui Electric Company, Ltd. • West Kamehameha Avenue • PO Box 398 • Maui, HI 96733-6898 • (808) 871-8461



August 31, 1998

Mr. Brian R. Jenkins, Esq.
Brumbaugh & Jenkins Attorneys at Law
2065 Main Street
Wailuku, HI 96793

Dear Mr. Jenkins:

Subject: Draft Environmental Assessment for Subdivision of Conservation District Land
at Hoolawa, Haumakualoa, Makawao, Maui, Hawaii; TMK 2-9-02:14

Thank you for allowing us to comment on the subject project.

In reviewing the information transmitted and our records, Maui Electric Company (MECO) at this time has no objections to the proposed project.

Please note that MECO does not have facilities near to the project area. The closest existing lines are approximately 1-2 miles away.

MECO encourages that the project's consultant meet with us as soon as practical so that we may plan for the project's electrical requirements.

If you have any questions or concerns, please call Fred Oshiro at 872-3202.

Sincerely,

A handwritten signature in cursive script that reads "Edward Reinhardt".

Edward Reinhardt
Manager, Engineering

ER/fo:lh

A&B PROPERTIES, INC.

August 26, 1998

Mr. Brian R. Jenkins, Esq.
2065 Main Street, Suite 101
Wailuku, Hawaii 96793-1693

Dear Mr. Jenkins:

Subject: Draft Environmental Assessment for
Subdivision of Conservation District Land
Hoolawa, Hamakualoa, Makawao, Maui, Hawaii
TMK: (2) 2-9-02:14

We have reviewed the draft environmental assessment you sent to Garret Hew of East Maui Irrigation Company. This is to inform you that we have no comments on this report.

Please contact us should you have any questions.

Sincerely,

A&B PROPERTIES, INC.



H. Kawahara, Manager
Engineering & Construction

HK:imm

cc: Garret Hew
Properties, Honolulu (w/letter)

RECEIVED

AUG 27 1998

BRUMBAUGH & JENKINS

33 Lono Ave. • Suite 400 • Kahului, Hawaii 96732-1608 • Phone (808) 877-5523 • Fax (808) 871-7497
Mailing Address: P.O. Box 156 • Kahului, Hawaii 96733-6656

A wholly owned subsidiary of A&B-Hawaii, Inc.



DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, HONOLULU
FT. SHAFTER, HAWAII 96858-5440

REPLY TO
ATTENTION OF

August 24, 1998

Civil Works Branch

Mr. Brian R. Jenkins
Braumbaugh and Jenkins
Attorneys at Law
2065 Main Street, Suite 101
Wailuku, Maui, Hawaii 96793

Dear Mr. Jenkins:

Thank you for the opportunity to review and comment on the Draft Environmental Assessment for the Subdivision of Conservation District Land at Hoolawa, Makawao, Maui (TMK 2-9-2:14). We do not have any comments to offer at this time since this is currently an administrative action.

However, any future work performed within the 100-year floodplain will have to adhere to the requirements of the Federal Emergency Management Agency. Additionally, the need for a Department of the Army permit will need to be determined based on any future project-related information submitted to us. Please refer to file number 980000290 in future correspondence.

Should you require additional information, please contact Ms. Jessie Dobinchick of our Engineering-Environmental Section at 438-8876; or, Mr. William Lennan of our Regulatory Section at 438-9258.

Sincerely,


James K. Hatashima, P.E.
Acting Chief, Civil Works Branch

RECEIVED

AUG 25 1998

BRUMBAUGH & JENKINS



United States
Department of
Agriculture

Natural
Resources
Conservation
Service

210 Ima Kala St.
Suite 209
Wailuku, HI
96793-2100

Our People...Our Islands...In Harmony

DATE: August 21, 1998

Mr. Brian R. Jenkins
Brumbaugh & Jenkins
P.O. Box 640
Wailuku, Hawaii 96793

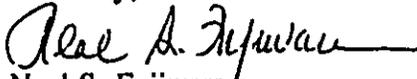
Dear Mr. Jenkins,

SUBJECT: Draft Environmental Assessment for Subdivision of
Conservation District Land at Hoolawa
TMK: 2-9-02: 14

I have no comment to your draft environmental assessment on the subject application.

Thank you for the opportunity to comment.

Sincerely,


Neal S. Fujiwara
District Conservationist

RECEIVED

AUG 24 1998

BRUMBAUGH & JENKINS

BENJAMIN J. CAYETANO
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

MAUI DISTRICT
650 PALAPALA DRIVE
KAHULUI, HAWAII 96732

August 20, 1998

KAZU HAYASHIDA
DIRECTOR

DEPUTY DIRECTORS
BRIAN K. MINAII
GLENN M. OKIMOTO

IN REPLY REFER TO:

Hwy-M 2.256-98

Mr. Brian R. Jenkins
Attorney at Law
Braumbaugh & Jenkins
2065 Main Street, Suite 101
Wailuku, Hawaii 96793

Dear Mr. Jenkins:

Subject: Draft EA for Subdivision of Conservation District Land at Hoolawa,
Maui, Hawaii, TMK 2-9-2:14

The proposed subdivision will not impact our facilities.

Thank you for the opportunity to comment on the Draft Environmental
Assessment.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert O. Starot".

Robert O. Starot
District Engineer, Maui

/fmc

RECEIVED

AUG 21 1998

BRUMBAUGH & JENKINS



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

AUG 14 1998

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

Ref:PB:THE

File: Cor98.132/97.76

Mr. Brian R. Jenkins
Brumbaugh & Jenkins
P.O. Box 640
Wailuku, Hawaii 96793-0640

Dear Mr. Jenkins,

Subject: Draft Environmental Assessment (EA) for Subdivision of
Conservation District Land at Hoolawa, Maui

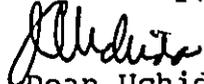
We received your preliminary draft EA prepared as part of a
Conservation District Use Application you plan on submitting to
our office, and we have the following comments.

Substantively, the document appears satisfactory. We offer the
following suggested stylistic changes so that the information
will be more consistent with the draft EA content requirements
delineated in Section 11-200-10, Hawaii Administrative Rules
(Rules)[enclosed]. Also, please refer to the enclosed marked-up
copy of your draft Contents page.

- 1) Move your Section 3, and re-number it as a new Section 8,
since it is fact the anticipated determination required in
draft EAs;
- 2) Delete your Section 9, and incorporate the text into your
Section 7, since the rules indicate that "alternatives
considered" are to be in the same section as "identification
and summary of impacts;"
- 3) Move your Section 10 into a new Section 9, and re-title it
as "Findings and Reasons Supporting the Anticipated
Determination" to more accurately reflect your detailed
discussion;
- 4) Renumerate the sections as noted on the enclosed copy of
your draft Contents page; and
- 5) For consistency, add a new Section 10 entitled "Agencies to
be consulted in the preparation of the EIS," and note this
section is Not Applicable, since no EIS is being prepared.

Thank you for the opportunity to provide our comments. Should you have additional questions, please contact Tom Eisen of our Planning Branch at 587-0386.

Sincerely,



Dean Uchida, Administrator
Land Division

enclosures

cc: Maui board member

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Socio-Economic Characteristic	11
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SECTION 7 (6) IDENTIFICATION AND SUMMARY OF MAJOR IMPACTS	15
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incorporate into SECTION 8 (6) ALTERNATIVE MODES OF SUBDIVISION OF THE HOOLAWA PROPERTY .	16
SECTION 10 8 (EXPECTED) DETERMINATION	16

(Anticipated) incorporate into:

- SECTION 9 ← Findings + reasons supporting the anticipated determination
- SECTION 10 Not Applicable, since no EIS is being prepared

SECTION 11
PERMITS AND APPROVALS NEEDED FOR PROJECT 20

SECTION 12
DOCUMENTS REGARDING CONTACT WITH COMMUNITY GROUPS AND
AGENCIES 20

FIGURES

- Exhibit No. 1: Planning Department Letter stating that no SMA permit is required for the subdivision.
- Figure No. 1: Shows Project Location on the Island of Maui.
- Figure No. 2: Shows the Project site.
- Figure No. 3: Shows the boundary between the agricultural and conservation districts.
- Figure No. 4: A map showing the location of the archaeological sites on the subject property.
- Appendix 1: Archeological Inventory Survey of Ho'olawa Ranch Property, Ho'olawa Ahupuaa, Makawao District, Maui Island dated December, 1998.

§11-200-10 Contents of an environmental assessment. The proposing agency or approving agency shall prepare any draft or final environmental assessment of each proposed action and determine

whether the anticipated effects constitute a significant effect in the context of chapter 343, HRS, and section 11-200-12. The environmental assessment shall contain, but not be limited to, the following information:

- (1) Identification of applicant or proposing agency;
- (2) Identification of approving agency, if applicable;
- (3) Identification of agencies, citizen groups, and individuals consulted in making the assessment;
- (4) General description of the action's technical, economic, social, and environmental characteristics;
- (5) Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
- (6) Identification and summary of impacts and alternatives considered;
- (7) Proposed mitigation measures;
- (8) Agency determination or, for draft environmental assessments only, an anticipated determination;
- (9) Findings and reasons supporting the agency determination or anticipated determination;
- (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared;
- (11) List of all permits and approvals (State, federal, county) required; and
- (12) Written comments and responses to the comments under the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15, and statutorily prescribed public review periods. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5(c), 343-6)

§11-200-11 REPEALED. (R AUG 31 1996)

§11-200-11.1 Notice of determination for draft environmental assessments. (a) After preparing an

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

David Craddick, Director
Department of Water Supply
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

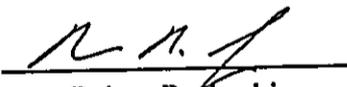
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Craddick:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Rick Egged, Director
Office of State Planning
Dept. of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804

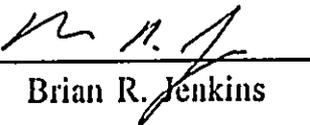
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Egged:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Thomas H. Eisen
State of Hawaii
Department of Land and Natural Resources
Land Division, Planning Branch
P.O. Box 621
Honolulu, Hawaii 96809

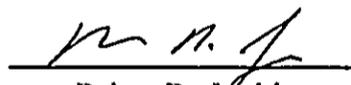
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Eisen:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Neil Fujiwara
United States Department of Agriculture
Natural Resources Conservation Service
210 Imi Kala Street, Suite 209
Wailuku, Hawaii 96793

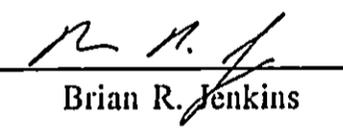
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Fujiwara:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Robbie Ann Guard, Coordinator
Office of Economic Development
County of Maui
200 South High Street
Wailuku, Hawaii 96793

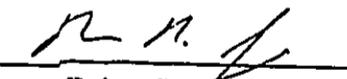
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Ms. Guard:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Charles Jencks, Director
Department of Public Works and Waste Management
County of Maui
250 South High Street
Wailuku, Hawaii 96793

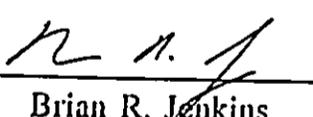
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Jencks:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

William Meyer
District Chief
United States Department of the Interior
U.S. Geological Survey
Water Resources Division
677 Ala Moana Blvd., Suite 415
Honolulu, Hawaii 96813

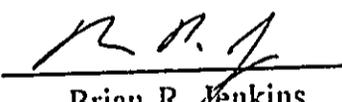
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Meyer:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Lawrence Miike
Department of Health
State of Hawaii
P.O. Box 3378
Honolulu, Hawaii 96801-3378

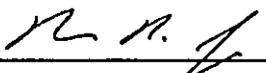
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Miike:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.



Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Robert Siarot, District Engineer
Department of Transportation
State of Hawaii
650 Palapala Drive
Kahului, Hawaii 96732

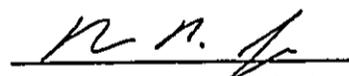
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Siarot:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Colleen Suyama
Staff Planner
County of Maui
Department of Planning
250 S. High Street
Wailuku, Hawaii 96793-1693

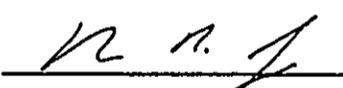
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Ms. Suyama:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.



Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 6, 1998

Lt. Col. Wally Walters
United States Dept. of the Army
U.S. Army Engineer District, Honolulu
Building 230
Ft. Shafter, Hawaii 96858-5440

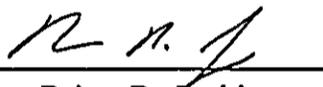
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hanakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Lt. Col. Walters:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Roan Brown Trust
Susan C. Brown Trust
570 W. Kuiaha Road
Haiku, Hawaii 96708

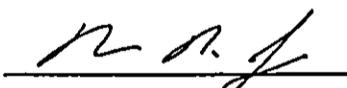
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Trustees:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to you, due to your status as the holder of a Revocable Permit for parcel TMK II 2-9-001:20 which is adjacent to the subject property, on a pre-consultation basis so that your comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Hoolawa Farms
P.O. Box 731
Haiku, Hawaii 96708

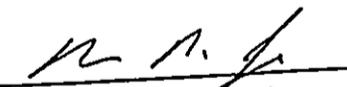
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Hoolawa Farms:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to you, due to your status as the holder of a Revocable Permit for parcel TMK II 2-9-001:33 which is adjacent to the subject property, on a pre-consultation basis so that your comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

David Frankl
Sierra Club of Hawaii
P.O. Box 2577
Honolulu, Hawaii 96803

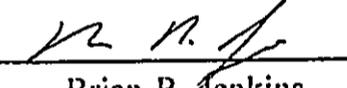
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Frankl:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Hawaii's Thousand Friends
305 Hahani Street, Suite 282
Kailua, Hawaii 96734

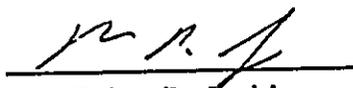
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Hawaii's Thousand Friends:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Garret Hew
East Maui Irrigation Company
P.O. Box 48
Paia, Hawaii 96779

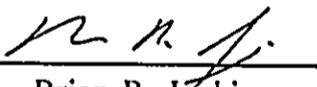
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hanakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Hew:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.



Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Jerry Imai, Senior Engineer
GTE Hawaiian Tel
60 S. Church Street
Wailuku, Hawaii 96793

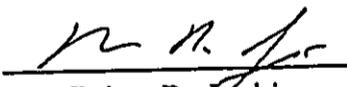
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Imai:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Susan Miller
Audubon Society of Hawaii
850 Richards Street, Suite 505
Honolulu, Hawaii 86813-4709

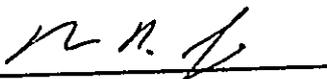
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Ms. Miller:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Phil Ohta, Land Agent
Department of Land and Natural Resources
State of Hawaii
200 South High Street
Wailuku, Hawaii 96793

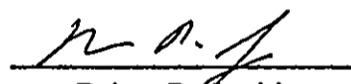
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Ohta:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office, due to the D.L.N.R.'s status as the landowner of parcels TMK II 2-9-001:20 and 33 which are adjacent to the subject property, on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Don Palawski
United States Department of the Interior
Fish & Wildlife Service
300 Ala Moana Blvd., Room 3-122
Honolulu, Hawaii 96813

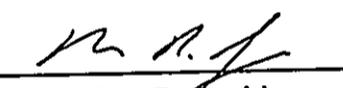
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Palawski:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Michael J. Piscitelli Trust
923 Alyssum Road
Carlsbad, California 92009

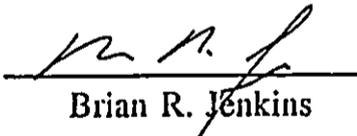
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Piscitelli:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to you, due to your status as the owner of parcel TMK II 2-9-002:16 which is adjacent to the subject property, on a pre-consultation basis so that your comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Edward L. Reinhardt
Manager, Engineering
Maui Electric Company
P.O. Box 398
Kahului, Hawaii 96733

Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. Reinhardt:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.



Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Mary Steiner
Outdoor Circle
1314 S. King Street, Suite 306
Honolulu, Hawaii 96814

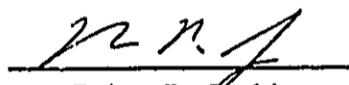
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Ms. Steiner:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to your office on a pre-consultation basis so that your department's comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.


Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Mark White
The Nature Conservancy of Hawaii
P.O. Box 1716
Makawao, Hawaii 96768

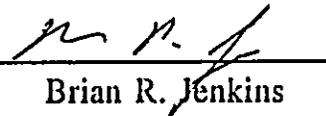
Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

Dear Mr. White:

Enclosed is a draft environmental assessment prepared as part of a
Conservation District Use Application. It is being sent to your office on a
pre-consultation basis so that your department's comments and/or
suggestions can be included in the draft environmental assessment for this
project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.



Brian R. Jenkins

xc: Michael Marquard

**Brumbaugh
& Jenkins** ATTORNEYS AT LAW

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

August 5, 1998

Chester Zywicki, et al.
Robert C. Zywicki Trust
Helen Zywicki
P.O. Box 211
Paia, Hawaii 96779

Re: Draft Environmental Assessment for Subdivision of Conservation
District Land at Hoolawa, Hamakualoa, Makawao, Maui, Hawaii; TMK
II 2-9-02:14

To Whom It May Concern:

Enclosed is a draft environmental assessment prepared as part of a Conservation District Use Application. It is being sent to you, due to your status as the owner of parcel TMK II 2-9-002:13 which is adjacent to the subject property, on a pre-consultation basis so that your comments and/or suggestions can be included in the draft environmental assessment for this project. Please contact me if you have any questions. Thank you.

Sincerely,
Brumbaugh & Jenkins

Enc.



Brian R. Jenkins

xc: Michael Marquard

ORDINANCE NO. 2749

BILL NO. 113 (1998)
DRAFT 1

A BILL FOR AN ORDINANCE ESTABLISHING
AN AGRICULTURAL DISTRICT IN TITLE 19 OF
THE MAUI COUNTY CODE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this ordinance is to implement land use policies consistent with the Maui County General Plan and Community Plans and the land use laws of the State of Hawai'i; to protect and preserve agricultural resources; to preserve and promote agricultural components of the County's economy and lifestyle; and to promote and preserve open spaces necessary for the general health and well being of the citizens of the County.

SECTION 2. Section 19.04.040, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Agricultural land conservation" means the planting of soil-nourishing plants and trees to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration.

"Agricultural Lands of Importance to the State of Hawai'i (ALISH)" means the agricultural land classification system adopted by the State of Hawai'i, Board of Agriculture. This system identifies those lands of the State which are of agricultural importance, and categorizes them according to specific criteria.

"Agricultural lease" means a contract renting a portion of a lot within the Agricultural district for a specified period or for a period determinable at the will of either lessor or lessee in consideration of rent or other compensation.

"Agricultural products" means cultivated or raised plant, animal, or marine life that has been harvested for consumption, including but not limited to coffee; feed and forage; floriculture and nursery products; grain; herbs and roots; sugar cane; fruits and nuts; vegetables and melons; honey; eggs; dairy; cattle, pigs, sheep, poultry; marine life; and fiber for clothing and building material. This does not include processed products.

"Agricultural products processing" means the processing, canning, bottling, packing or packaging of agricultural produce, livestock and forestry products for eventual distribution or consumption.

"Agricultural products stand" means a structure used for the display and sale of agricultural products.

"Agricultural resources" means all the natural and manmade resources of agricultural production, including the land, soil, water, air, plant communities, watersheds, and natural and physical attributes that together comprise and support agriculture.

"Agriculture" means the production of plant and animal life for food and fiber, and for raw materials for processed products. Agriculture includes but is not limited to fruit, vegetable, and flower growing; forestry; aquaculture; beekeeping; grazing and dairying; and their accompanying services and facilities.

"Animal and livestock raising" means facilities and activities associated with the breeding and raising of live animals such as dairy cows, poultry, hogs, beef cattle, sheep, horses, bees, dogs, and other domesticated animals. This does not include small-scale animal-keeping.

"Animal boarding facility" means a structure or premises where animals are boarded, groomed, bred or trained for commercial gain, including commercial stables and kennels.

"Animal hospital" means a structure or premises where animals are given medical care, and the boarding of animals is limited to short-term care incidental to the hospital use.

"Developable area" means the total area, in square feet, of all enclosed living areas of dwellings.

"Farm" means a lot on which the majority of the land is used for and the predominant activity is agriculture and/or agricultural land conservation.

"Farm dwelling" means a single-family dwelling that is located on and used in connection with a farm.

"Farm labor dwelling" means a dwelling or lodging unit that is used exclusively by agricultural employees employed full-time or seasonally in the County, and that is located on a farm and is ancillary and secondary to agriculture.

"Fence" means an open barrier of posts and wire, wood, chain link or similar material that closes, marks or borders a field, yard or lot and that does not limit, by more than fifty (50) percent, visibility or the flow of air and light.

"Open land recreation" means public or private recreational use or enjoyment, including but not limited to parks, picnic grounds, beaches, beach accesses, greenways and areas for hiking, fishing, hunting, camping, equestrian activities and other scenic interests, on a parcel or area of land or water which may be improved but which contains no buildings and which is set aside, designated or reserved for such purposes.

"Prime, unique, and other important agricultural land" means ALISH land, as identified on ALISH maps dated January 1977, which shall be in the custody of the Maui County Department of Planning.

"Private agricultural park" means a subdivision of an area of not less than twenty-five (25) acres within the Agricultural district that is restricted to agricultural use and that complies with all requirements and standards as set forth herein for private agricultural parks.

"Riding academy" means a structure or premises where horses are boarded and cared for, where instruction in riding, jumping and showing is offered, and where horses may be hired for riding.

"Small-scale animal-keeping" means the keeping of dogs, cats, birds, rabbits, fowl, and similar type animals for non-commercial and domestic use. This also includes the keeping, grazing, and raising of pigs, goats, chickens, horses, cows, sheep and similar type animals for non-commercial and domestic use in the Agricultural and Rural districts.

"Storage, wholesale and distribution" means activities and facilities for the storage of goods and the bulk sale and distribution of products. Examples include warehouses, freight-forwarding and delivery operations, self-storage lockers, markets in which products are sold directly by their producers, and construction supply businesses.

"Wall" means a constructed solid barrier of concrete, stone, brick, tile, wood or similar type of material that closes, marks or borders a field, yard or lot and that limits visibility and restricts the flow of air and light."

SECTION 3. Title 19, Maui County Code, is hereby amended by adding a new chapter to be designated and read as follows:

"Chapter 19.30A

AGRICULTURAL DISTRICT

Sections:

19.30A.010	Purpose and intent.
19.30A.020	District criteria.
19.30A.030	District standards.
19.30A.040	Limitations on resubdivision.
19.30A.050	Permitted uses.
19.30A.060	Special uses.
19.30A.070	Private agricultural parks.
19.30A.080	Agricultural leases.
19.30A.090	Substandard agricultural lots.
19.30A.100	Exemptions pursuant to State law.
19.30A.110	Permits issued prior to the enactment of this ordinance.
19.30A.120	Rule-making authority.

19.30A.010 Purpose and intent. A. Purpose. The purpose of the Agricultural district is to:

1. Implement chapter 205, Hawai'i Revised Statutes, and the goals and policies of the Maui County General Plan and Community Plans;
2. Promote agricultural development;
3. Preserve and protect agricultural resources; and
4. Support the agricultural character and components of the County's economy and lifestyle.

B. Intent. It is the intent of this chapter to:

1. Reduce the land use conflicts arising from encroachment of nonagricultural uses into agricultural areas;
2. Mitigate rising property values of farm lands to make agricultural use more economically feasible;
3. Discourage developing or subdividing lands within the Agricultural district for residential uses, thereby preserving agricultural lands and allowing proper planning of land use and infrastructure development;
4. Discourage establishment of nonagricultural subdivisions;
5. Ensure that the rezoning of land from the Agricultural district shall be open for public debate and in the overall public interest, as evidenced by conformance with the Maui County General Plan and Community Plan land use designations and policies, State land use law, this chapter and good planning practices; and
6. Notify the public that lands within the Agricultural district are used for agricultural purposes. Owners, residents, and other users of such property or neighboring properties may be subjected to inconvenience, discomfort, and the possibility of injury to property and health arising from normal and accepted agricultural practices and operations. Such normal and accepted agricultural practices and operations include but are not limited to noise, odors, dust, smoke, the operation of machinery of any kind, including aircraft, and the storage and disposal of manure. Owners, occupants, and users of such property or neighboring properties shall be prepared to accept such inconveniences, discomfort, and possibility of injury from normal agricultural operations.

19.30A.020 District criteria. Agricultural lands that meet at least two of the following criteria should be given the highest priority for retention in the Agricultural district:

A. Agricultural Lands of Importance to the State of Hawai'i (ALISH);

B. Lands not classified by the ALISH system whose agricultural land suitability, based on soil, topographic, and climatic conditions, supports the production of agricultural commodities, including but not limited to coffee, taro, watercress, ginger, orchard and flower crops and nonirrigated pineapple. In addition, these lands shall include lands used for intensive animal husbandry, and lands in agricultural cultivation in five (5) of the ten (10) years immediately preceding the date of approval of this chapter; and

C. Lands which have seventy-five (75) percent or more of their boundaries contiguous to lands within the Agricultural district.

19.30A.030 District standards. Except as otherwise provided in this chapter, the following district standards shall apply for uses, facilities and structures in the Agricultural district:

A. Minimum lot area: two (2) acres;

B. Minimum lot width: two hundred (200) feet;

C. Minimum yard setbacks: front yards, twenty-five (25) feet; side and rear yards, fifteen (15) feet;

D. Maximum developable area: ten (10) percent of the total lot area. This restriction shall apply to farm dwellings, but shall not apply to any structure or portion thereof which is used to support agriculture, including but not limited to storage facilities, barns, silos, greenhouses, farm labor dwellings, and stables, and shall not apply to utility facilities as permitted by this chapter;

E. Maximum height limit: Unless otherwise provided for herein, the maximum height of any dwelling shall be thirty (30) feet, except that vent pipes, fans, chimneys, antennae and solar collectors on roofs shall not exceed forty (40) feet. Any non-dwelling structure such as a barn or silo that is over thirty-five (35) feet in height shall be set back one (1) additional foot for each foot in structure height;

F. Maximum wall height: Walls shall not exceed four (4) feet within the yard setback area as measured from the finished or existing grade, whichever is lower, to the top of the wall as defined herein. This does not preclude constructing fences on the top of the wall for safety purposes. The director of public works and waste management may permit greater heights of walls as needed to retain earth, water or both for health and safety purposes;

G. The maximum number of lots that may be created from a lot, or portion thereof, that is in the Agricultural District shall be based on the gross area of the subject lot, which for the purposes of this subsection shall be the Tax Map Key parcel as certified by the Real Property Tax Division on March 1998, as follows:

AGRICULTURAL DISTRICT				
Area of lot (in acres)	Maximum number of permitted lots:			
	2-acre minimum lot size	15-acre minimum lot size	25-acre minimum lot size	40-acre minimum lot size
At least 2 but less than 31	7			
At least 31 but less than 61	7, plus one additional lot for each 10 acres above 31 acres			
At least 61 but less than 92	10, plus one additional lot for each 15 acres above 61 acres; plus ↖	1		
92 +	12, plus one additional lot for each 40 acres above 92 acres (not to exceed 14 lots); plus ↖	2, plus one additional lot for each 60 acres above 92 acres; plus ↖		

For the purposes of this subsection, any lot(s) or portion(s) thereof that is contained entirely within the subject lot, and that is owned by the same persons or related corporate entities as the subject lot, shall be considered a part of the subject lot and shall count towards the maximum number of permitted lots that may be created from the subject lot.

This subsection shall not apply to any lot which received preliminary subdivision approval prior to the effective date of this ordinance and which receives final subdivision approval after the effective date of this ordinance. The subsequent lots resulting from such subdivision shall be subject to this subsection.

19.30A.040 Limitations on resubdivision. A. Following the effective date of this ordinance:

1. At the time of subdivision, the director of public works and waste management shall determine the maximum number of lots that can be created based upon the provisions and standards set forth in section 19.30A.030;

2. The subdivider shall allocate the maximum number of lots that can be created between the original lot and any new lot created as a result of the subdivision;

3. The allocation of lots shall be recorded with the Bureau of Conveyances; and

4. No lot, or portion thereof, which is in the Agricultural district shall be further subdivided beyond the maximum number of lots permitted pursuant to this chapter and as recorded with the Bureau of Conveyances, except as provided by subsection 19.30A.040.C.

B. The following subdivisions shall not reduce the gross "area of lot" nor the "maximum number of permitted lots" as provided by subsection 19.30A.030.G:

1. Any subdivision requested by a public agency or public utility company for a public purpose;

2. Any consolidation and resubdivision in which no additional developable lots, as defined by section 18.04.123, Maui County Code, are created, provided that this would not result in the potential to create any additional lots than could have been created prior to consolidation and resubdivision;

3. Any subdivision for purposes of providing an easement exclusively for the protection of sites of cultural and historic significance; greenways; protection of sensitive environmental areas such as wetlands, streams, and endangered species habitat; and easements for public access to shoreline and mountain areas; or

4. Any subdivision for purposes of providing a roadway easement or lot.

C. If the original lot has been subdivided into the maximum number of lots permitted pursuant to this chapter, additional lots may be created for family members as described in subsections 18.20.280.B.1 and 18.20.280.B.2, Maui County Code, whether or not a deferral of improvements is intended, with the approval of the Council; the application for such additional lots shall be processed in the same manner as applications for conditional permits, as provided by chapter 19.40, Maui County Code.

D. No deed, lease, agreement of sale, mortgage or other instrument of conveyance shall contain any covenant or clause which restricts, directly or indirectly, the operation of agricultural activities on lands within the Agricultural district. This subsection shall not apply to any covenant or clause existing prior to the effective date of this ordinance.

19.30A.050. Permitted uses. The following uses and structures shall be permitted in the Agricultural district provided they also comply with all other applicable laws:

A. Principal uses:

1. Agriculture;
2. Agricultural land conservation;

3. Agricultural parks, pursuant to chapter 171, Hawai'i Revised Statutes;

4. Animal and livestock raising, including animal feed lots and sales yards;

5. Private agricultural parks as defined herein;

6. Minor utility facilities as defined in section 19.04.040, Maui County Code; and

7. Retention, restoration, rehabilitation, or improvement of buildings, sites or cultural landscapes of historical or archaeological significance.

B. Accessory uses. Uses which are incidental or subordinate to, or customarily used in conjunction with a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed 1,000 square feet of developable area;

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:

a. provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State General Excise Tax forms and federal Schedule F forms;

b. provide certification by the Maui Board of Water Supply that agricultural water rates are being paid if the subject lot is served by the County water system; or

c. provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Moloka'i and Lana'i, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050.B.2.a and 19.30A.050.B.2.b;

3. One agricultural products stand per lot, for the purpose of displaying and selling agricultural products grown and processed on the premises or grown in the County, provided that said stand shall not exceed three hundred square feet, shall be set back at least fifteen (15) feet from roadways, shall have a wall area which is at least fifty (50) percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010, Maui County Code, except that paved parking shall not be required; stands which display or sell agricultural products which are not grown on the premises shall be required to obtain a Special Permit pursuant to chapter 205, Hawai'i Revised Statutes;

4. Farmer's markets, for the growers and producers of agricultural products to display and sell agricultural products grown and processed in the County; structures shall have a wall area which is at least fifty (50) percent open; markets shall operate only

during daylight hours and shall not operate on parcels less than ten (10) acres; the director of public works and waste management may impose additional requirements if a building permit is required for any structures; markets which display or sell agricultural products which are not grown on the premises shall be required to obtain a Special Permit pursuant to chapter 205, Hawai'i Revised Statutes;

5. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County;

6. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation;

7. Energy systems, small-scale;

8. Small-scale animal-keeping;

9. Animal hospitals and animal boarding facilities; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i Planning Commission as conforming to the intent of this chapter;

10. Riding academies; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i Planning Commission as conforming to the intent of this chapter;

11. Open land recreation as follows: hiking; non-commercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours which are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding or mountain biking are conducted for commercial purposes on the island of Moloka'i, such uses shall have been approved by the Moloka'i Planning Commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection 19.30A.060.H shall be prohibited; certain open land recreation uses or structures may also be required to obtain a Special Permit pursuant to chapter 205, Hawai'i Revised Statutes;

12. Parks for public use, not including golf courses and not including commercial uses except when under the supervision of a government agency in charge of parks and playgrounds; and

13. Other uses which primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter.

19.30A.060 Special uses. The following uses and structures shall be permitted in the Agricultural district if a special use permit, pursuant to section 19.510.070, Maui County Code, has been obtained; except that if a use described in this section also requires a Special Permit pursuant to chapter 205, Hawai'i Revised Statutes, and if the land area of the subject parcel is fifteen (15) acres or less, the State Special Permit shall fulfill the requirements of this section:

A. Additional farm dwellings beyond those permitted by subsection 19.30A.050.B.1;

B. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050.B.2;

C. Agricultural products stands that do not meet the standards of subsection 19.30A.050.B.3;

D. Farmer's markets that do not meet the standards of subsection 19.30A.050.B.4;

E. Public and quasi-public institutions which are necessary for agricultural practices;

F. Major utility facilities as defined in section 19.04.040, Maui County Code;

G. Telecommunications and broadcasting antenna;

H. Open land recreation uses, structures or facilities which do not meet the criteria of subsection 19.30A.050.B.11, including commercial camping; gun or firing ranges; archery ranges; skeet shooting; paint ball; bungee jumping; skateboarding; roller blading; playing fields; accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a Special Permit pursuant to chapter 205, Hawai'i Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips; motor sports facilities; golf courses and golf driving ranges;

I. Cemeteries, crematories, and mausoleums;

J. Churches and religious institutions;

K. Mining and resource extraction; and

L. Landfills.

19.30A.070 Private agricultural parks. Private agricultural parks provide for appropriately sized, functionally configured, and affordable agricultural parcels to support diversified agricultural development. Lots created for the purposes of establishing or expanding a private agricultural park shall not be counted in or as part of the number of lots permitted by subsection 19.30A.030.G. Except as otherwise provided in this chapter, the following requirements and standards shall apply for uses, facilities, and structures in areas designated as private agricultural parks:

A. Individual lot leases or deeds shall provide that the lot is restricted to agricultural purposes;

B. Lots within private agricultural parks shall be made available for lease or sale;

C. No permanent or temporary dwellings or farm dwellings, including trailers and campers, shall be permitted within a private agricultural park, unless the following requirements are met:

1. A special use permit, pursuant to section 19.510.070, Maui County Code, has been obtained;

2. The lot on which the dwelling is located is used principally for agriculture, and the occupant of the dwelling provides security or caretaker services for the private agricultural park;

3. A maximum of one dwelling per lot;

4. The private agricultural park shall be subject to a maximum density of one dwelling per 25 acres of private agricultural park area; and

5. The dwelling shall be subject to a maximum developable area of 700 square feet.

D. A restrictive covenant excluding dwellings that do not meet the criteria of subsection 19.30A.070.C shall be included in the deed of the lot and run with said lot as long as said lot is within the Agricultural district. This restriction shall not prohibit the construction of storage sheds, equipment sheds or other structures appropriate to the agricultural activity carried on within the lot;

E. Agricultural parks shall not be less than twenty-five (25) acres in size;

F. Minimum lot area: five (5) acres;

G. Subdivision requirements, as set forth in the following provisions of Title 18, Maui County Code, shall not apply to private agricultural parks and the lots therein:

1. 18.16.010 to 18.16.180;

2. 18.16.270 to 18.16.310B;

3. 18.16.320;

4. 18.20 to 18.20.090;

5. 18.20.140; and

6. 18.28; and

H. All requirements set forth herein shall terminate if an area designated as an agricultural park is rezoned to a nonagricultural zoning district.

19.30A.080 Agricultural leases. A. Any landowner may enter into an agricultural lease provided that the following conditions are met:

1. The principal use of the leased land is agriculture; and

2. No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of

storage sheds, equipment sheds or other structures appropriate to the agricultural activity carried on within the lot.

B. Subdivision requirements, as set forth in Title 18, Maui County Code, shall not apply to agricultural leases.

19.30A.090 Substandard agricultural lots. Substandard agricultural lots existing prior to the enactment of this ordinance shall be subject to the following standards:

A. Lots less than two (2) acres but equal to or greater than one-half (0.5) acre shall be subject to the yard and building height standards as set forth for lots of such area in section 19.29.020, Maui County Code, and shall be exempt from the maximum developable area restriction of subsection 19.30A.030.D; and

B. Lots less than one-half (0.5) acre shall be subject to the yard and building height standards as set forth for lots of such area in sections 19.08.050 and 19.08.060, Maui County Code, and shall be exempt from the maximum developable area restriction of subsection 19.30A.030.D.

19.30A.100 Exemptions pursuant to State law. A. If provided by Hawai'i Revised Statutes, for lands legally defined and recognized as kuleana or similar type of land ownership, such as Land Commission Awards or Royal Patents, the district standards of section 19.30A.030, and the density restriction of subsection 19.30A.050.B.1, shall not apply.

B. Affordable housing projects as set forth in chapter 201E, Hawai'i Revised Statutes, shall be exempt from the requirements of this chapter.

19.30A.110 Permits issued prior to the enactment of this ordinance. State or County Special Permits, special use permits, conditional permits and variances issued prior to the enactment of this ordinance shall remain in full force and effect for their duration, and their renewal shall be subject to the provisions of this chapter. Any dwelling or structure that was constructed with a building permit that was approved prior to the enactment of this ordinance need not acquire a County special use permit, conditional permit or variance and may be reconstructed as permitted by the original building permit(s), and such dwellings or structures may be expanded or modified with a building permit, subject to the other provisions of this chapter and this title.

19.30A.120 Rule-making authority. The planning director and the director of public works and waste management shall have the authority to adopt rules regarding the administration of this chapter."

SECTION 4. Chapter 19.30, Maui County Code, is hereby repealed.

SECTION 5. Adoption of Zoning Maps. Pursuant to Articles 4 and 8 of the Maui County Charter and Chapter 19.510, Maui County Code, on the effective date of this ordinance, any lot or portion thereof is hereby zoned Agricultural District if it is designated as Agriculture by the Maui County General Plan and Community Plans.

The Planning Director shall prepare the appropriate zoning maps which shall be filed with the County Clerk. Notwithstanding any provision of this article to the contrary, upon the effective date of this ordinance all areas zoned Agricultural District are hereby subject to the provisions of Chapter 19.30A, Maui County Code.

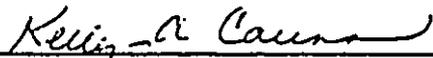
The Planning Director shall notify each owner of record of any lot, or portion thereof, greater than fifteen (15) acres that is hereby zoned Agricultural District as a result of this section.

SECTION 6. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision of application, and to this end the provisions of this ordinance are severable.

SECTION 7. New material is underscored. Material to be repealed is bracketed. In printing this bill, the County Clerk need not include the brackets, bracketed material, or underscoring.

SECTION 8. This ordinance shall be effective upon its approval.

APPROVED AS TO FORM AND LEGALITY:



KELLY A. CAIRNS
Deputy Corporation Counsel
County of Maui

lu:misc:32bill14:js/mnc

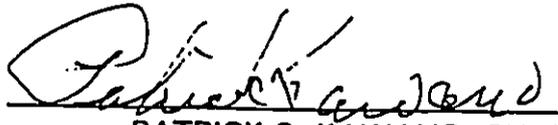
WE HEREBY CERTIFY that the foregoing BILL NO. 113 (1998), DRAFT 1

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 18th day of December, 1998, by the following votes:

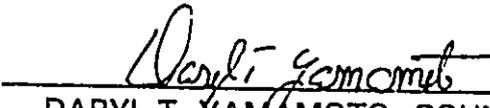
Patrick S. KAWANO Chair	James "Kimo" APANA Vice-Chair	Alan ARAKAWA	J. Kalani ENGLISH	G. Riki HOKAMA	Alice L. LEE	Dennis Y. NAKAMURA	Wayne H. NISHIKI	Chamaine TAVARES
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of December, 1998.

DATED AT WAILUKU, MAUI, HAWAII, this 21st day of December, 1998.



PATRICK S. KAWANO, CHAIR
Council of the County of Maui



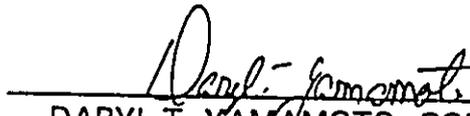
DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 31st DAY OF December, 1998.



County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 2749 of the County of Maui, State of Hawaii.



DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

Passed First Reading on November 20, 1998.
Effective date of Ordinance December 31, 1998.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2749, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

RECEIVED

DEC 21 1998