

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 10, 2023

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

Ref: EO 4584

OAHU

Report on Agenda Item D-11 at the Board meeting of December 9, 2022 regarding Cancellation of Governor's Executive Order No. 4584 to the Department of Agriculture for Agriculture Purposes, Honouliuli, Ewa, Oahu, Tax Map Key (1) 9-1-031:001.

BACKGROUND:

The subject request was deferred by the Board at its meeting of December 9, 2022 under agenda item D-11 for 60 days. A copy of the submittal is attached as **Exhibit 1**. The deferral was to allow Mr. Farias of Hawaii Land & Livestock, LCC (HLL) to report on (1) a schedule for the removal of the industrial equipment and objects from the subject 110-acre parcel; and (2) HLL's plan for use of the subject 110-acre parcel.

On December 27, 2022, staff sent an email to the Department of Agriculture (DOA) reiterating the Board's directives and requesting a copy of the same information be copied to the Division prior to the meeting. DOA acknowledged receipt of the email.

On January 23, 2023, the DOA Chairperson advised the Department of Land and Natural Resources (DLNR) that:

HDOA requests that the matter of an amendment to the lease to Bobby Farias/Hawaii Meats and HDOA be postponed. This was subject to an item being submitted by February 1, 2023 for the February 10, 2023 Land Board Meeting for the Board to consider returning some of the "air rights" to DLNR so long as agriculture production can continue. This return of the land's air rights was due to a DLNR inspection of the Kalaeloa property, where it was noted that the lessee was using the property for other than agriculture production use and the land was being used as a trucking equipment storage area. Since then, the trucking company (All American) has agreed to vacate by March 31, 2023, requiring his relocation from the property by April 1, 2023. This would be for other than specific equipment necessary to conduct the business of trucking on behalf of Hawaii Meats,

such as trucking equipment for hauling containers of cattle and equipment directly related to clearing the property and hauling debris.

Staff notes that the December 9, 2022 submittal actually recommended a cancellation of the Executive Order (“EO”) due to the activities observed on the subject parcel, which were not consistent with the public purposes stated in the EO. Under the EO itself, the Board has already reserved the “air rights” to issue leases for renewable energy project on the parcel¹ and the above-mentioned submittal was not related to any “returning of some of the air rights...” as suggested by DOA’s email.

While the above email is responsive to the first item required by the Board as to the schedule for the removal of industrial equipment from the subject parcel, it does not discuss the planned use of the parcel. By email dated December 27, 2022, DLNR requested DOA to provide a non-action informational update to the Board on HLL’s plan for use of the subject 110-acre parcel at today’s meeting.

At the time of preparing this report, DLNR had not received any information from either Mr. Farias or DOA on HLL’s plans for future utilization of the subject parcel.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

KOM

RT

¹ The reservation in the EO is more accurately stated as, “RESERVING to the State of Hawaii, Board of Land and Natural Resources the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with the State of Hawaii, Department of Agriculture’s use of the land”

DEFERRED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 9, 2022

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

OAHU

Cancellation of Governor's Executive Order No. 4584 to the Department of Agriculture for Agriculture Purposes, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031:001.

APPLICANT:

Department of Agriculture.

LEGAL REFERENCE:

Sections 171-6 and 11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031: 001, as shown on the attached map labeled **Exhibit A**.

AREA:

110 acres, more or less.

ZONING:

State Land Use District: Urban
County Zoning: I-2 Intensive Industrial District

TRUST LAND STATUS:

Acquired after 8/59, i.e., non-ceded.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Deferred
~~APPROVED~~ BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 8-9, 2022 *Go.*

D-11

EXHIBIT 1

Governor's Executive Order No. 4584 setting aside to the Department of Agriculture (DOA) for agriculture purposes. DOA subsequently leased the land to Hawaii Land & Livestock, LLC (HLL) under DOA General Lease No. S-3138 for diversified agriculture¹ including animal feedlot purposes for finishing prior to slaughter of livestock.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources (Department) reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving minor expansion or minor change of use beyond that previously existing" and Part 1, Item 36 that states, "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agency through a Governor's Executive Order".

The proposed disposition is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

REMARKS:

At its meeting of November 9, 2018, the Board of Land and Natural Resources (Board) approved the set aside of the subject parcel to DOA for agricultural purposes. The subject parcel was formally set aside via Executive Order No. 4584 on May 15, 2019, subject to a reservation to the Board of the right to issue leases for renewable energy projects on the land provided that the projects do not unreasonably interfere with DOA's or its lessee's use of the land for agricultural purposes.²

On December 26, 2019, DOA executed General Lease No. S-3138 with HLL for a term of 35 years. The lease was solely for Diversified Agriculture including animal feedlot purposes for finishing prior to slaughter of livestock and the lease specified that DOA

¹ "Diversified agriculture" as defined in the lease means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, livestock feedlot operations for temporary holding of cattle, sheep, goats, hogs and any approved animals.

² The Department reserved rights for developing renewable energy projects on the land because the land was once designated as income-producing as a prime site for renewable energy projects with its location in Campbell Industrial Park across a Hawaiian Electric Company, Inc. (HECO) facility and close to the west side energy corridor. The land was previously under a Board-approved development agreement for a renewable energy project, but the developer was not able to secure the HECO power purchase agreement for its project and the development agreement terminated. Soon thereafter, DOA requested the land be transferred to it.

maintained the right to withdraw any portion of the premises for leasing to renewable energy producers and/or for the creation of photovoltaic projects and supporting infrastructure.

At its meeting of April 8, 2022, under agenda item D-4,³ the Board authorized the issuance of a right-of-entry permit to Eurus Energy America LLC (Eurus) for due diligence purpose regarding a proposed renewable energy project planned on the subject parcel.

As reported in the April 2022 submittal:

staff visited the subject parcel on January 21 and February 22, 2022. On these visits staff observed that a significant portion of the parcel is being used for purposes other than those prescribed in the lease and executive order. There is what appears to be an extensive industrial base yard running along the makai portion of the parcel parallel to Olai Road. Staff documented numerous excavators and other heavy equipment, shipping containers and rusting trailers stacked and strewn throughout the parcel, large piles of what appear to be construction fill and rubble, abandoned and wrecked vehicles ranging from cars to construction equipment to semi-trucks, large vehicle repair bays and support structures, stacks of concrete girders and barriers, and other industrial and construction materials. Aside from a small corral situated behind the HLL office, staff did not observe any cattle or other agricultural activity taking place on the subject parcel.

HLL employees explained that the vehicles and materials located on the subject parcel are the property of a hauling company that provides hauling services in support of HLL's slaughterhouse business, and that its use of the subject parcel was with the permission of HLL.

At the April 8, 2022 Board meeting, representatives from both DOA and its tenant disagreed with the division's position and responded that the presence of the heavy equipment and vehicles observed was not abnormal for a large farm operation. DOA and its tenant explained that the equipment and vehicles were meant to be utilized for the agricultural use as permitted under DOA's lease. Since the April 2022 meeting was for the issuance of a right-of-entry to Eurus, staff did not pursue any remedy for the discrepancy noted between the public purposes in EO 4584 and the actual use Land Division staff observed on the ground.

Another site visit to the subject property was conducted on November 1, 2022, this time led by Chairperson Case. The site inspection team observed the same use being made of the land as Land Division staff had noted during its inspections of January and February 2022. Heavy construction equipment and vehicles were still present and there was no sign of any active agricultural use on the property. The best description of the use observed by the Department on November 1, 2022 is base yard for industrial activities. Multiple photos taken during the latest site visit are attached as **Exhibits B-1 to B-3** for the Board's reference.

³ Submittal can be downloaded from <https://dlnr.hawaii.gov/wp-content/uploads/2022/04/D-4.pdf>

Staff notes that the ongoing use of subject parcel as an industrial base yard is not compliant with the terms of Executive Order No. 4584. Staff believes proper utilization of State land following the permitted uses is the key as a steward of the natural resources. Therefore, staff recommends the Board authorize the cancellation of Executive Order No. 4584. Upon approval, Land Division will assume the ongoing management of the subject parcel as the Lessor under DOA General Lease No. S-3138.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis action.
2. Approve of and recommend to the Governor issuance of an executive order cancelling Governor's Executive Order No. 4584, subject to:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson

Land Board Meeting: December 8-9, 2022;
D-11: Deferred for sixty (60) days.

Deferred for sixty (60) days.¹ *for RT* Mr. Farias of Hawaii Land & Livestock, LLC to report on (1) a schedule for the removal of the industrial equipment and objects from the subject 110-acre parcel; and (2) its plans for use of the subject 110-acre parcel.

¹ To be scheduled on the first Board meeting in February; February 10, 2023.



TMK: (1) 9-1-031:001

EXHIBIT A

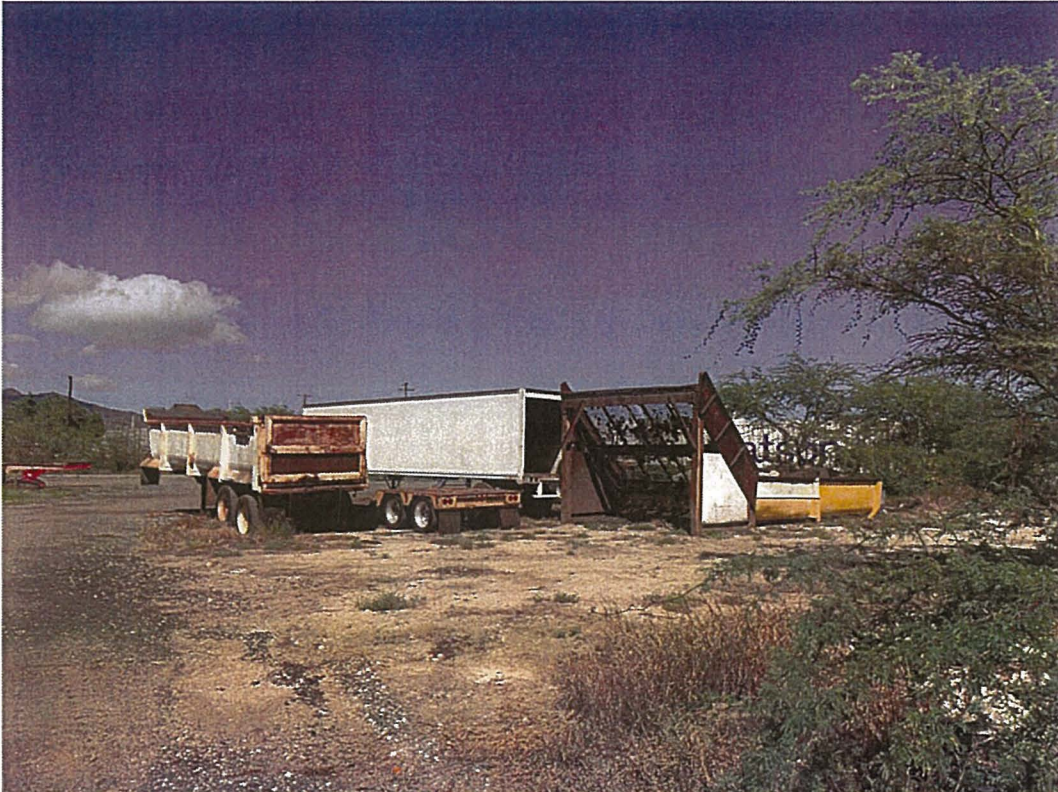
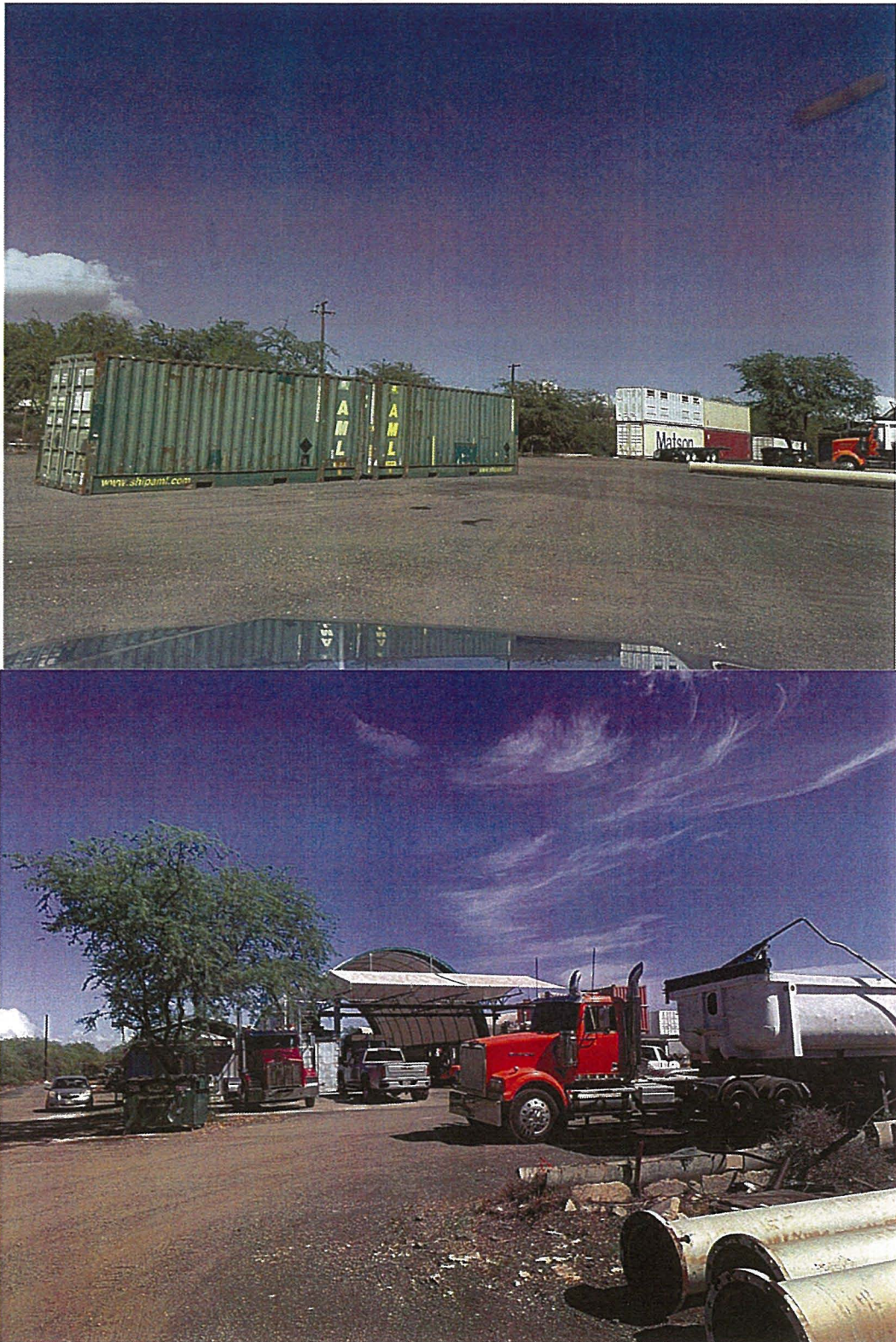
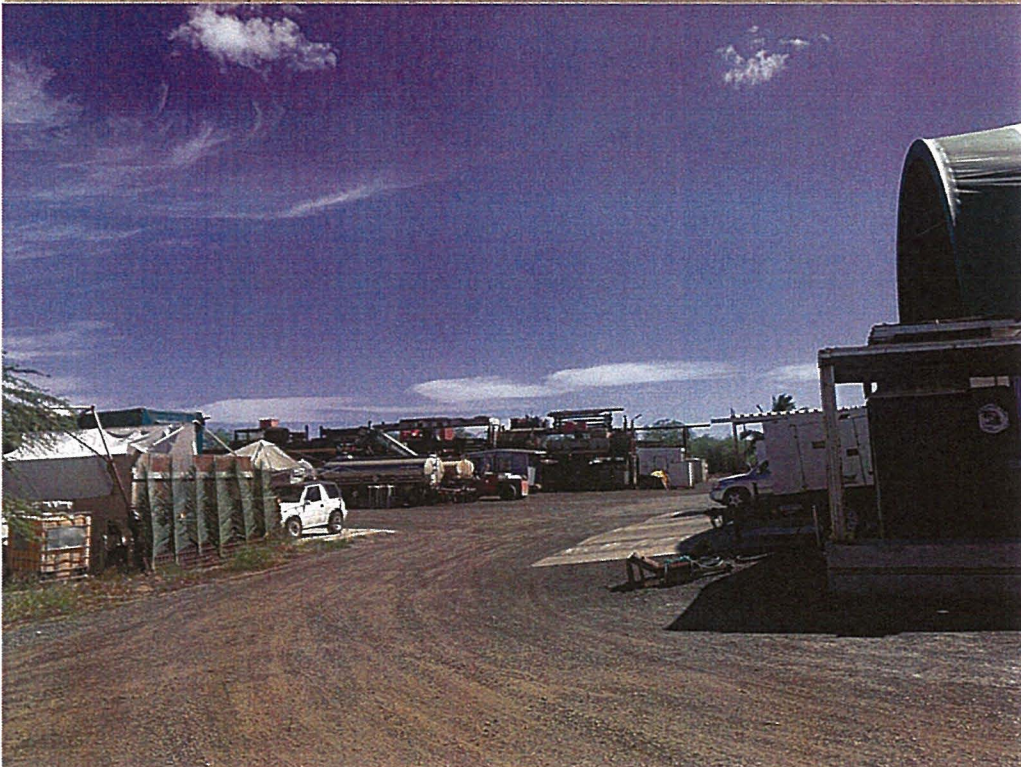
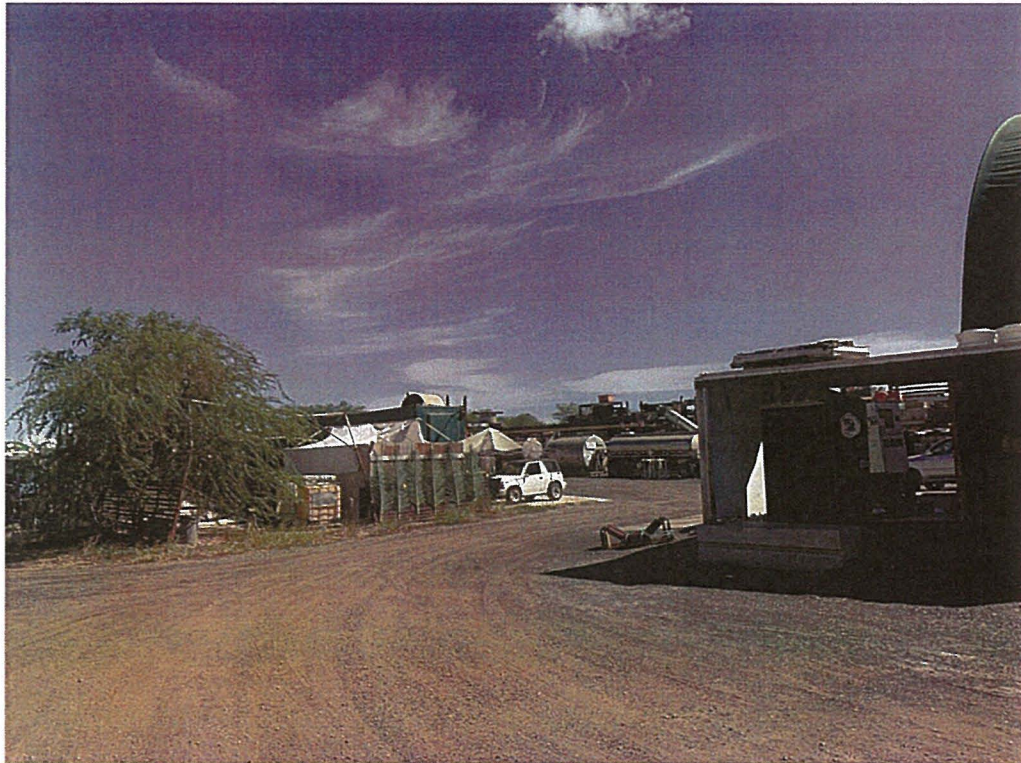


EXHIBIT B-1
Industrial Uses

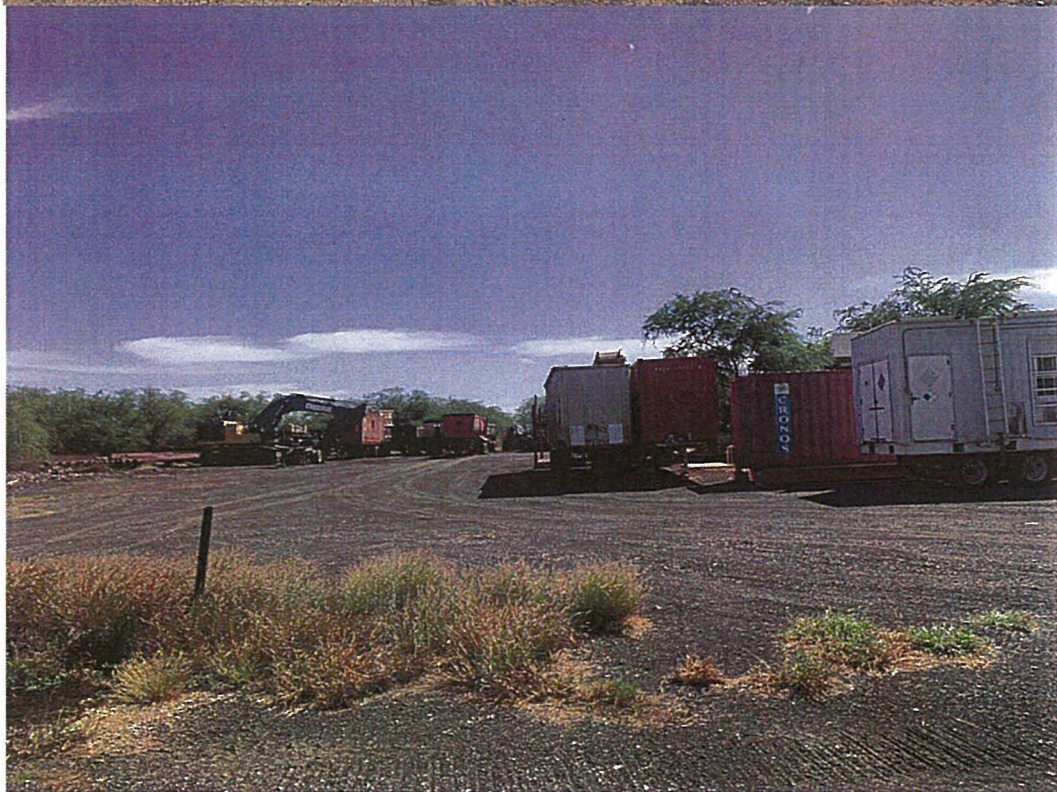
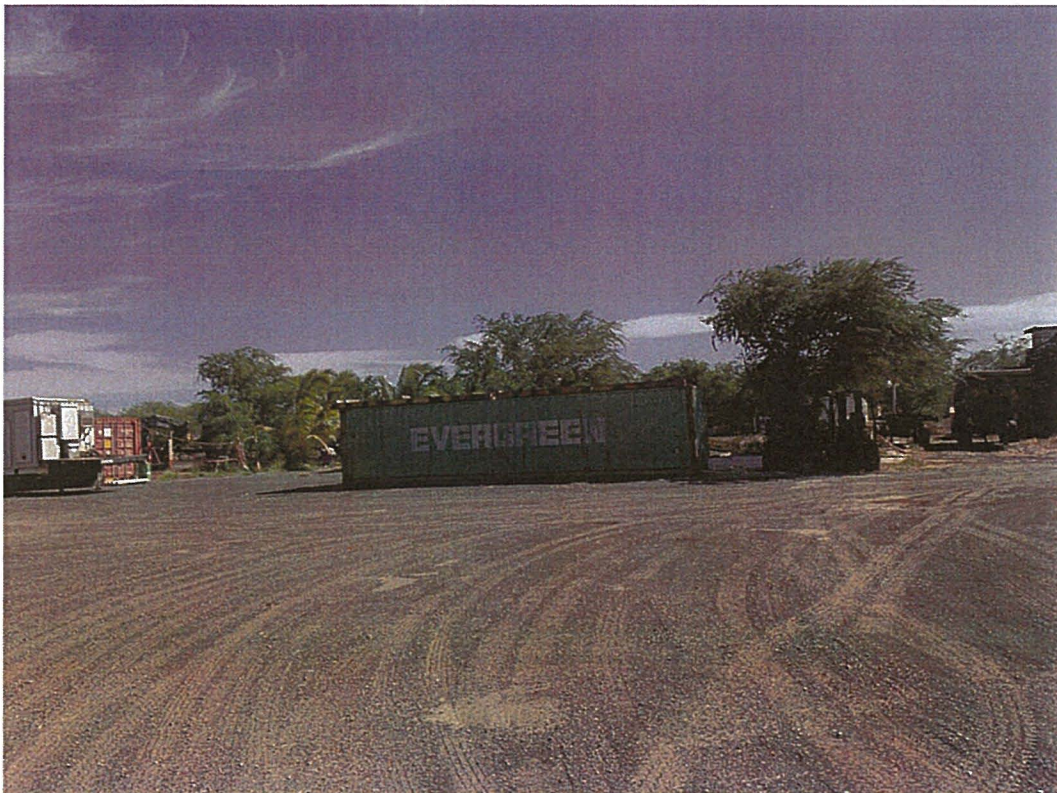


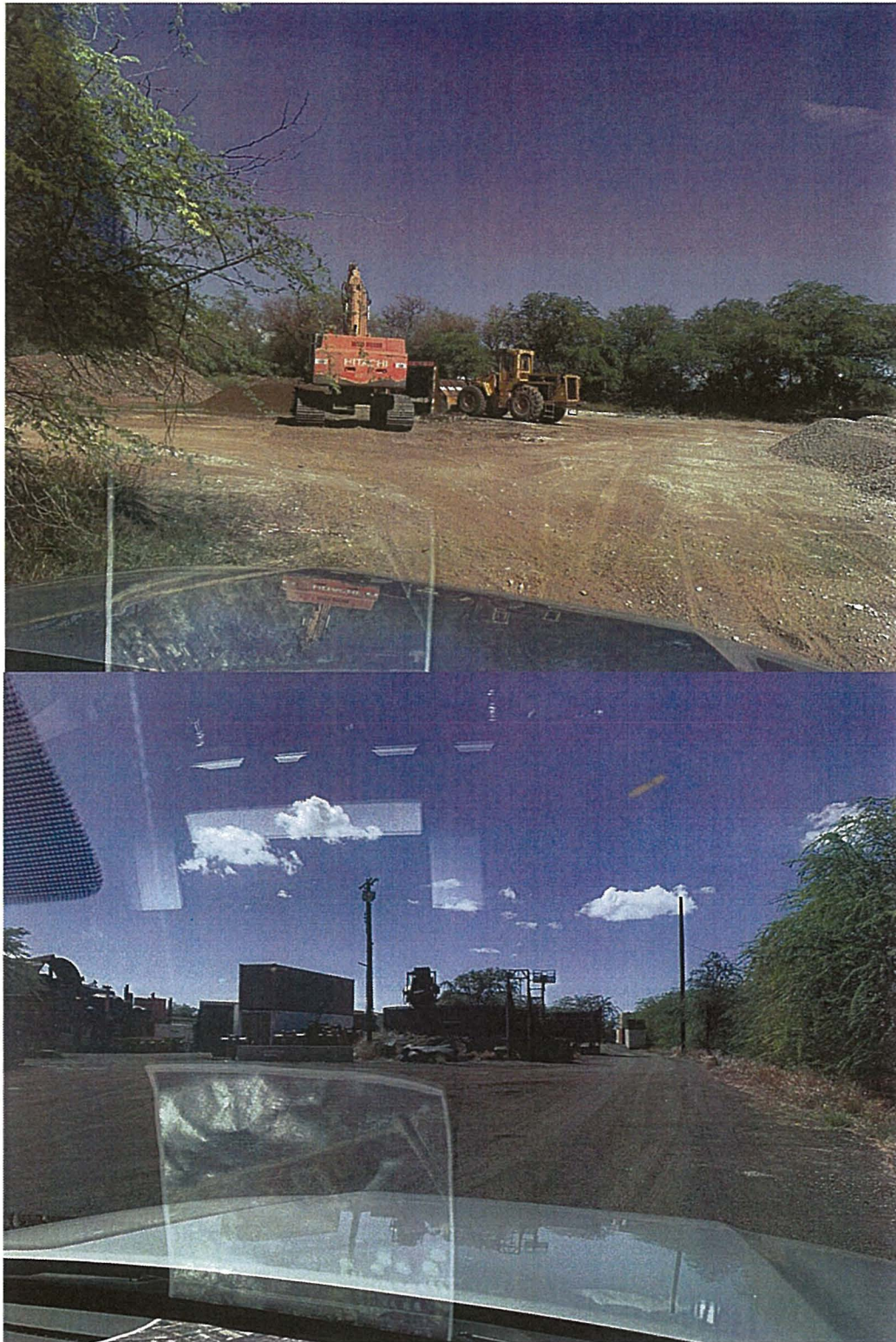


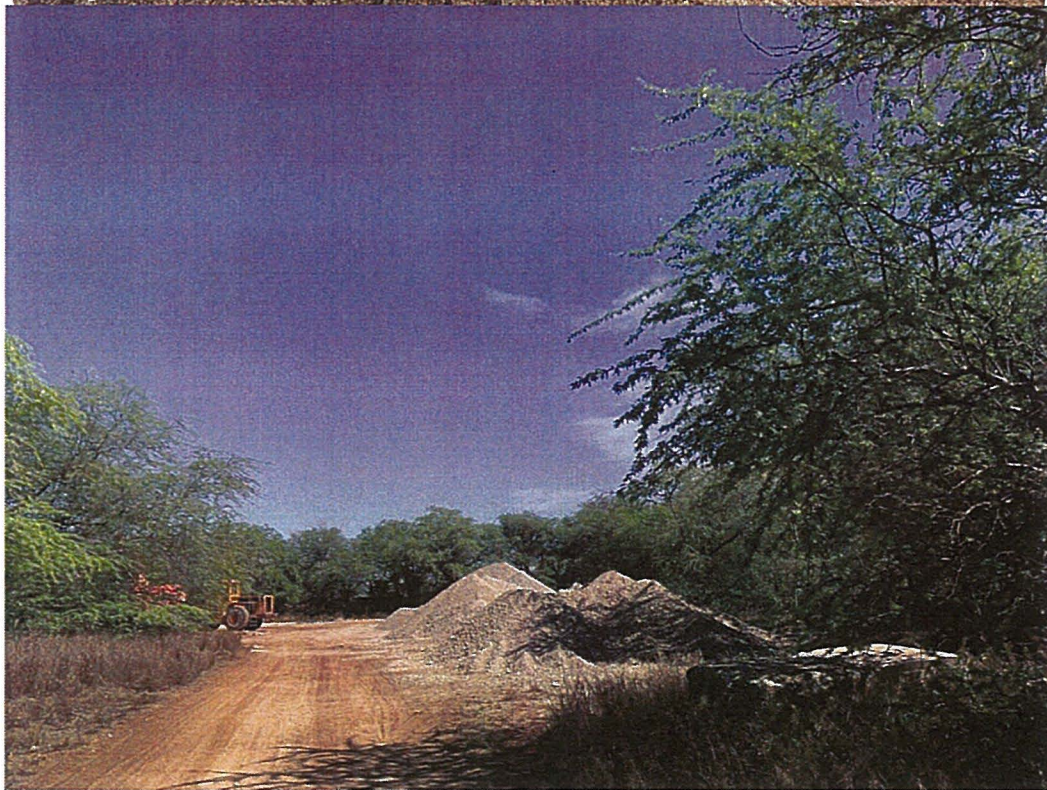


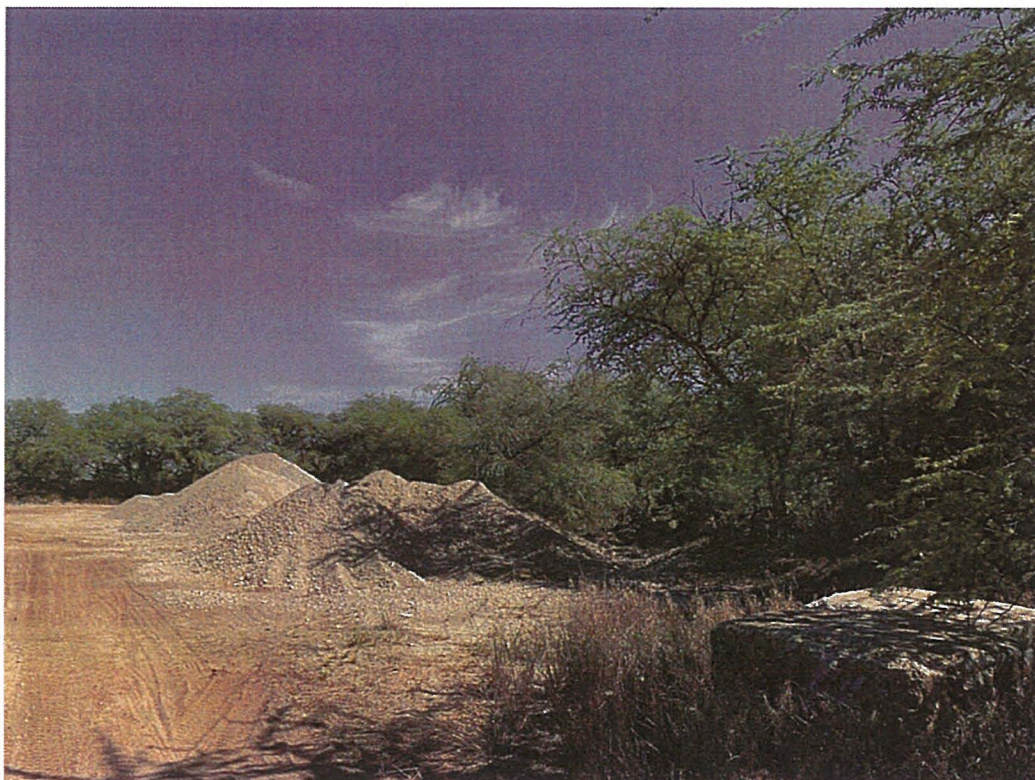












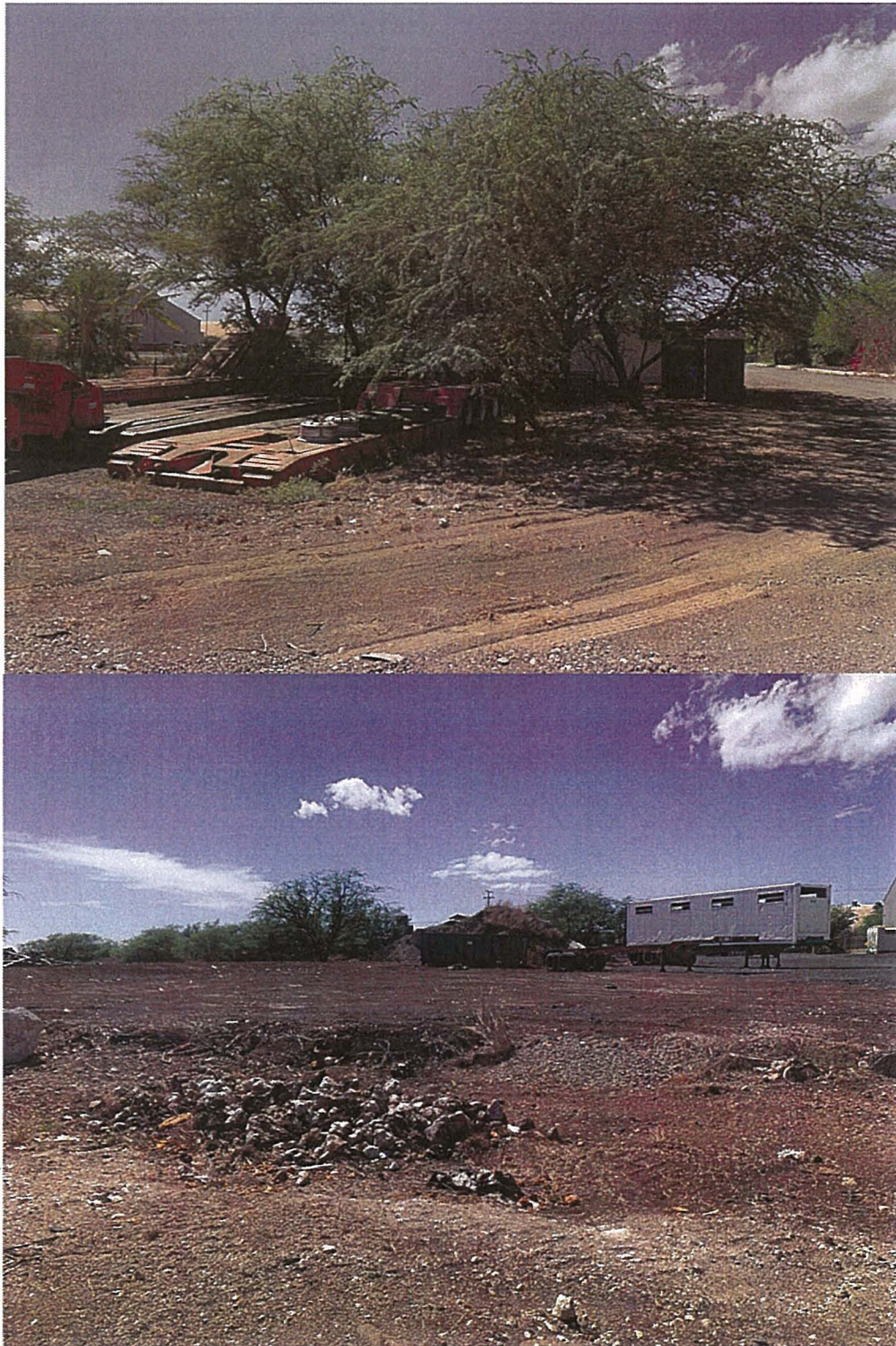


EXHIBIT B-2

Unused land, recently cleared, no known permit

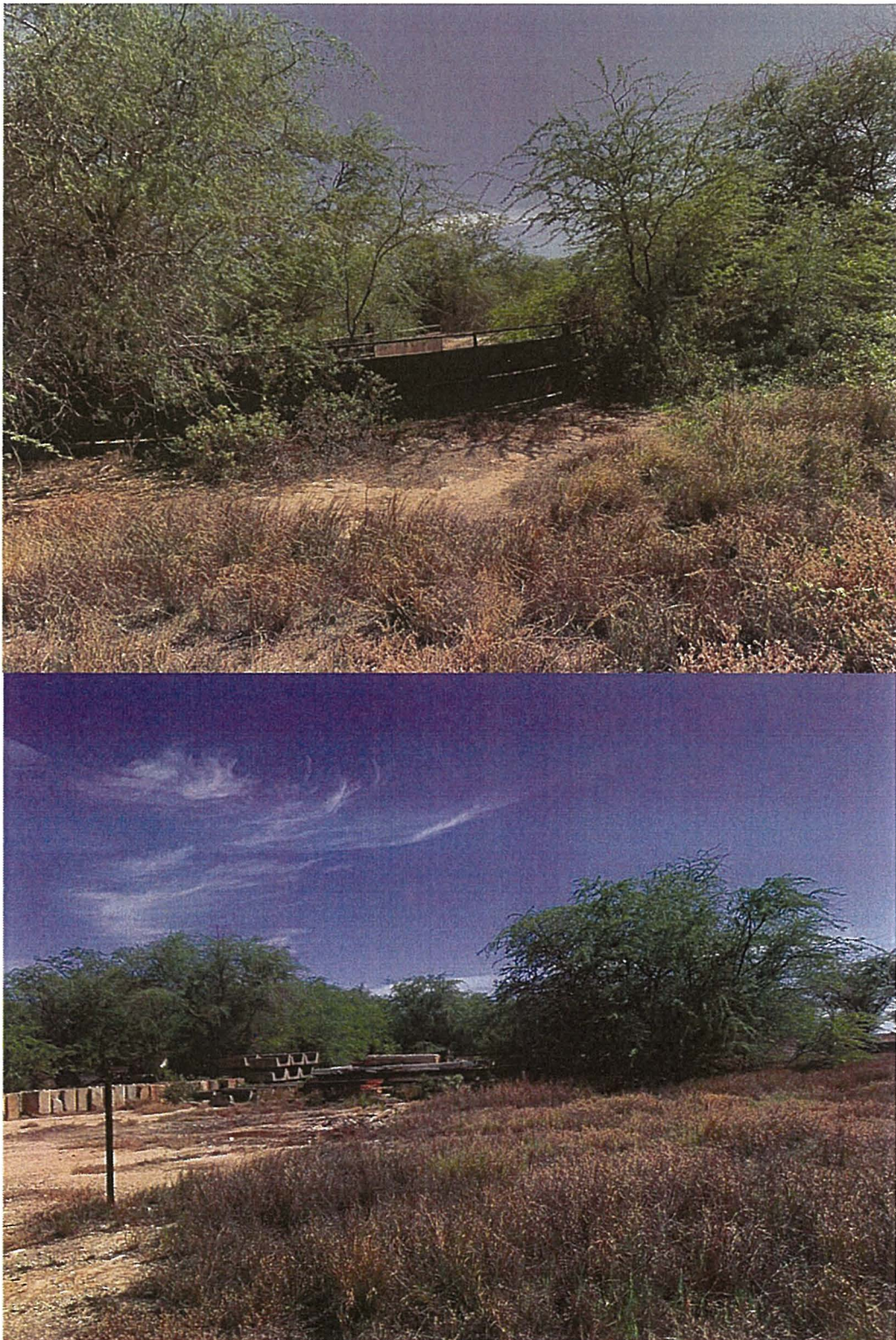














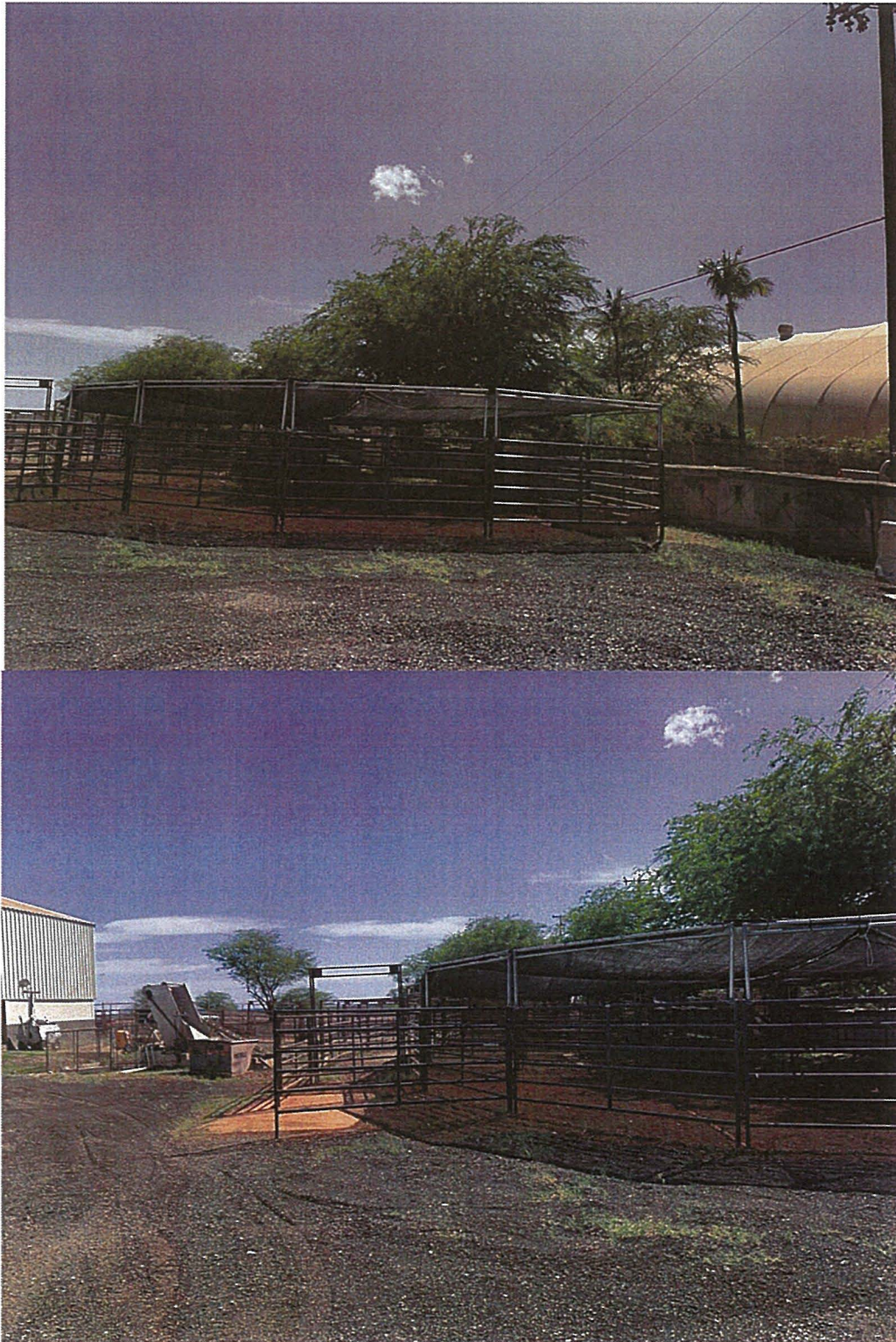


EXHIBIT B-3
Holding pen, on the adjacent slaughterhouse