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5246 Kalanianaʻole Highway
Honolulu, Hawai'i 96821

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April 3, 2013

Via Facsimile (808) 587-0390 and Mail

William J. Aila, Chairperson
Department of Land & Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

Dear Mr. Aila:

Address: 1031, 1055 & 1057 Hao Street, Wailupe
(Āina Haina), Honolulu, Hawaii 96821
Owner: Residences @ Āina Haina, L.L.C
TMK: 3-6-02-4001
Subject: Request for DLNR-SHPD Promptly
Expanding the Scope of the Above-Mentioned AIS
To 9.5 Acres (415,213 s.ft) from .4 acres

The Āina Haina Community Association (AHCA) respectfully requests that DLNR-SHPD promptly expand the scope of the above-mentioned Archeological Inventory Survey for TMK 360240001 from .4 acres to the entire 9.5 acres, as required by the National Historic Preservation Act of 1966, as amended (NHPA), Sec. 106, NHPA's Rules, Sec. 36 C.F.R. 800.4(a), 36 C.F.R. Sec.800.16(d), the Hawaii State Constitution Articles 9, Sec 7, and Article 11.1, Hawaii Revised Statutes 6E-1 et seq, DLNR's Hawaii Administrative Rules (HAR).Sections 13-284-2, 13-276-2, and HAR Sec. 3-284-2 and HAR 13-276-2.

The primary reasons for this expanded scope request arise from the following:

1. On January 14 & 28th, 2013, the City & County of Honolulu's Department of Planning & Permitting's processing and issuing the Owners' Grading Permits, and Building Permits for the above named real property triggered the State Department of Land (DLNR) SHPD July 16, 2012 Draft Standard Operating Procedures, Review & Compliance and Survey & Inventory (hereinafter SOPR), as a State Historic Preservation Review Process "Project", as defined by DLNR's HAR 13-284-2, and 13-276-2.
2. NHPA's 36 C.F.R. Sec. 800.4(a), Sec. 800.16(d), DLNR Sec. 13-284-2, and Sec. 13-276-2 requires SHPD to Identify and Review the Historic Property's '**Area of Potential Effects**' (APE)-- means the area the proposed project **may potentially affect** either **directly or indirectly**. It includes not only the area where the project will take place, but also the **proposed project's area of potential effect.**" (emphasis added).

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3. The DLNR Must Promptly and Dramatically Expand the Scope of the SHPD's Archaeological Inventory Survey's "Area of Potential Effect" (APE), "Project Area" for Tax Map Key 3-6-024-001 to the entire undivided 9.4 acre parcel, as required by DLNR's own HAR Chapters 13-276, 13-280 and 13-284.

H.A.R. Sec. 13-284-5 titled Identification & Inventory of Historic Properties provides:

(a) "The (State or County) agency shall ensure whether historic properties are present in the project area and, if so, it shall ensure that these properties are properly identified and inventoried.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to undergo an inventory survey to determine if historic properties are present. **The tax map key for the parcel or parcels involved and a map shall be submitted to the SHPD to locate and define the boundaries of the actual project.** The SHPD shall supply a response in writing within thirty days of the receipt of the initiating request at the SHPD office. . . ."

(emphasis added) See also, HAR Sec. 13-276-5(1)(B) "tax map key (TMK) and acreage of the parcel).

SHPD's Draft Standard Operating Procedures (SOPR) clearly instruct that:

'Area of Potential Effects' (APE) The area of potential effects (APE) includes the entire area within which historic properties could be affected by this project (refer to 36 CFR 800.4(a) and 36 CFR 800.16(d). This the broader surrounding area that might experience visual or other effect from the project (indirect effects). includes all areas of construction, demolition and ground disturbance (direct effects) and Provide a written description of the APE. Discuss the potential for the project to have direct and indirect effects on historic properties and justify the boundaries chosen for the APE. Show APE on the maps provided. (emphasis added)

DPP's January 28, 2013 Issuance of Building Permits for 1055 Hao Street and 1057 Hao Street for first phase of two Single Family Dwellings, (up to a maximum of eight single family dwellings) pursuant to Revised Ordinances of Honolulu (R.O.H.) Sec. 21-8.20A which currently allows up to eight separate Multiple (residential) Dwelling Units on a Single (undivided) Residential District Zoning Lot, as a means of evading the City's regulations for a residential subdivision, cluster homes, or a planned (residential) development.. Likewise, the Registered Land Court Title Property Ownership for TMK 3-6-024-00, clearly shows that this undivided 9.5 acre (415,213 Sq Ft) parcel is owned only by Residences at Aina Haina, LLC (RAHL), Hao Street Partners, LLC, and RAHL's agent Commercial Property Advisors Inc. all businesses, registered to Developer Jeff Stone, and sharing a common business address 1100 Alakea Street, Suite 2500, Honolulu, Hawaii 96813.

On April 18, 2011, the DPP approved the Developer's Sewage Connection Permit Application SCA-02111 for Eight new single family dwellings. See **Exhibit "1"**

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In support of the Developer's October 1, 2012 Building Permit Applications for 1055 Hao and 1057 Hao Street DPP Permit applications, the Developer filed, on October 26, 2012, Geotechnical Engineers Shinsato Engineering Inc's Soils Engineering Report (dated September 9, 2012) was Transmitted to Civil Engineers Hida, Okamoto et al., on October 26, 2012-- Project No. 11-0087) for 1031 Hao Street, Honolulu, Hawaii for TMK 3-6-024-0001 for this Aina Haina Development unequivocally describing the 1031 Hao Street as "PLANNED DEVELOPMENT: "From the information provided, the project will consist of developing the site for eight single family homes, including a paved private roadway." Meanwhile, Shinsato Engineering's Plot Plan for the `Aina Haina Development (Residences at Aina Haina) clearly illustrates eight (8) homes (Units #1,#2,#3,#4, #5, #6, #7, and #8) 14 test pits scattered throughout TMK 36024001 (1031 Hao Street) Project No. 11-0087, and a 16' paved private road. See **Exhibit "2"**: TMK 36024001 Plot Plan:Plate 2

On or about December 19th, 2012, property owner Residences at `Aina Haina, executed and recorded a Declaration of Restrictive Covenants, concerning future park dedication fees and park requirements for a Multi-Family Development named Residences at Aina Haina, situated at 1031 Hao Street, Honolulu, Hawaii 96821 Tax Map Key 3-6-024-001, contingent upon building more than two homes upon this 9.5 acre parcel.

This Project's Direct effects include the Developer's bull-dozing and demolishing an ahu and sentinel site, and grading portions of the Wailupe Valley trail, even before the preliminary AIS is completed. This Na Ala Hele recognized Wailupe Valley trail, as well public easements # 85 and #86 to the City's `Aina Haina Forest Reserve and to the State's surrounding one thousand acres of Conservation lands and the State's recognized Wailupe Valley hunting trail generally extends mauka of Hao Street, criss-crosses and winds continually through middle of the Developer's 9.5 acre 1031 Hao Street parcel. Indirect Effects also include the Developer's continued blockage, and grading, and continued denial of the Public's access to this historical Wailupe Valley (ahupaua'a) trail, with around the clock security guards, and a green "dust fence" surrounding the Overall Proposed 9.5 acre's property line (See Aina Haina single Family Development—House A-- Overall Site Plan, Sheet Number A1.1A (Dated September 28, 2012), including a DPP approved private electronic gate, blocking any public access to the historical Wailupe Valley trail. See DLNR Board Chair Michael D. Wilson's April 25, 1996 Letter referring to the historic Wailupe Valley Gulch trail head (OA150009) located on the West side of the Honolulu Forest Preserve, for hiking, hunting and for wild-land fire suppression. See **Exhibit "3"**.

The City DPP's late January 2013 Approved Blueprint titled "Overall Site Plan A1.A" (Dated September 28 2012) Topographical Survey, Portion Lot 1593 (9.53 acres) Land Court 656, Portion Hao Street, Walter P. Thompson Inc. (September 6, 2012) clearly shows that the scope of the "Proposed Development" follows the TMK 36024001 "Property Lines", far exceeding the two single family dwellings House A and House B 19000 sf (.4 acre), and encompasses the entire 9.5 acre parcel, with a lengthy Hao Street extension (@ 1400 feet), with concrete sidewalks, planter strips, and curbing, running throughout the TMK 36024001 parcel, with at least six separate water meters, street lights, underground electrical utilities, as well as

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underground storm drains, water lines and sewers, and a 12' wide Easement W-1 (1763.57 sf) for water access purposes in favor of Board of Water Supply/DLNR.

On August 24, 2012, the Hawaii Supreme Court, in Keleikini v. Yoshika, et al., rejected the City and County of Honolulu's attempts to limit the scope of the Archeological Inventory Survey (AIS), to four separate phases, for the entire Honolulu High Capacity Transit Project's system. Instead, the Hawaii Supreme court ordered a halt to construction, after the City and the State failed to comply with the State's AIS laws and rules requiring that the required AIS for archaeological historic properties and burial sites must be completed for all four phases of the Project Area, in one Historic Preservation Review AIS, to fully and adequately assess the full impact of Honolulu's proposed Rapid Transit system.

4. DLNR's Improperly Limits the Scope of the Current AIS to .4 acres (the immediate area of the 'Inadvertent Discovery', and Improperly Accelerating SHPD's Historic Preservation Review Process (HPRP), pursuant to HAR Sec. 13-284-12 Discovery of Previously Unknown Historic Properties During Implementation of a Project, or to HAR Sec. 13-280-3 "Procedure for Inadvertent Discoveries" violates DLNR's own Administrative Rules, which clearly limits "Inadvertent Discoveries" to Projects which have already gone through (and completed) the Historic preservation review process, and after "an archaeological assessment or inventory survey and prior to construction".

Here, it is undisputed that bull-dozing and construction began before completion of this Parcel's Historic Preservation Review Process, and before completion of an archeological assessment or inventory.

5. The Hawaii State Constitution Public Trust Doctrines, are enunciated in Article 11.1 titled Conservation and Management of Public Resources and in Article IX, Section 7 Public Sightliness & Good Order:

In addition to H.R.S. 6E-42, the Hawaii State Constitution: Article IX, Sec. 7: "Public Sightliness & Good Order" establishes the basis for SHPD's regulatory authority over private property as follows:

(a) The State shall have the power to conserve and develop objects and places of historic or cultural interest and provide for public sightliness and physical good order. For these purposes, private property shall be subject to reasonable regulation.

Meanwhile, Article 11.1 of Hawaii State Constitution: titled "Conservation and Development of Resources" declares:

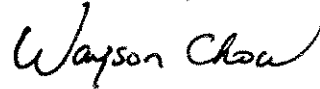
(a) "For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, mineral and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

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(b) “All public natural resources are held in trust by the State for the benefit of the people. (add Constitutional Convention 1978 and General Election November 7, 1978)

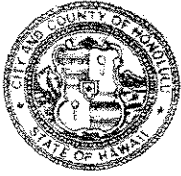
In summary, the `Aina Haina Community Association, and its Native Hawaiian community members join together, in unequivocally urging both DLNR and SHPD to fully embrace the Public Trust Doctrine, to protect this State’s cherished natural resources, its cultural and historic sites, and the historic Wailupe Valley (ahupua’a) trail by dramatically expanding the scope of this Parcel’s Archaeological Inventory Survey to the entire 9.5 acre parcel, to increase DLNR protection of our treasured historical and cultural sites, and protect the historic Wailupe Valley trail from further grading, bull-dozing, and the members of the public from continued threats of criminal arrest for trespass along the historic Wailupe Valley trail by the Developer-owner’s representatives, by dramatically expanding the AIS’s scope to 9.5 acres, and by enforcing a Stop Work Order pending completion of the SHPD Historic Preservation Review protocols.

Mahalo nui loa,



Wayson Chow, President

Exhibits “1”—“3”



DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET * HONOLULU, HAWAII 96813
 Phone: (808) 768-8209 * Fax: (808) 768-4210

SEWER CONNECTION APPLICATION

APPLICATION NO.: **2011/SCA-0211** STATUS: **Approved**
 DATE RECEIVED: **04/06/2011** IWDP APP. NO.:
 PROJECT NAME: **2011/SCA-0211 Eight new single family dwellings**

\$38,787.00
Estimated Wastewater System Facility Charge*

LOCATION:

Zone	Section	Plat	Parcel		
3	6	024	001	1031 HAO ST	415,213 Sq. Ft.

SPECIFIC LOCATION: **1031 Hao Street**

APPLICANT: **Armstrong Design, Ltd.**
Gary Herald
 80 Sand Island Access Road #209
 Honolulu, Hawaii 96819

DEVELOPMENT TYPE: **Dwelling, Single-family** SEWER CONNECTION WORK DESIRED:

OTHER USES:

NON-RESIDENTIAL AREA: **s.f.** APPROXIMATE DATE OF CONNECTION:

<u>PROPOSED UNITS</u>	<u>EXISTING UNITS</u>	<u>UNITS TO BE DEMOLISHED</u>
No. of New Units: 8	No. of Existing Units: 0	No. of Units to be Demolished: 0
Studios:	Studios:	Studios:
1-Bedroom:	1-Bedroom:	1-Bedroom:
2-Bedroom:	2-Bedroom:	2-Bedroom:
3-Bedroom:	3-Bedroom:	3-Bedroom:
4-Bedroom:	4-Bedroom:	4-Bedroom:
5-Bedroom:	5-Bedroom:	5-Bedroom:
6-Bedroom:	6-Bedroom:	6-Bedroom:

REMARKS

APPROVAL DATE: **04/19/2011**

Valid 2-years after approval date. Construction plans shall be completed and approved within this 2-year period. Construction shall commence within 1-year after approval of plans.

EXPIRATION DATE: **04/18/2013**

** Applicable WSFC shall be collected at the prevailing rate in accordance with ROH 1990, Chapter 14, Sections 14-10.3, 14-10.4, 14-10.5 and Appendix 14-D.*

REVIEWED BY: **Tessa Ching**

Site Development Division, Wastewater Branch

EXHIBIT 1
 Page 1 of 2

CITY AND COUNTY OF HONOLULU
 DEPARTMENT OF PLANNING & PERMITTING
 650 South King Street, Honolulu, Hawaii 96813

SITE DEVELOPMENT DIVISION MASTER APPLICATION FORM

Additional data, drawings/plans, and fee requirements are listed on a separate sheet titled "Instructions for Filing" and are available at your request. All specified materials described in the "Instructions for Filing" and required fees must accompany this form. You are encouraged to consult with Site Development Division (SDD) staff in completing the application to avoid processing delays. For other applications, procedures, instructions, and a fillable version of this form, please visit www.honoluludpp.org

I. APPROVAL PERMIT VARIANCE AGREEMENT/LICENSE

Check one or more as appropriate:

- | | | | |
|--|--|---|--|
| <input type="checkbox"/> Subdivision | <input type="checkbox"/> Grading | <input type="checkbox"/> Flood Hazard District Variance | <input type="checkbox"/> Driveway Crossing Existing Retaining Wall Agreement |
| <input type="checkbox"/> Easement(s) | <input type="checkbox"/> Grubbing | <input type="checkbox"/> Slope Easement Variance | <input type="checkbox"/> Sewer Easement Agreement |
| <input type="checkbox"/> Lot Consolidation | <input type="checkbox"/> Stockpiling | <input type="checkbox"/> Non-Standard Driveway Variance | <input type="checkbox"/> Drainage Connection License |
| <input type="checkbox"/> Park Dedication | <input type="checkbox"/> Trenching | <input type="checkbox"/> Non-Standard Sidewalk Finish Variance | |
| <input type="checkbox"/> Site Development | <input type="checkbox"/> Dewatering | <input type="checkbox"/> Surface Encroachment Variance | |
| <input type="checkbox"/> Flood Determination | <input checked="" type="checkbox"/> Sewer Connection | <input type="checkbox"/> Surface Encroachment Variance for Planting Strip | |

NOTE: Sections II & III must be filled in completely for all applications. Please type or print legibly.

II. LOT AND LAND USE INFORMATION

TAX MAP KEY(S) 3-6-024:001 Lot Area: 9.53 sq. ft./ac.
 Zoning District: R-7.5 Development Plan Designation: _____ State Land Use District: _____
 Street Address/Location of Property: 1031 Hao Street
 Present Use of Property/Building: Vacant
 Project Name (if any): _____

Request/Proposal (describe the nature of the request, proposed activity or project):

Sewer connection application to build 8 new single family dwellings on this lot.

RECEIVED
 CITY AND COUNTY OF HONOLULU
 DEPARTMENT OF PLANNING AND PERMITTING
 2011 JUN 10 10:00 AM

III. APPLICANT INFORMATION

Name (& title)	Recorded Fee Owner/Applicant	Engineer/Architect/Surveyor	Contractor/Authorized Agent/Contact
	<u>Residences at Aina Hina LLC</u>	<u>Armstrong Design, Ltd</u>	<u>Armstrong Builders LLC</u>
Mailing Address	<u>1100 Alakea Street</u>	<u>80 Sand Is/ Access Rd #209</u>	<u>80 Sand Is/ Access Rd #209</u>
	<u>Honolulu Hawaii 96813</u>	<u>Honolulu Hawaii 96819</u>	<u>Honolulu Hawaii 96819</u>
Phone Number(s)	<u>531-7961</u>	<u>848-2484 x22</u>	<u>848-2484</u>

APPLICANT Gary Herald Armstrong Design, Ltd / Architect
Print NAME of applicant Print COMPANY NAME and TITLE of applicant

Signature of applicant

IV. FOR GRADING/GRUBBING/STOCKPILING INFORMATION ONLY

Estimated Dates: Start: _____ Completion: _____ Borrow Material: _____
 Area of work (sf): _____ Borrow Site: _____
 Dimensions of work: Length: _____ Width: _____ Height: _____ Disposal Material: _____
 Estimated Quantity (cy): Cut: _____ Fill: _____ Disposal Site: _____
*Stockpile Only

AUTHORIZATION CLEARANCE

This statement of authorization is used in reference to the information provided for in sections I, II and III above.
 I/We, _____, hereby authorize _____ to act in my/our behalf in obtaining/closing
Print NAME and TITLE of person giving authority Print NAME of person receiving authority
 the Grading/Grubbing/Stockpiling permit for the project.

Signature of Owner/Developer giving authority

FOR DIVISION USE ONLY:
 Date of Application: _____ Received By: _____ Application No.: _____

SEE REVERSE FOR APPLICATIONS FOR TRENCHING AND SEWER CONNECTION

EXHIBIT 1
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SP# 4545

2012/CP-263

11/7/12

**REPORT
SOILS INVESTIGATION**

**PROPOSED AINA HAINA DEVELOPMENT
1031 HAO STREET
HONOLULU, HAWAII
TMK: (1) 3-6-024: 001**

for

RESIDENCES AT AINA HAINA LLC

Project No. 11-0087
September 9, 2011

**SHINSATO ENGINEERING, INC.
98-747 KUAHAO PLACE, #E
PEARL CITY, HI 96782**

EXHIBIT 2
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INTRODUCTION

This investigation was made for the purpose of obtaining information on the subsurface conditions from which to base recommendations for site development and foundation design for the proposed residences to be located at 1031 Hao Street in Honolulu, Hawaii. The location of the site, relative to the existing streets and landmarks, is shown on the Vicinity Map, Plate 1.

SCOPE OF WORK

The services included excavating and logging 14 test pits to depths of 4.0 to 10.0 feet below existing grade, obtaining samples of the underlying soils, performing laboratory tests to determine pertinent engineering properties of the representative soil samples, and performing an engineering analysis to determine foundation design parameters. The following information is provided for use by the Architect and/or Engineer:

1. General subsurface conditions, as disclosed by the test pits.
2. Physical characteristics of the soils encountered.
3. Recommendations for foundation design, including bearing values, embedment depth and estimated settlement.
4. Recommendations for site preparation and grading including placement of fill and backfill.
5. Recommendations for pavement design.
6. Special design considerations.

PLANNED DEVELOPMENT

From the information provided, the project will consist of developing the site for eight single family homes including a paved private roadway.

SITE CONDITIONS

Surface

The property is located in Aina Haina Valley at the northern end of Hao street. The lot is bordered by

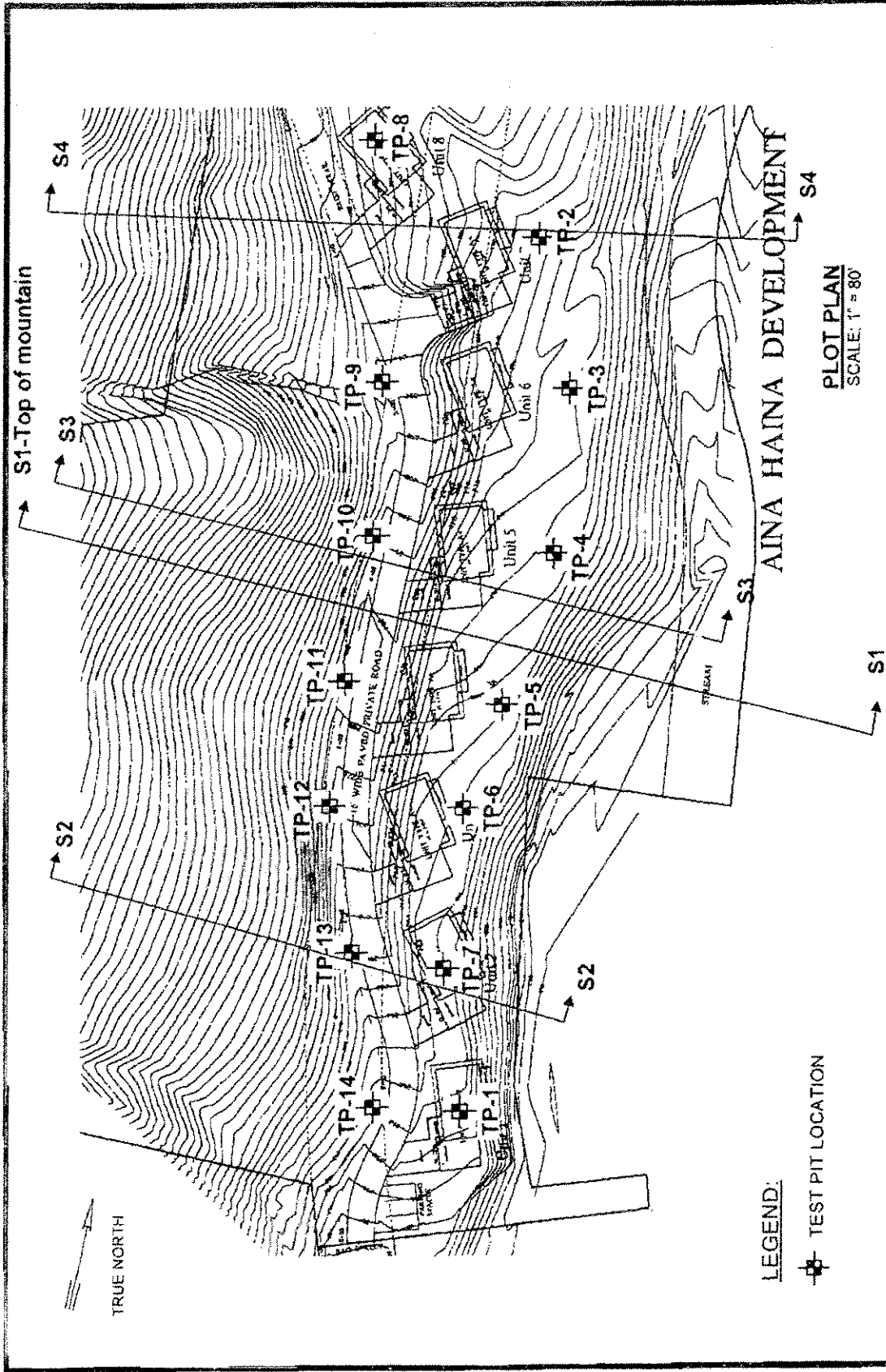


PLATE
 2

SHINSATO ENGINEERING, INC.
 CONSULTING GEOTECHNICAL ENGINEERS
 98-747 KUAHAO PL., #E PEARL CITY, HI 96782

Project: RESIDENCES AT AINA HAINA
 1031 HAO STREET
 Project No.: 11-0087

EXHIBIT 2
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KENULANI'U J. CAYETANO
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

APR 25 1996

MICHAEL D. WILSON
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTY
GILBERT S. COLOMA-AGARAN

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

Mr. Patrick T. Onishi
Department of Land Utilization
650 South King Street
Honolulu, HI 96813

Dear Mr. Onishi:

Subject: Proposed subdivision located in Aina Haina-Hind Iuka Drive area, owner
Volumms Co. LTD

I apologize for the late comments and recommendations. The Department of Land and Natural Resources (DLNR) Division of Forestry and Wildlife's (DOFAW) Na Ala Hale (NAH) Trails and Access Program has been working with the Volumms Co. in establishing public access to the Honolulu Forest Reserve via Wailupe trail (OAL5009) which traverses a section of Volumms property.

DOFAW staff has reviewed the tax map key (TMK 3-6-04:01), forestry boundary and trail inventory maps and visited the location with Keith Kurahashi, of Kusao & Kurahashi, Inc. On April 17, 1996 NAH staff met with representatives from Volumms Co. and discussed some possibilities which are outlined in the following comments and recommendations below.

Comments:

1. The proposed subdivision located Aina Haina-Hind Iuka Drive (TMK 3-6-04:01) overlaps the Wailupe gulch trail head (OAL5009) which is located on the West side of the lower Wailupe portion of the Honolulu Forest Reserve. The subdivision also overlaps access to the east side of the lower portion of the reserve. (see attached map). Therefore the proposed subdivision request must comply with Honolulu City and County Ordinance 4311.
2. Access to the Wailupe Gulch trail needs to be maintained for hiking and hunting but also for management purposes - such as wild-land fire suppression.
3. Access to the east side of the Honolulu Reserve needs to be maintained for management purposes - such as wild-land fire suppression.

EXHIBIT 3

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Recommendations:

1. The Volumns Co., upon completion of the subdivision will establish an easement through their land starting at the end of Hao street along either the established trail or reroute the trail to take the shortest route from Hao street to the forest reserve. Any trail rerouting will be to NAH specifications. For example: The trail would only be for pedestrian access, with width dimensions not exceeding a 36 inch tread-way with 2-3 feet of cleared vegetation on either side of the tread and a gradient of no more than 15%.
2. The Volumns Co. upon completion of the subdivision needs to give key to DOPAW staff for access to the east part of the lower Wailupe portion of the Honolulu Forest Reserve for purposes of management.

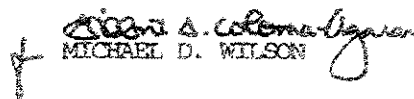
Agreement thus far:

1. NAH staff is willing to explore the possibility of selecting a new mauka access route through the subdivision to the forest boundary prior to the completion of the subdivision and consult on proper trail construction.
2. The Volumns Co. has agreed to submit a revised map showing the different easement possibilities.
3. The Volumns Co. has agreed to allow access to DOPAW staff through the east side of the subdivision for management purposes.
4. An MOA will be drafted that delineates vehicular access for DLNR through Volumns property for management purposes.

If you have any further questions, please contact Aaron Lowe, Oahu Trails and Access Specialist.

Attached: Enlarged topographic map showing trail and forest boundary
Subdivision map showing proposed subdivision boundary and Hao street
NAH trail specifications

Aloha,


MICHAEL D. WILSON