

2011 DEC 13 AM 11:56

EX OFFICIO B. TERAOKA  
CLERK

LAW OFFICES OF GERARD JERVIS

GERARD A. JERVIS  
Hawaii Bar No. 2490  
354 Uluniu Street, Ste. 100  
Kailua, Hawaii 96734  
T: (808) 262-2828  
F: (808) 261-2921

LYNCH, HOPPER, SALZANO & SMITH

P. KYLE SMITH  
Hawaii Bar No. 9533  
1640 Alta Drive, Ste. 11  
Las Vegas, NV 89106  
T:(702) 868-1115

*Attorney on behalf of Class Plaintiffs*

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

JIM AANA, MARIE AANA, THELMA )  
AANA, WILSON AANA, JOHN AANA, )  
CORRADO ALTOMARE, MICHIYO )  
ALTOMARE, ROY APO, ALLEN )  
ARQUETTE, SUSAN ARQUETTE, )  
PUANANI ARRUDA, BLAISDELL )  
AYAU, RHONDELL AYAU, YURIKO )  
BABA, LANI BERNALDES, JOHN )  
BERNALDES, MARCUS BERNALDES, )  
JEFFREY BRYANT, CINDY BRYANT, )  
PAMELA CALDWELL, JOANNA )  
CASTILLO, AARON CHAR, KARIN )  
DAMERON, ERIC DAMERON, EDWIN )  
DELA CRUZ, KRIS DELA CRUZ, )  
THOMAS DUARTE, BARBIE DUARTE, )  
DOUGLAS DUSENBERRY, LINDA )  
DUSENBERRY, SHELBY ERDMANN, )  
ERIC ERDMANN, PEDRO GARABILEZ, )  
PATRICIA GARABILEZ, JAY )  
GARDNER, RICKY HAMADA, DELIA )  
HAMADA, GREG HARDING, )  
MICHELLE HIGGINS, GARY HIGGINS, )  
RUSSEL HILL, JODI HOOKANO, )  
MITSUKO HOOKANO, RENFRED )  
HOOKANO, MICHELLE HOOKANO, )  
CARLY IBARA, LESLIE IBARA, LINDA )  
IBARA, MELANIE IBARA, TOM IBARA, )  
KEVIN IWAI, BENJINETTE IWAI, )  
NOELANI NAWAI, NALANI JOE )  
GOMES, ALBETTE BAJO, ALAN BAJO, )

CIVIL NO.: 11-1-0356  
(Other Non-Vehicle Tort)

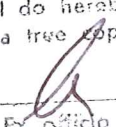
COMPLAINT  
(PROPERTY RELATED CLAIMS)

DEMAND FOR JURY TRIAL

EXHIBITS 1-11

SUMMONS

I do hereby certify that the foregoing is  
a true copy of the original.

  
Ex officio Clerk

1 AMY JUNG, ELLIOT JUNG, MERLA )  
2 KAAUMAONA, WENDALL KABUTAN, )  
3 WANDA KABUTAN, MARGARET )  
4 KAHALE, TIANI KAJIWARA, IVAN )  
5 RUIZ, BERT KAKUDA, YVONNE )  
6 KAKUDA, GEORGIA KAKUDA, JON )  
7 KAKUDA, MARK KAKUDA, MICHAEL )  
8 KAKUDA, OWEN KAKUDA, )  
9 LEIGHTON KAMAKELE, RAQUEL )  
10 KANAHELE, AMBROSE KANAHELE, )  
11 ANYA KAOHI, DONIA KAOHI, )  
12 KELSEY KAOHI, KOHARU )  
13 KAWAMURA, VERLYNN KEUMA, )  
14 DALSA Y KEUMA, MITSUE KIMURA, )  
15 GIUSEPPI GEREK-KING, KENT )  
16 KINOSHITA, KLAYTON KUBO, )  
17 MARGARET LACHRO, JULIAN )  
18 LACRO, ANNIE LACRO, CHEYENNE )  
19 LAGUNDINO, FERDINAND )  
20 LAGUNDINO, LISETTE LANGLOIS, )  
21 WOLFGANG LANGLOIS, ELWOOD )  
22 MACHADO, ANNA MACHADO, )  
23 KAHILI MALAMA, JOACHIN )  
24 MALAMA, CHARMAINE MANUAL, )  
25 DAVELYN MATA, KAUAKEA MATA, )  
26 ROBERT MATSUDA, NANCY )  
27 MATSUDA, JAMES MCGIHON, DIONIS )  
28 MCGIHON, RON MORIKAWA, )  
STANLEY NAGATA, THELMA )  
NAGATA, TYSON NAKAMITSU, JULIA )  
NAKAYA, EARL NEWCOMB, )  
CAROLYN NEWCOMB, DEXTER )  
NISHI, GLENN NITTA, PATSY NITTA, )  
BRYAN OKAZAKI, DENNIS OKIHARA, )  
ALFREDO PADAMADA, MIKE RILEY, )  
JADE RILEY, KENNETH SAKAI, )  
TERESA SAKAI, NORMAN )  
SALVACION, JAMES HENSLEY, )  
DEBRA SANTIAGO, SHUILUN, )  
SCHMIDT, TAWNIA SCHOENICK, )  
RANDY SETO, SHANLYNN SETO, )  
YUKIO SHIBUYA, KAREN SHIBUYA, )  
CRYSTAL SHIMATSU, ROY )  
SHITANAKA, KRISTINE SHITANAKA, )  
EULA MAE TAALA, SAUNIATU )  
TAALA, DOLLY TAALA, CURTIS )  
KUPAHU, NANY TANIGUCHI, REID )  
TANITA, KATHY TANITA, ROBERT )  
TANITA, MYRNA TUZON, BRIAN )  
UENO, CHARLENE UENO, GARY )  
UNDERWOOD, ANN MARIE )  
UNDERWOOD, MELINDA VIDINHA, )  
CAROL WARDEN, THOMAS WARDEN, )  
HERMAN WILSON, SANDY WILSON, )

1 KIKUE YAMAMOTO, MICHAEL )  
 2 YOKOTAKE, ROWEN YORKMAN )  
 3 , on behalf of themselves and all others )  
 4 similarly situated, )  
 5 Plaintiffs; )  
 6 vs. )  
 7 PIONEER HI-BRED INTERNATIONAL, )  
 8 INC., a DuPont Business and Iowa )  
 9 Corporation, GAY & ROBINSON, INC., a )  
 10 Hawaii corporation; ROBINSON FAMILY )  
 11 PARTNERS, a general partnership )  
 12 registered in Hawaii; and DOE )  
 13 DEFENDANTS 1-10; )  
 14 Defendants. )

15  
 16  
 17  
 18 **COMPLAINT**

19 Plaintiffs, by and through their undersigned attorneys, allege the following against  
 20 Pioneer Hi-Bred International, Inc. ("Pioneer"), Gay & Robinson, Inc., Robinson Family  
 21 Partners, DOE DEFENDANTS 1-10, and ROE CORPORATIONS 1-10:  
 22

23 **I.**  
 24 **JURISDICTION AND VENUE**

- 25 1) This Court has jurisdiction and venue over the above Defendants under Hawaii  
 26 Revised Statute §634-35, as the real property and tortious acts alleged herein  
 27 occurred and reside within this Circuit. Further, Defendants are subject to the  
 28 jurisdiction of this Court because they reside and conduct business in this Circuit.
- 2) This Court has subject matter jurisdiction over this action under Hawaii Revised Statute §603-21.5.
- 3) Venue is proper before this Court under Hawaii Revised Statute §603-36.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**II.**

**PARTIES**

- 4) All plaintiffs reside in Waimea, Kauai, State of Hawaii, and have done so during all relevant time periods herein. Plaintiffs are collectively referred to herein as “Waimea Residents.”
- 5) Defendant PIONEER HI-BRED INTERNATIONAL, INC. (“Pioneer”) is a DuPont business headquartered in Des Moines, Iowa, and has been at all relevant times an Iowa Corporation, which leases land in Waimea, Kauai, since at least August 1998.
- 6) Upon information and belief, GAY & ROBINSON, INC., is a Hawaii corporation, with its principal place of business in Kauai, Hawaii.
- 7) Upon information and belief, ROBINSON FAMILY PARTNERS is a general partnership registered in Hawaii.
- 8) DOE DEFENDANTS 1-10 and ROE CORPORATIONS 1-10 are named hereunder fictitiously for the reason that their true identities are unknown to Plaintiffs, except that they are persons or entities engaged in the activities and responsible for the injuries and damages alleged herein. Plaintiffs at this time are unable to identify the names and identities of the persons or entities described as DOES 1-10 and ROE CORPORATIONS 1-10. Plaintiffs request leave to insert herein their true names and capacities are ascertained.

**III.**

**FACTUAL ALLEGATIONS**

- 9) Waimea is a town located on the southwest coast of Kauai, Hawaii.
- 10) From approximately August 1998, Pioneer has leased fields to the east of Waimea from Gay & Robinson, Inc., and Robinson Family Partners.
- 11) Pioneer uses the fields it leases to conduct open air-testing of genetically modified (“GMO”)<sup>1</sup> crops as part of its Waimea Research Center (“GMO Test Fields”).<sup>2</sup>

---

<sup>1</sup> “GMO” stands for “genetically modified organism.”

<sup>2</sup> See Aerial Photo of Pioneer GMO Operation and Fields adjacent to Waimea, attached hereto as **Exhibit 1**.



1 ***Migration of Fugitive Dust & Dangerous Pesticides from Pioneer's GMO Test Fields***

2 12) Pioneer's GMO Test Field soils are particularly susceptible to erosion by wind and  
3 water mechanisms because of damage to soil structure from historic farming of sugar  
4 cane near Waimea.

5 13) Persistent trade winds also impact Kauai the majority of the year, which generally  
6 blow across Pioneer's GMO Test Fields into the adjacent community of Waimea.

7 14) Despite the well-known susceptibility of local soils to wind and water-borne erosion,  
8 Pioneer has failed to take necessary steps to adequately control soil erosion from the  
9 inception of its GMO operation to the present.

10 15) Rather, Pioneer routinely manages its GMO Test Fields in a manner that creates and  
11 exacerbates soil erosion.

12 16) Pioneer's failure to prevent and control soil erosion from its GMO Test Fields results  
13 in the routine generation of excessive fugitive airborne dust, which has occurred  
14 from the inception of Pioneer's operation to today at levels far in excess of historic  
15 agriculture practiced near Waimea.<sup>3</sup>

16 17) Because of Waimea's persistent windy conditions and Pioneer's failure to control  
17 soil erosion, fugitive dust from Pioneer's GMO Test Fields routinely blows into the  
18 Waimea community and Waimea Residents' homes.

19 18) Soil erosion from Pioneer's GMO Test Fields also negatively impacts water quality  
20 for the adjacent Waimea River, coastline, and nearby coral reef.<sup>4</sup>

21 19) In addition to excessive fugitive dust, Pioneer uses numerous herbicides,  
22 insecticides, fungicides, and other chemicals (collectively, "pesticides") on its GMO  
23 Test Fields on an almost daily basis.<sup>5</sup>

24  
25  
26 <sup>3</sup> See Photos of Fugitive Dust from Pioneer Fields, attached hereto as **Exhibit 2**.

27 <sup>4</sup> Vanessa Van Voorhis, "County Takes Legal Action Against Seed Companies," *The Garden Island*, May 4,  
2011, attached hereto as **Exhibit 3**.

28 <sup>5</sup> For example, Pioneer has applied pesticides individually and in combination to its GMO Test Fields roughly  
67% of all days of the year for at least the past three years.

1 20) Pioneer's intense application of dangerous pesticides occurs far more frequently than  
2 historic agricultural practices followed near Waimea.

3 21) Pioneer's pesticides pose a recognized hazard to migrate into the adjacent Waimea  
4 community and environment by the widely recognized transport mechanisms of run-  
5 off, volatilization drift, and spray drift.

6 22) As in the case of fugitive dust, Waimea's persistent windy conditions increase the  
7 likelihood of offsite drift of pesticides into the Waimea community and environment.

8 23) The likelihood for the offsite migration of pesticides is exacerbated by Pioneer's  
9 failure to reasonably minimize fugitive dust and control soil erosion, which act as  
10 vehicles for pesticide migration into the adjacent community and environment.

11 24) Despite the well-known susceptibility of pesticides for off-site drift, Pioneer has  
12 failed to prevent pesticide drift from its GMO Test Fields into the Waimea  
13 community and environment.

14 ***Recognized Dangers of Pioneer's Fugitive Dust and Chemicals***

15 25) Pesticides and fugitive dust from Pioneer's GMO Test Fields are recognized  
16 pollutants that present known and unknown risks to human health and the  
17 environment associated with acute, sub-chronic, and chronic exposure.

18 26) For example, Pioneer uses restricted-use pesticides on its GMO Fields.<sup>6</sup> Restricted  
19 use pesticides are pesticides that may cause unreasonably adverse effects to human  
20 health and the environment even when used as directed by the product labeling.

21 27) A single exposure to the pesticides (or combination of pesticides) used by Pioneer  
22 can adversely impact human health. Likewise, many of the delayed effects of  
23 exposure to the individual pesticides and combinations of pesticides used by Pioneer  
24 are unknown.

25 28) Pesticides used by Pioneer also pose substantial risks to the environment of Waimea.  
26  
27

---

28 <sup>6</sup> See Department of Agriculture Restricted Use Sales Report for Pioneer, attached hereto as **Exhibit 4**.

1 29) Accordingly, the inherent risks associated with Pioneer's use of pesticides on its  
2 GMO Test Fields cannot be eliminated.

3 30) Because of the inherent risks for pesticide exposure and the potential of pesticide  
4 migration, Pioneer has a duty to not apply pesticides in a way that will contact  
5 Waimea Residents directly or through spray drift.

6 31) Waimea Residents further contend they have the right to know what chemicals are  
7 used by Pioneer, and the actual risks posed by those chemicals to their health, their  
8 families, and their environment.

9 32) Despite Pioneer's obligation to prevent pesticide drift into the surrounding  
10 community and environment and knowledge of the hazard to Waimea and the  
11 environment from inherently dangerous pesticides, Pioneer has failed to: a)  
12 investigate the degree of danger to Waimea residents and the environment; b) warn  
13 Waimea residents of the risks posed by the actual pesticides it uses; and c) prevent  
14 pesticides from migrating into Waimea.

15 33) Pioneer pesticides therefore routinely migrate from Pioneer's GMO Test Fields into  
16 the Waimea community and environment.

17 34) Like its pesticides, Pioneer's fugitive dust is also a recognized pollutant that presents  
18 known risks for human health from both short- and long-term exposures.

19 35) Pioneer's fugitive dust exacerbates the risks associated with Pioneer's use of  
20 inherently dangerous pesticides because fugitive dust acts as a transport mechanism  
21 to carry pesticides into Waimea.

22 36) Pioneer therefore has similar duties to prevent fugitive dust from impacting the  
23 Waimea community.

24 37) Despite the recognized danger to human health, the environment, and the real and  
25 personal property of Waimea Residents, Pioneer has failed to prevent the migration  
26 of either fugitive dust or pesticides into the Waimea community and environment.

1 ***Pioneer's Historic Disregard for Waimea's Concerns***

2 38) Waimea residents have attempted to bring their concerns over the persistent drift of  
3 fugitive dust and dangerous pesticides into the Waimea community to Pioneer's  
4 attention for over a decade without success.

5 39) In June 2000, Waimea residents petitioned Pioneer to address the impact of fugitive  
6 dust and chemicals from Pioneer's GMO Test Fields upon their community (the  
7 "Waimea Petition").<sup>7</sup>

8 40) Within the Waimea Petition, Waimea residents explained their concern that dust  
9 from Pioneer GMO operations was being deposited in "our homes, our cars, our  
10 streets and buildings and, most alarmingly, our children, who are forced to breath  
11 dust laden air as a part of living."<sup>8</sup>

12 41) The Waimea Petition further gave Pioneer notice of residents' concern that dust from  
13 Pioneer fields "may contain other pollutants, such as fertilizers and/or pesticides"  
14 with long-term health consequences for their community, that "current provisions for  
15 reducing dust pollution are not being adequately implemented," and that Pioneer had  
16 not complied "with existing regulations intended to restrict dust pollution."<sup>9</sup>

17 42) Following the Waimea Petition in June 2000, Pioneer responded by letter on October  
18 31, 2000.<sup>10</sup> In its response, Pioneer affirmed its commitment to clear air, recognized  
19 residents' reasonable concerns about the "red dust problem that is so much a feature  
20 of all of our lives," and expressed its intention to take immediate steps to minimize  
21 dust from Pioneer fields.<sup>11</sup>

22  
23  
24  
25 <sup>7</sup> See Waimea Residents' June 2000 Petition for Cleaner Air, attached hereto as **Exhibit 5**.

26 <sup>8</sup> *Id.*

27 <sup>9</sup> *Id.*

28 <sup>10</sup> See October 31, 2000, Letter from Pioneer Senior Scientist, G.O. Edmeades, attached hereto as **Exhibit 6**.

<sup>11</sup> *Id.*

1 43) After Pioneer's representations, however, Waimea residents continued to see dust  
2 and smell chemicals from Pioneer's GMO Test Fields due to Pioneer's failure to  
3 undertake the "immediate steps" it had promised.

4 44) Since the Waimea Petition, the influx of dust and chemicals from Pioneer's fields  
5 has continued while Waimea Residents fight a daily battle to keep their homes and  
6 property free of dust and chemicals and continue to suffer on a daily basis.<sup>12</sup>

7 ***Pioneer's Disregard for Kauai Ordinance 808 & the Hawaii Air Pollution Control Act***

8 45) In addition to its disregard of the Waimea Petition, Pioneer's GMO Test Fields are  
9 operating in violation of Kauai Ordinance 808 and the Hawaii Air Pollution Control  
10 Act.

11 46) Kauai Ordinance 808 sets standards for grubbing and grading land in Kauai.<sup>13</sup>

12 47) The express purpose and scope of Ordinance 808 is "to safeguard the public health,  
13 safety and welfare; to protect property; [and] to control soil erosion and  
14 sedimentation by setting standards for grading, grubbing, and stockpiling"  
15 operations on Kauai.<sup>14</sup>

16 48) Thus, Ordinance 808 establishes standards to prevent injury to the health and  
17 property of others from contaminants like wind-blown dust and chemicals created by  
18 unnecessary erosion from projects like Pioneer's GMO operation above Waimea.

19 49) In 2002, Pioneer applied for an Agricultural Exemption under Ordinance 808 for its  
20 Waimea Research Center.

21 50) As part of its application, Pioneer submitted a "Conservation Plan" to satisfy  
22 Ordinance 808's requirements, which pledged to: a) plant windbreaks to minimize  
23 windblown erosion from its fields; b) create a grassed waterway to safely dispose of  
24

25  
26 <sup>12</sup> See Exemplar Photos of Dust Impact to Waimea Homes, attached hereto as **Exhibit 7**.

27 <sup>13</sup> Kauai County Revised Code of Ordinance 808, §22-7.4 ("Grubbing' means any act by which vegetation or  
28 materials, including but not limited to trees, timber, shrubbery, plants, concrete, or asphalt concrete, is  
dislodged or uprooted from the surface exposing bare ground.")

<sup>14</sup> *Id.*, §22-7.1 Purpose and Scope.

1 water run-off; and c) plant conservation cover on land temporarily removed from  
2 planting.<sup>15</sup>

3 51) After submitting its 2002 Conservation Plan to obtain an Agricultural Exemption  
4 from Ordinance 808, Pioneer failed to implement the dust mitigation measures of its  
5 Conservation Plan despite knowledge of dust and pesticide complaints raised within  
6 the Waimea Petition.<sup>16</sup>

7 52) Pioneer did not plant windbreaks around its fields, did not create a grassed waterway  
8 to safely dispose of water run-off, and did not plant conservation cover on land  
9 temporarily removed from planting as promised within its 2002 Conservation Plan.

10 53) Rather, Pioneer's claim that its has belatedly implemented dust and erosion  
11 mitigation measures (many of which were originally promised within Pioneer's 2002  
12 Conservation Plan) underscore Pioneer's failure to conduct its GMO research  
13 operation in accordance with generally accepted agricultural and management  
14 practices.

15 54) In addition to its failure to implement its 2002 Conservation Plan, recent violations  
16 of Kauai Ordinance 808 demonstrate Pioneer's ongoing failure to implement best  
17 management practices required by Ordinance 808 to prevent soil erosion that leads  
18 to fugitive dust.

19 55) As the Kauai County Engineer's March 2011 Notice of Violation notes, Pioneer has  
20 failed to keep its fields "in a condition that would not otherwise prevent damage by  
21 sedimentation to streams, watercourses, natural areas and or the property of  
22 others."<sup>17</sup>

23  
24  
25  
26 <sup>15</sup> See October 22, 2002, Letter to Kauai County Engineer for Ag Exemption, attached hereto as **Exhibit 8**; see  
also Pioneer 2002 Conservation Plan, attached hereto as **Exhibit 9**.

27 <sup>16</sup> See Ex. 1, Aerial Photo depicting lack of: a) wind breaks; b) grassed water way to dispose of water run-off;  
and c) lack of conservation cover on land removed from planting.

28 <sup>17</sup> See March 2011 Notice of Violation, attached hereto as **Exhibit 10**.

1 56) This Notice of Violation specifically cites Pioneer for grubbing its GMO Test Fields  
2 without a permit and failing to implement “Best Management Practices” as required  
3 by Kauai Ordinance 808.<sup>18</sup>

4 57) Pioneer has therefore failed to satisfy its obligations under Ordinance 808, failed to  
5 implement its own 2002 Conservation Plan, and failed to undertake the immediate  
6 measures promised in response to the Waimea Petition in 2000.

7 58) Pioneer’s failure to satisfy its obligations under Ordinance 808, failure to implement  
8 its 2002 Conservation Plan, and failure to undertake measures promised in response  
9 to the Waimea Petition in 2000 all demonstrate Pioneer’s failure to follow generally  
10 accepted agricultural and management practices.

11 59) Similarly, under the Hawaii Air Pollution Control Act, fugitive dust is the  
12 “uncontrolled emission of solid airborne particulate matter from any source other  
13 than combustion.”<sup>19</sup>

14 60) Under Hawaii Administrative Rule §11-60.1-33, “[n]o person shall cause or permit  
15 visible fugitive dust to become airborne without taking reasonable precautions.”<sup>20</sup>

16 61) “Reasonable precautions” under HAC §11-60.1-33 for agricultural operations  
17 requires operations to be conducted “in such a manner as to reasonably minimize  
18 fugitive dust.”<sup>21</sup>

19 62) Pioneer’s failure to satisfy its obligations under Kauai Ordinance 808, implement  
20 measures promised within its Conservation Plan, adequately respond to Waimea  
21 Residents’ June 2000 petition, and otherwise prevent the ongoing creation and  
22 deposition of fugitive dust from its GMO operation for over a decade demonstrates  
23 Pioneer’s failure to reasonably minimize fugitive dust and constitute violations of  
24 the Hawaii Air Pollution Control Act.

---

25  
26 <sup>18</sup> *Id.*

27 <sup>19</sup> HRS §342B-1.

28 <sup>20</sup> Haw. Admin. Rules §11-60.1.-33(a).

<sup>21</sup> *Id.*, §11-60.1.-33 (a)(5).



1 ***Impact of Pioneer's Fugitive Dust and Pesticides on Waimea***

2 63) Pioneer's fugitive dust and pesticides have substantial impacts for Waimea  
3 Residents, the Waimea community, and the environment.

4 64) Pioneer pesticides and fugitive dust result in direct injury to Waimea residents' real  
5 and personal property from fugitive dust, chemical odors in the Waimea community,  
6 increased health risks for Waimea residents, substantial impact to the lives of  
7 Waimea residents, and a reduction of the value and beneficial use and enjoyment of  
8 Waimea homes within the drift zone of fugitive dust and chemical pollutants from  
9 Pioneer's GMO research operation.<sup>22</sup>

10 65) Under Hawaii law, an owner of real property must also disclose all conditions, past  
11 or present, which can be expected to measurably affect the value of their property.<sup>23</sup>

12 66) Pesticide use and pesticide odors in one's general neighborhood are two specifically  
13 recognized conditions that must be disclosed.<sup>24</sup>

14 67) Similarly, the substantial fugitive dust created by Pioneer's GMO operation results  
15 in excessive additional work for homeowners in the drift zone, which can also be  
16 expected to measurably affect the value of their property.

17 68) Pioneer's use of inherently dangerous pesticides and creation of fugitive dust  
18 therefore not only adversely impact the quality of life and property of Waimea  
19 Residents, but also lowers the value of their homes.

20 69) Pioneer's fugitive dust and inherently dangerous pesticides negatively impact local  
21 farmers who do not want either Pioneer's dust or pesticides to impact their fields,  
22 and local businesses who do not want dust and pesticides in their establishments.

23 70) Pioneer's fugitive dust and inherently dangerous pesticides negatively impact the  
24 local environment of Waimea as well, including local corn and taro farms, local  
25

26 <sup>22</sup> This Complaint does not allege individual personal injuries on behalf of Waimea Residents, which will be  
27 brought, if any, by separate complaint.

28 <sup>23</sup> HRS 508D.

<sup>24</sup> See Hawaii Real Property Seller Disclosure Form, attached hereto as **Exhibit 11**.

1 honey bee populations, the adjacent Waimea River, and the ocean and coral reef,  
2 which have all long predated Pioneer's testing of GMO crops adjacent to Waimea.

3  
4 **FIRST CLAIM FOR RELIEF**

5 **(Negligence – Failure to Use Due Care)**

6 71) Waimea Residents repeat and incorporate the above paragraphs herein.

7 72) Pioneer owes Waimea Residents a duty to use due care to prevent the migration of  
8 fugitive dust and dangerous pesticides into the Waimea community and  
9 environment.

10 73) Despite community complaints and knowledge of the risks posed by its generation of  
11 fugitive dust and use of dangerous pesticides, Pioneer has failed to prevent the  
12 migration of pesticides and fugitive dust into Waimea Residents' homes and the  
13 surrounding community.

14 74) Pioneer's negligent failure to use due care has caused the routine migration of  
15 fugitive dust and pesticides into Waimea Residents' homes, which has resulted in  
16 substantial impact to the real and personal property of Waimea Residents, regular  
17 chemical odors in the community, an increase in health risks for Waimea  
18 community, and a substantial reduction in the value and beneficial use and  
19 enjoyment of Waimea Residents' homes and property.

20 75) Pioneer's conduct has been undertaken with reckless disregard for the foreseeable  
21 consequences to Waimea. Pioneer's conduct therefore justifies an award of  
22 exemplary or punitive damages in an amount to be proven at the trial of this matter.

23 76) Because of the invasion of fugitive dust and pesticides into Waimea homes because  
24 of Pioneer's negligence, it has been necessary for Waimea Residents to incur  
25 expenses and other special damages in an amount to be proven at trial.

26 77) As a proximate and legal result of the negligent conduct of Pioneer, Waimea  
27 Residents have been compelled to resort to litigation and therefore request an award  
28

1 of all consequential damages, including, but not limited to, attorneys' fees and costs  
2 incurred in such litigation, in amounts to be proven at time of trial.

3  
4 **SECOND CLAIM FOR RELIEF**

5 **(Negligence – Failure to Investigate and Warn)**

6 78) Waimea Residents repeat and incorporate the above paragraphs herein.

7 79) Pioneer owes a duty to investigate and warn of the actual risks posed by its use of  
8 dangerous pesticides to the community of Waimea. Despite knowledge of the hazard  
9 created by its use of dangerous pesticides, Pioneer has failed to investigate or warn  
10 of the risks to the Waimea community for pesticide migration.

11 80) Pioneer's negligent failure to investigate, select, warn, and use pesticides on its  
12 GMO Test Fields has caused the routine migration of pesticides into Waimea  
13 Residents' homes, which has resulted in regular chemical odors in the community,  
14 an increase in health risks for the Waimea community, and a substantial reduction in  
15 the value and beneficial use and enjoyment of Waimea Residents' homes and  
16 property.

17 81) Pioneer's conduct has been undertaken with reckless disregard for the foreseeable  
18 consequences to Waimea. Pioneer's conduct therefore justifies an award of  
19 exemplary or punitive damages in an amount to be proven at the trial of this matter.

20 82) Because of the invasion of pesticides into Waimea homes because of Pioneer's  
21 negligence, it has been necessary for Waimea Residents to incur expenses and other  
22 special damages in an amount to be proven at trial.

23 83) As a proximate and legal result of the negligent conduct of Pioneer, Waimea  
24 Residents have been compelled to resort to litigation and therefore request an award  
25 of all consequential damages, including, but not limited to, attorneys' fees and costs  
26 incurred in such litigation, in amounts to be proven at time of trial.

**THIRD CLAIM FOR RELIEF**

**(Negligence Per Se)**

1  
2  
3 84) Waimea Residents repeat and incorporate the above paragraphs herein.

4 85) Pioneer’s generation of excessive fugitive dust and negligent and reckless use of  
5 inherently dangerous pesticides violates both Hawaii state law and Kauai ordinances:

6 ***Hawaii Revised Statute 149A-2***

7 86) Hawaii Revised Statute 149A-2 prohibits the use of pesticides in any manner that  
8 presents an unreasonable adverse effect on the environment, which includes any  
9 unreasonable risk to humans or the environment with consideration for the  
10 economic, social and environmental costs and benefits of the pesticide’s use.

11 87) Waimea Residents belong to the class of persons intended to be protected by HRS  
12 149A-2.

13 88) Pioneer’s intentional use of inherently dangerous pesticides without consideration of  
14 the risks to Waimea Residents violates HRS 149A-2 and constitutes negligence per  
15 se under Hawaii law.

16 ***Hawaii Air Pollution Control Act***

17 89) Under the Hawaii Air Pollution Control Act, fugitive dust is the “uncontrolled  
18 emission of solid airborne particulate matter from any source other than  
19 combustion.”<sup>25</sup>

20 90) Under Hawaii Administrative Rule §11-60.1-33, “[n]o person shall cause or permit  
21 visible fugitive dust to become airborne without taking reasonable precautions.”<sup>26</sup>

22 91) “Reasonable precautions” under HAC §11-60.1-33 for agricultural operations  
23 requires operations to be conducted “in such a manner as to reasonably minimize  
24 fugitive dust.”<sup>27</sup>

25  
26  
27 <sup>25</sup> HRS §342B-1.

28 <sup>26</sup> Haw. Admin. Rules §11-60.1.-33(a).

<sup>27</sup> *Id.*, §11-60.1.-33 (a)(5).

1 92) Pioneer’s failure to satisfy its obligations under Kauai Ordinance 808, implement  
2 measures promised within its own Conservation Plan, adequately respond to  
3 Waimea Residents’ June 2000 petition, and otherwise prevent the ongoing creation  
4 and deposition of fugitive dust from its GMO testing operation for over a decade  
5 demonstrates Pioneer’s failure to reasonably minimize fugitive dust and constitutes  
6 the violation of the Hawaii Air Pollution Control Act.

7 93) Waimea Residents belong to the class of persons intended to be protected by the  
8 Hawaii Air Pollution Control Act.

9 94) Pioneer’s intentional generation of fugitive dust without consideration of the impact  
10 to Waimea Residents violates the Hawaii Air Pollution Control Act and constitutes  
11 negligence per se under Hawaii law.

12 ***Kauai Ordinance 808***

13 95) Kauai Ordinance 808 sets standards for grubbing and grading land in Kauai.<sup>28</sup>

14 96) The express purpose and scope of Ordinance 808 is “to safeguard the public health,  
15 safety and welfare; to protect property; [and] to control soil erosion and  
16 sedimentation by setting standards for grading, grubbing, and stockpiling”  
17 operations on Kauai.<sup>29</sup>

18 97) Pioneer has failed to satisfy its obligations under Ordinance 808 with respect to the  
19 implementation of its Conservation Plan and best management practices as required  
20 under Ordinance 808.

21 98) Pioneer’s violation of Kauai Ordinance 808 has caused injury and damages to  
22 Waimea Residents of the type this statute was designed to protect against.

23 99) Pioneer’s intentional generation of fugitive dust without consideration of the impact  
24 to Waimea Residents and failure to satisfy its obligations under Kauai Ordinance  
25 808 therefore constitutes negligence per se under Hawaii law.

27 <sup>28</sup> Kauai County Revised Code of Ordinance 808.

28 <sup>29</sup> *Id.*, §22-7.1 Purpose and Scope.

1 100) Pioneer's disregard of Hawaii Revised Statutes, Administrative Rules, and Kauai  
2 Ordinance 808 has been undertaken with reckless disregard for the foreseeable  
3 consequences to the Waimea Residents. Pioneer's conduct therefore justifies an  
4 award of exemplary or punitive damages in an amount to be proven at the trial of  
5 this matter.

6 101) Because of the invasion of pesticides and fugitive dust into the Waimea  
7 community and Waimea residents' homes, it has been necessary for Waimea  
8 Residents to incur expenses and other special damages in an amount to be proven at  
9 trial.

10 102) As a proximate and legal result of the negligent conduct of Pioneer, Waimea  
11 Residents have been compelled to resort to litigation and therefore request an award  
12 of all consequential damages, including, but not limited to, attorneys' fees and costs  
13 incurred in such litigation, in amounts to be proven at time of trial.

14  
15 **THIRD CLAIM FOR RELIEF**

16 **(Strict Liability)**

17 103) Waimea Residents repeat and incorporate the above paragraphs herein.

18 104) Pioneer's application of pesticides is an abnormally dangerous activity because  
19 Pioneer cannot eliminate the risks even when it exercises the utmost care.

20 105) Pioneer's use of pesticides adversely impacts the health and property of persons  
21 who live in the drift zone created by Pioneer's pesticides.

22 106) Specifically, Pioneer's use of inherently dangerous pesticides causes the routine  
23 migration of pesticides into the Waimea community, which results in regular  
24 chemical odors in the community, an increase in health risks for the Waimea  
25 community, and a substantial reduction in the value and beneficial use and  
26 enjoyment of Waimea Residents' homes.

27 107) Pioneer is strictly liable for all damages that arise from its use of inherently  
28 dangerous pesticides.

1 108) Pioneer's conduct has been undertaken with reckless disregard for the foreseeable  
2 consequences to the Waimea community. Indeed, despite actual knowledge of the  
3 potential hazards created by its use of pesticides, Pioneer has failed to take steps to  
4 prevent the migration of pesticides into Waimea Residents' homes and the Waimea  
5 community or provide any warning to the community.

6 109) Pioneer's reckless conduct justifies an award of exemplary or punitive damages in  
7 an amount to be proven at the trial of this matter.

8 110) Because of Pioneer's use of abnormally dangerous pesticides, it has been  
9 necessary for Waimea Residents to incur expenses and other special damages in an  
10 amount to be proven at trial.

11 111) As a proximate and legal result of Pioneer's conduct, Waimea Residents have been  
12 compelled to resort to litigation and therefore request an award of all consequential  
13 damages, including, but not limited to, attorneys' fees and costs incurred in such  
14 litigation, in amounts to be proven at time of trial.

15  
16 **FIFTH CLAIM FOR RELIEF**

17 **(Trespass)**

18 112) Waimea Residents repeat and incorporate the above paragraphs herein.

19 113) Pioneer's negligent and reckless acts have caused excessive fugitive dust and  
20 abnormally dangerous chemicals to enter the Waimea community and Waimea  
21 Residents' real property.

22 114) Pioneer's generation of excessive fugitive dust and use of dangerous pesticides  
23 cause injury to Waimea Residents' property and an increase in health risks to the  
24 Waimea community.

25 115) Specifically, Pioneer's generation of excessive fugitive dust and use of dangerous  
26 pesticides causes the routine migration of pesticides and fugitive dust into the  
27 community and results in regular chemical odors in the community, an increase in  
28



1 health risks for Waimea Residents, and a substantial reduction in the value and  
2 beneficial use and enjoyment of Waimea Residents' homes.

3 116) Pioneer is therefore liable for the trespass of its chemicals and fugitive dust into  
4 the Waimea community and onto Waimea Residents' property.

5 117) Pioneer's reckless conduct justifies an award of exemplary or punitive damages in  
6 an amount to be proven at the trial of this matter.

7 118) Because of the invasion of pesticides and fugitive dust into Waimea Residents'  
8 homes, it has been necessary for Waimea Residents to incur expenses and other  
9 special damages in an amount to be proven at trial.

10 119) As a proximate and legal result of the negligent conduct of Pioneer, Waimea  
11 Residents have been compelled to resort to litigation and therefore request an award  
12 of all consequential damages, including, but not limited to, attorneys' fees and costs  
13 incurred in such litigation, in amounts to be proven at time of trial.

14  
15 **SIXTH CLAIM FOR RELIEF**

16 **(Nuisance)**

17 120) Waimea Residents repeat and incorporate the above paragraphs herein.

18 121) Pioneer's generation of excessive fugitive dust and use of dangerous pesticides has  
19 caused the routine migration of pesticides and fugitive dust into the community and  
20 resulted in regular chemical odors in the community, an increase in health risks for  
21 Waimea Residents, and a substantial reduction in the value and beneficial use and  
22 enjoyment of Waimea Residents' homes.

23 122) Pioneer's generation of excessive fugitive dust and use of dangerous pesticides has  
24 resulted in harm, inconvenience, and damage to Waimea Residents, which has  
25 unlawfully annoyed and disturbed Waimea Residents' free use, possession, and  
26 enjoyment of their property.

27 123) Pioneer's use of dangerous pesticides and generation of excessive fugitive dust  
28 constitutes a nuisance to the Waimea community and Waimea Residents' homes.

1 124) Pioneer's failure to prevent excessive fugitive dust and pesticides from impacting  
2 the Waimea community, failure to respond to the concerns of Waimea residents,  
3 failure to comply with Kauai Ordinance 808, failure to implement erosion measures  
4 contemplated by its own Conservation Plan, failure to comply with the Hawaii Air  
5 Pollution Control Act, and violation of Hawaii Revised Statute 149A-2 all  
6 demonstrate Pioneer's failure to conduct its operations in a manner consistent with  
7 generally accepted agricultural and management practices under Hawaii Revised  
8 Statutes, Chapter 165.

9 125) Pioneer is therefore liable for the damages that are the legal and proximate result  
10 of the nuisance created by its use of pesticides and generation of excessive fugitive  
11 dust.

12 126) Pioneer's reckless conduct justifies an award of exemplary or punitive damages in  
13 an amount to be proven at the trial of this matter.

14 127) Because of the invasion of pesticides and dust into Waimea Residents' homes, it  
15 has been necessary for Waimea Residents to incur expenses and other special  
16 damages in an amount to be proven at trial.

17 128) As a proximate and legal result of the negligent conduct of Pioneer, Waimea  
18 Residents have been compelled to resort to litigation and therefore request an award  
19 of all consequential damages, including, but not limited to, attorneys' fees and costs  
20 incurred in such litigation, in amounts to be proven at time of trial.

21  
22 **SEVENTH CLAIM FOR RELIEF**

23 **(Landlord Liability for Acts of Tenant)**

24 129) Waimea Residents repeat and incorporate the above paragraphs herein.

25 130) Upon information and belief, Gay & Robinson, Inc., leases certain real property to  
26 Robinson Family Partners, which in turn subleases the real property to Pioneer for  
27 operation of its GMO Test Fields and related GMO testing operation in Waimea,  
28 Kauai.

1 131) Gay & Robinson, Inc., and Robinson Family Partners are collectively referred to  
2 herein as "Gay & Robinson."

3 132) Upon information and belief, Gay & Robinson is aware that Pioneer uses the real  
4 property it leases for operation of a GMO testing facility and has consented to this  
5 use.

6 133) Upon information and belief, Gay & Robinson knows or should know that  
7 Pioneer's GMO testing operation involves the use of inherently dangerous pesticides  
8 and generation of fugitive dust.

9 134) Upon information and belief, Gay & Robinson knows or should know that  
10 Pioneer's GMO operation involves an unreasonable risk to Waimea Residents for  
11 the generation of excessive fugitive dust and migration of dangerous pesticides.

12 135) Because of Gay & Robinson's historic measures to address the impact of fugitive  
13 dust and pollutants on the town of Waimea, Gay & Robinson also knows or should  
14 know that Pioneer's GMO operations necessarily involve the creation of fugitive  
15 dust, dangerous pesticides, and other pollutants that impact Waimea.

16 136) Accordingly, Gay & Robinson is jointly and severally liable for negligence,  
17 negligence per se, strict liability, nuisance and trespass committed by Pioneer.

18 137) Gay & Robinson's reckless conduct justifies an award of exemplary or punitive  
19 damages in an amount to be proven at the trial of this matter.

20 138) Because of the invasion of pesticides and dust into Waimea Residents' homes, it  
21 has been necessary for Waimea Residents to incur expenses and other special  
22 damages in an amount to be proven at trial.

23 139) As a proximate and legal result of the negligent conduct of Pioneer, Waimea  
24 Residents have been compelled to resort to litigation and therefore request an award  
25 of all consequential damages, including, but not limited to, attorneys' fees and costs  
26 incurred in such litigation, in amounts to be proven at time of trial.

1 WHEREFORE, Plaintiffs pray for judgment jointly and severally against

2 Defendants as follows:

- 3 1. General, special, and consequently damages in an amount to be proven at trial;
- 4 2. Diminution in value to Waimea Residents' real property due to Pioneer's
- 5 generation of fugitive dust and use of dangerous pesticides;
- 6 3. The cost to cure or mitigate the conditions alleged and the reasonable expenses
- 7 of temporary housing reasonably necessary during the repair;
- 8 4. Preliminary and permanent injunctive relief to require Pioneer to: a) investigate
- 9 the actual risks posed by the use of inherently dangerous pesticides for the
- 10 Waimea community; b) give warning to the Waimea Community of the risks
- 11 posed by Pioneer's pesticides; and c) enjoin Pioneer's use of inherently
- 12 dangerous pesticides until the full potential for harm to the Waimea community
- 13 is disclosed;
- 14 5. Preliminary and permanent injunctive relief to require Pioneer to immediately
- 15 cease its generation of excessive fugitive dust until and unless it complies with
- 16 all applicable Hawaii laws and ordinances;
- 17 6. Punitive damages for Defendants' wanton, reckless, and grossly negligent
- 18 conduct;
- 19 7. Reasonable attorney's fees;
- 20 8. Any prejudgment interest provided by statute;
- 21 9. For such other and further relief as the Court may deem just and proper.

22 DATED this 12<sup>th</sup> day of December, 2011.

23   
24 **LAW OFFICES OF GERARD**  
25 **JERVIS**

26 GERARD A. JERVIS  
27 Hawaii Bar No. 2490  
28 354 Uluniu Street, Ste. 100  
Kailua, Hawaii 96734  
T: (808) 262-2828  
F: (808) 261-2921

23   
24 **LYNCH, HOPPER, SALZANO &**  
25 **SMITH**

26 P. KYLE SMITH  
27 Hawaii Bar No. 9533  
28 1640 Alta Drive, Ste. 11  
Las Vegas, NV 89106  
T: (702) 868-1115  
F: (702) 868-1114

1  
2  
3  
4                   **IN THE CIRCUIT COURT OF THE FIRST CIRCUIT**  
5                   **STATE OF HAWAII**

6 JIM AANA, MARIE AANA, THELMA )  
 AANA, WILSON AANA, JOHN AANA, )  
 7 CORRADO ALTOMARE, MICHIO )  
 ALTOMARE, ROY APO, ALLEN )  
 8 ARQUETTE, SUSAN ARQUETTE, )  
 PUANANI ARRUDA, BLAISDELL )  
 9 AYAU, RHONDELL AYAU, YURIKO )  
 BABA, LANI BERNALDES, JOHN )  
 10 BERNALDES, MARCUS BERNALDES, )  
 JEFFREY BRYANT, CINDY BRYANT, )  
 11 PAMELA CALDWELL, JOANNA )  
 CASTILLO, AARON CHAR, KARIN )  
 12 DAMERON, ERIC DAMERON, EDWIN )  
 DELA CRUZ, KRIS DELA CRUZ, )  
 13 THOMAS DUARTE, BARBIE DUARTE, )  
 DOUGLAS DUSENBERRY, LINDA )  
 14 DUSENBERRY, SHELBY ERDMANN, )  
 ERIC ERDMANN, PEDRO GARABILEZ, )  
 15 PATRICIA GARABILEZ, JAY )  
 GARDNER, RICKY HAMADA, DELIA )  
 16 HAMADA, GREG HARDING, )  
 MICHELLE HIGGINS, GARY HIGGINS, )  
 17 RUSSEL HILL, JODI HOOKANO, )  
 MITSUKO HOOKANO, RENFRED )  
 18 HOOKANO, MICHELLE HOOKANO, )  
 CARLY IBARA, LESLIE IBARA, LINDA )  
 19 IBARA, MELANIE IBARA, TOM IBARA, )  
 KEVIN IWAI, BENJINETTE IWAI, )  
 20 NOELANI NAWAI, NALANI JOE )  
 GOMES, ALBETTE BAJO, ALAN BAJO, )  
 21 AMY JUNG, ELLIOT JUNG, MERLA )  
 KAAUMAONA, WENDALL KABUTAN, )  
 22 WANDA KABUTAN, MARGARET )  
 KAHALE, TIANI KAJIWARA, IVAN )  
 23 RUIZ, BERT KAKUDA, YVONNE )  
 KAKUDA, GEORGIA KAKUDA, JON )  
 24 KAKUDA, MARK KAKUDA, MICHAEL )  
 KAKUDA, OWEN KAKUDA, )  
 25 LEIGHTON KAMAHELE, RAQUEL )  
 KANAHELE, AMBROSE KANAHELE, )  
 26 ANYA KAOHI, DONIA KAOHI, )  
 KELSEY KAOHI, KOHARU )  
 27 KAWAMURA, VERLYNN KEUMA, )  
 28 DALSAY KEUMA, MITSUE KIMURA, )

Case No.:  
Dept No.:

**DEMAND FOR JURY TRIAL**

1 GIUSEPPI GEREK-KING, KENT )  
 KINOSHITA, KLAYTON KUBO, )  
 MARGARET LACHRO, JULIAN )  
 2 LACRO, ANNIE LACRO, CHEYENNE )  
 LAGUNDINO, FERDINAND )  
 3 LAGUNDINO, LISETTE LANGLOIS, )  
 WOLFGANG LANGLOIS, ELWOOD )  
 4 MACHADO, ANNA MACHADO, )  
 KAHILI MALAMA, JOACHIN )  
 5 MALAMA, CHARMAINE MANUAL, )  
 DAVELYN MATA, KAUAKEA MATA, )  
 6 ROBERT MATSUDA, NANCY )  
 MATSUDA, JAMES MCGIHON, DIONIS )  
 7 MCGIHON, RON MORIKAWA, )  
 STANLEY NAGATA, THELMA )  
 8 NAGATA, TYSON NAKAMITSU, JULIA )  
 NAKAYA, EARL NEWCOMB, )  
 9 CAROLYN NEWCOMB, DEXTER )  
 NISHI, GLENN NITTA, PATSY NITTA, )  
 10 BRYAN OKAZAKI, DENNIS OKIHARA, )  
 ALFREDO PADAMADA, MIKE RILEY, )  
 11 JADE RILEY, KENNETH SAKAI, )  
 TERESA SAKAI, NORMAN )  
 12 SALVACION, JAMES HENSLEY, )  
 DEBRA SANTIAGO, SHUILUN, )  
 13 SCHMIDT, TAWNYA SCHOENICK, )  
 RANDY SETO, SHANLYNN SETO, )  
 14 YUKIO SHIBUYA, KAREN SHIBUYA, )  
 CRYSTAL SHIMATSU, ROY )  
 15 SHITANAKA, KRISTINE SHITANAKA, )  
 EULA MAE TAALA, SAUNIATU )  
 16 TAALA, DOLLY TAALA, CURTIS )  
 KUPAHU, NANY TANIGUCHI, REID )  
 17 TANITA, KATHY TANITA, ROBERT )  
 18 TANITA, MYRNA TUZON, BRIAN )  
 UENO, CHARLENE UENO, GARY )  
 19 UNDERWOOD, ANN MARIE )  
 20 UNDERWOOD, MELINDA VIDINHA, )  
 CAROL WARDEN, THOMAS WARDEN, )  
 21 HERMAN WILSON, SANDY WILSON, )  
 KIKUE YAMAMOTO, MICHAEL )  
 22 YOKOTAKE, ROWEN YORKMAN, on )  
 behalf of themselves and all others similarly )  
 23 situated, )  
 24 Plaintiffs; )  
 25 vs. )  
 26 PIONEER HI-BRED INTERNATIONAL, )  
 INC., a DuPont Business and Iowa )  
 27 Corporation, GAY & ROBINSON, INC., a )  
 Hawaii corporation; ROBINSON FAMILY )  
 28 PARTNERS, a general partnership )

1 registered in Hawaii; and DOE )  
2 DEFENDANTS 1-10; )

3 Defendants. )  
4 )  
5 )

---


6  
7 **DEMAND FOR JURY TRIAL**

8  
9 COMES NOW Plaintiffs above-named, by and through their undersigned  
10 counsel, and hereby demands a trial by jury on all issues so triable herein.

11  
12 DATED: Kailua, Hawaii, December 12<sup>th</sup>, 2011.

13  
14   
15 **LAW OFFICES OF GERARD**  
16 **JERVIS**

17 GERARD A. JERVIS  
18 Hawaii Bar No. 2490  
19 354 Uluniu Street, Ste. 100  
20 Kailua, Hawaii 96734  
21 T: (808) 262-2828  
22 F: (808) 261-2921

23   
24 **LYNCH, HOPPER, SALZANO &**  
25 **SMITH**

26 P. KYLE SMITH  
27 Hawaii Bar No. 9533  
28 1640 Alta Drive, Ste. 11  
Las Vegas, NV 89106  
T:(702)868-1115  
F: (702)868-1114



# EXHIBIT 1

# Pioneer's Waimaea GMO Test Center & Fields



GMO Test  
Fields

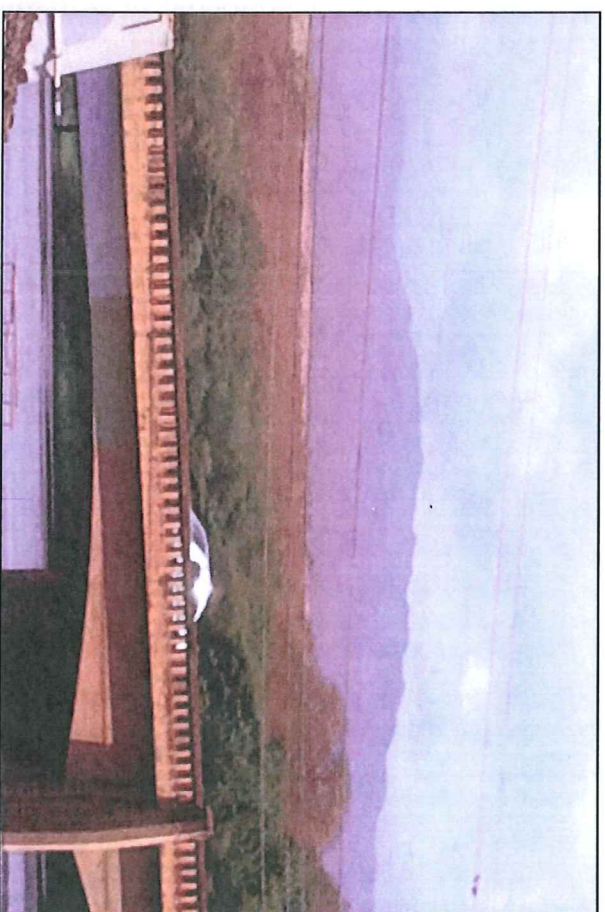
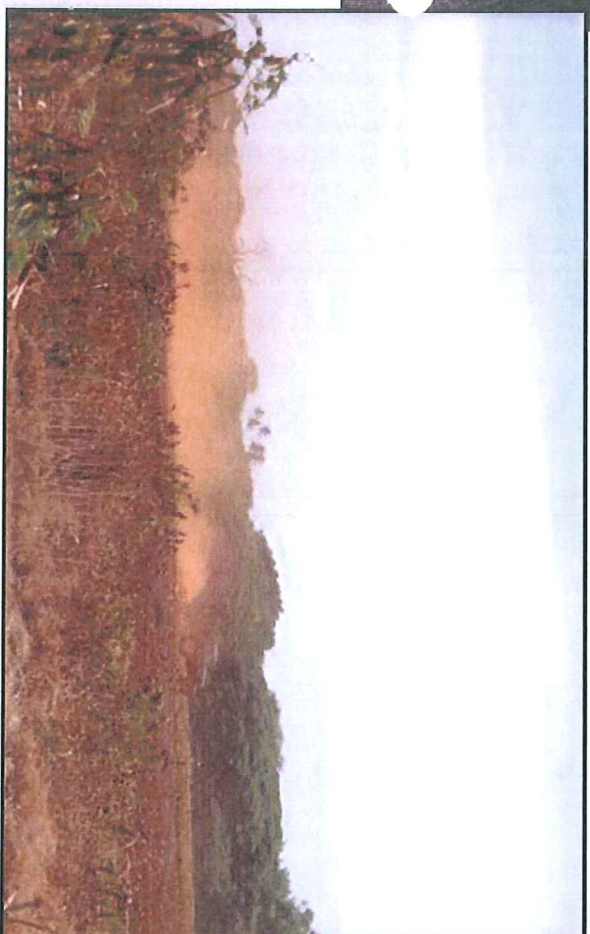
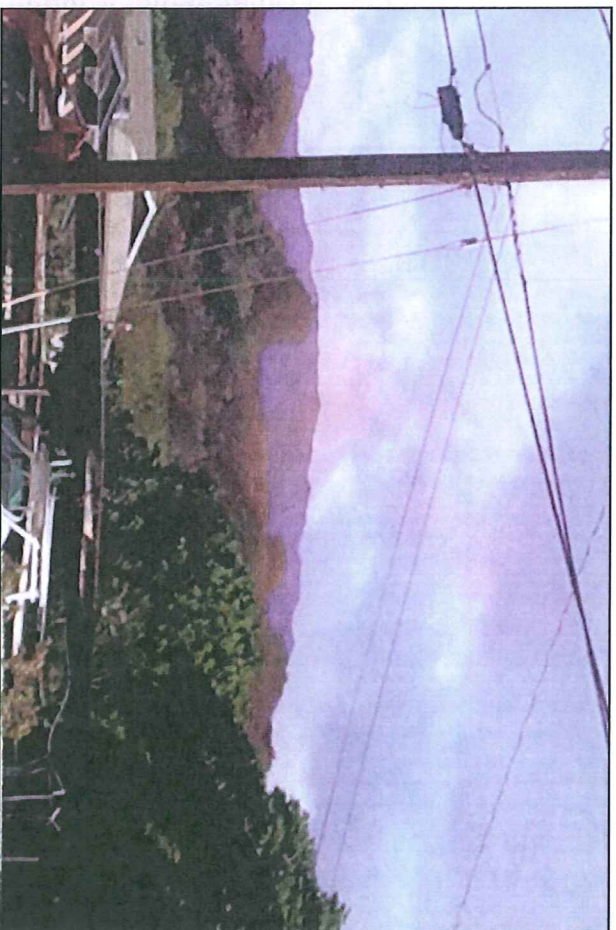
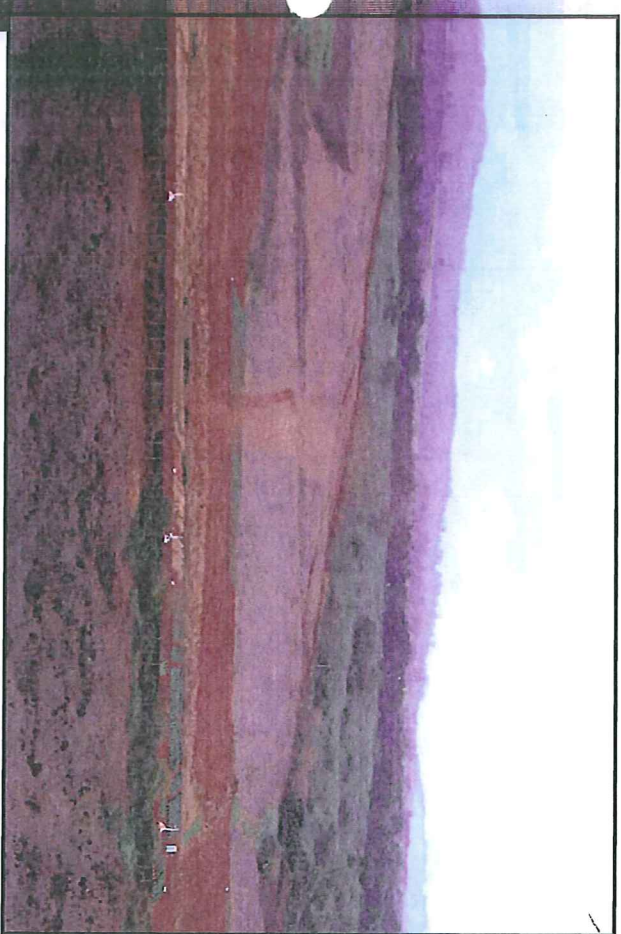
GMO Test  
Center

Waimaea, Kauai

# EXHIBIT 2



Pioneer Fugitive Dust Photos (2010-2011) - Waimea, Kauai



# EXHIBIT 3





# County takes legal action against seed companies

## Dow Agro, Pioneer addressing unpermitted grubbing violations

**Vanessa Van Voorhis**

THE GARDEN ISLAND

LIHUE — In response to community concerns, the county has issued multiple notices of violation to two South Shore seed companies for non-permitted grubbing activities in November and December.

"After investigating, the county did determine that unpermitted and unexempt agriculture-related grubbing was taking place," County Engineer Larry Dill said. "The issuance of violation notices was a legal action taken by the county."

The Public Works Department issued two notices of violation to Pioneer Hi-Bred

International in Waimea and eight notices to Dow Agro-Sciences in Kaunakani. Each notice is dated March 3 and each cites three Dec. 8 violations: grubbing area exceeding one acre, permit requirement and lack of minimum best practices.

"The county has historically pursued grubbing violations via complaint," Dill said. "In these cases, the county was informed of the possible grubbing violations after receipt of anonymous complaint. Due to concerns of the reporting party, the county cannot release the name of the complainant or the number of complaints received."

A source speaking on

condition of anonymity said area residents witnessed mud slides along coastal agricultural fields following the heavy rains of last December, and that the subsequent muddy runoff ended up in the ocean and impacted commercial fishing.

"No damage to the surrounding areas were identified," Dill said, adding that "identification of damage is not a requisite for legal action."

"Companies have responded promptly to the notices of violation and have been working in good faith with the county," he said. "Due to the fact that

See **Violations**, A7



Terry Lilley/Contributed photo

**Diver Terry Lilley captured images below the ocean on Jan. 29 near Dow fields in Waimea where non-permitted grubbing took place. He said he did seven dives over three days in an area within 100 yards of shore and found the coral in bad shape and progressively deteriorating. He said the sediment was thick in the water and on the reef and visibility in the plume was from four to 10 feet in the areas where fish and young and old growth corals had previously created a healthy reef.**

# Violations

*Continued from A1*

the grubbing violations were related to agricultural operations, it was decided that the companies should complete their pursuit of their agricultural exemptions rather than seek retro-active grubbing permits."

Cindy Goldstein, manager of business and community outreach for Pioneer Hi-Bred, said, "Pioneer is working to clear this up with the county and know that there are agricultural exemptions for the grading and grubbing ordinance ... I'm not in a position to comment in more detail."

She was uncertain of the time frame of the grubbing and the number of acres involved, but stated that her office received no complaints about the grubbing activities from

the community.

"We did receive some complaints about dust," Goldstein said, "and we responded to them promptly."

Tom Scagnoli, Kaua'i site leader for Dow Agro-Sciences, said in a written statement, "Unfortunately, I am not able to speak to the specifics at this time. What is important is that Dow AgroSciences will abide by all relevant site-related requirements for our operations."

Scagnoli also said he has not received any complaints from the community about damages.

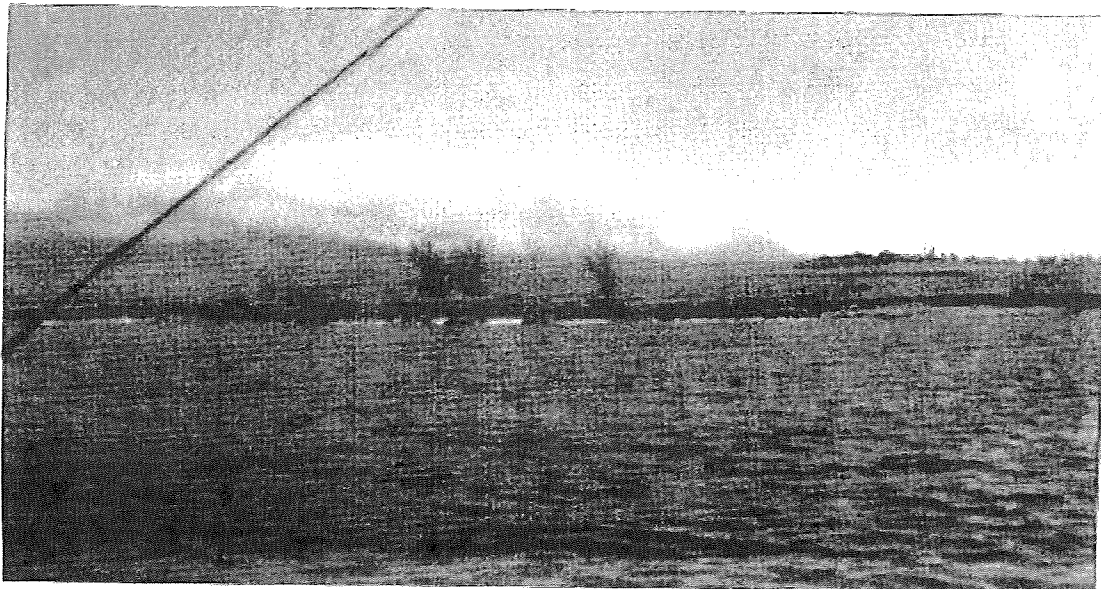
"In coordination with the county, we will continue to implement and comply with best management practices with respect to the land and in compliance with the Kaua'i County Code pending receipt of an agricultural exemption for our operations," he said. "So, while we work to finalize any outstanding

issues with the County, activities to steward the land are ongoing and have been aggressively pursued from the outset."

Grubbing permits are the vehicle by which the county requires implementation of erosion and sediment control measures, which serve to mitigate damage to streams, water courses, natural areas and neighboring properties, the county engineer said.

"The scope of the county's grading, grubbing and stockpiling ordinance limits our jurisdiction to activities on land," Lull said. "The county has not conducted any underwater inspections."

► **Vanessa Van Voorhis**, staff writer, can be reached at 245-3681 (ext. 251) or by emailing [vvanvoorhis@thegardenisland.com](mailto:vvanvoorhis@thegardenisland.com).



Terry Lilley, Contributor photo

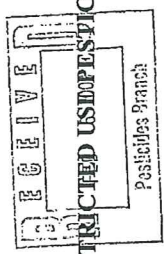
**Diver Terry Lilley captured images above and below the ocean on Jan. 29 near Dow fields in Waimea where non-permitted grubbing took place. He said he did seven dives over three days in an area within 100 yards of shore and found the coral 'in bad shape' and progressively deteriorating. He said the sediment was thick in the water and on the reef and visibility in the plume was from four to 10 feet in the areas where fish and young and old growth corals had previously created a healthy reef.**



# EXHIBIT 4

Crop Production Services Inc.  
3042 Peleke St.  
Lihue, HI 96766-1458

- (1) Dealer Address: PO-368
- (2) Month & Year of Report: JAN 09
- (3) Dealer Representative: Joey Silva
- (4) Date Submitted to HDQA: 2-5-09



**RESTRICTED USE PESTICIDE SALES RECORD**

Division of Plant Industry  
Pesticides Branch  
1428 South King Street  
Honolulu, Hawaii 96814-2512



(6) Date	(7) Licence No.	(8) Exp. Date	(9) PURCHASER Name, Company and Address	Quantity (units)	IDENTITY OF FORMULATION EPA Reg. No.	Product Name	INTENDED USE Site/Pest to be treated
1/5/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	50 lb	700-585	Aatrex-Nine O	WEEDS / CORN
1/5/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	5 gl	524-314	Intrro	WEEDS / CORN
1/5/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	5 gl	62719-220	Lorsban 4E	EARWORM / CORN
1/5/09	K51411	8/24/09	Adrian Escobar PO Box 127 Kekaha, HI 96752-0127	4 gl	264-840	Baythroid XL	EARWORM / CORN
1/7/09	K51430	6/24/13	Daniel J Commers Jr PO Box 609 Waimea, HI 96796-0609	4 gl	34704-873	Permethrin	EARWORM / CORN
1/9/09	K51361	7/27/12	Takato Ishikawa PO Box 7 Eleele, HI 96705-0007	14 lb	62719-72	Dursban 50W	Borers / Ornamentals
1/12/09	K51373	4/14/13	Alfred Balauro 4558 Awawa Rd. Hanapepe, HI 96716	4 gl	352-515	Asana XL	EARWORM / CORN
1/13/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	50 lb	700-585	Aatrex-Nine O	WEEDS / CORN
1/13/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	15 gl	100-818	Dual II Magnum	WEEDS / CORN
1/13/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	60 gl	524-314	Intrro	WEEDS / CORN
1/13/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	25 gl	62719-220	Lorsban 4E	EARWORM / CORN
1/13/09	K51438	12/16/13	Mike Wylie PO Box 609 Waimea, HI 96796-0609	10 gl	34704-69	Atrazine 4L	WEEDS / CORN
1/13/09	K51438	12/16/13	Mike Wylie PO Box 609 Waimea, HI 96796-0609	10 gl	62719-220	Lorsban 4E	EARWORM / CORN
1/13/09	K51438	12/16/13	Mike Wylie PO Box 609 Waimea, HI 96796-0609	10 gl	100-526	Princep 4L	WEEDS / CORN
1/13/09	K51438	12/16/13	Mike Wylie PO Box 609 Waimea, HI 96796-0609	10 gl	100-818	Dual II Magnum	WEEDS / CORN
1/15/09	K51411	8/24/09	Adrian Escobar PO Box 127 Kekaha, HI 96752-0127	5 gl	62719-220	Lorsban 4E	EARWORM / CORN
1/15/09	K51333	6/13/10	Bondel Vakonama 4558 Awawa Rd. Hanapepe, HI 96716	4 gl	100-1112	Warrior ZT	EARWORM / CORN
1/19/09	K51411	8/24/09	Adrian Escobar PO Box 127 Kekaha, HI 96752-0127	5 gl	34704-69	Atrazine 4L	WEEDS / CORN
1/19/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	5 gl	100-818	Dual II Magnum	WEEDS / CORN
1/19/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	4 gl	34704-873	Permethrin	EARWORM / CORN
1/19/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	5 gl	62719-220	Lorsban 4E	EARWORM / CORN
1/19/09	K51404	6/7/11	Paul Russell PO Box 237 Waimea, HI 96796-0237	4 gl	279-3014-34704	Permethrin 3.2 LPI	EARWORM / CORN
1/20/09	K51438	12/16/13	Mike Wylie PO Box 609 Waimea, HI 96796-0609	8 gl	352-515	Asana XL	EARWORM / CORN
1/23/09	K51361	7/27/12	Takato Ishikawa PO Box 7 Eleele, HI 96705-0007	14 lb	62719-72	Dursban 50W	Borers / Ornamentals

# EXHIBIT 5

## Petition For Cleaner Air

We, the undersigned, wish to urgently request that local growers of the Waimea, Kauai region (zip code 96796) immediately implement steps to reduce dust pollution caused by vehicular traffic on the dirt roads used in the planting and harvesting of their crops. At a minimum, we request that all roads be sprayed with water immediately prior to use by any vehicle. We also request other remedial steps be taken without delay, including paving or gravel-coating the field roads, planting wind-breaks between fields and inhabited areas, and observing regulations with respect to ceasing work during periods of high wind.

We further wish to express our growing concern about other air pollution generated by agricultural enterprises in the vicinity of Waimea. The use of vehicles on dirt roads which have not been wet down prior to use raises clouds of red dust, which are subsequently carried by the wind into our community. This dust is then deposited on our homes, our cars, our streets and buildings, and, most alarmingly, our children, who are forced to breathe dust laden air as a part of living.

We are concerned that this dust may contain other pollutants, such as fertilizers and / or pesticides that are used in commercial agriculture, and that the long-term health consequences of continuing present behavior may be severe.

We believe that current provisions for reducing dust pollution are not being adequately implemented, and that local agricultural businesses are not complying with existing regulations intended to restrict dust pollution. The result is clearly visible in the film of dust that blankets our community. Please help to reduce and ultimately eliminate this very serious problem.

Signature	Print Name	Waimea Address, HI 96796	Date
<i>Gene Barkin</i>	Gene Barkin	9924 Kahakai Rd.	5/30/00
<i>Karin Barkin MD</i>	Karin Barkin MD	9924 Kahakai Rd.	5/30/00
<i>Wayne Samud</i>	Wayne Samud	4595 Ala Wai Rd	5/30/00
<i>Clinton Kibb</i>	Clinton Kibb	4597A Ala Wai Rd.	5/30/00
<i>Kevia Iwai</i>	Kevia Iwai	5097 Menehune Rd	5/30/00
<i>Henry Aizawa</i>	Henry Aizawa	4604 ALAWAI RD.	5/30/00
<i>Erica Iwai</i>	Erica Iwai	5097 Menehune Rd	5/30/00
<i>M. Shingawa</i>	M. Shingawa	4633 A. Ala Wai Rd	5/30/00
<i>J. Takami</i>	J. TAKAMI	4633 ALA WAI RD	5/30/00
<i>Y. Sugawara</i>	Y. SUGAWARA	4645 ALAWAI RD.	5/30/00
<i>N. Hoopii</i>	N. HOOPII	4644 ALAWAI RD	5/30/00
<i>R. Shitana</i>	R. Shitana	4634 ALAWAI RD	5/30/00
<i>Mike Yokotake</i>	MIKE YOKOTAKE	4663 ALAWAI RD	5/30/00
<i>E. Kakesa</i>	E. KAKESA	4670 Alawai	5/30/00
<i>Chaunwin Apo</i>	Chaunwin Apo	4671A Alawai Rd	5/30/00
<i>Aume Aaleo</i>	AUME AALEO	4995 Menehune Rd.	5/30/00
<i>Mahelani Lacro</i>	Mahelani Lacro	4995 Menehune Rd.	5/30/00
<i>Waymond Reynolds</i>	Waymond Reynolds	4677A Alawai Rd	5/30/00
<i>Aimee Aaleo</i>	AIMEE AALEO	5-30-00	5/30/00
<i>Roy Y. Yokotake</i>	ROY Y. YOKOTAKE	4663 ALAWAI RD.	5/30/00
<i>Maita Colomano</i>	Maita Colomano	9600 Kaunuaiki	6/1/00

0

Anthony Bunsard	Anthony Bunsard	4677-B Alawai Rd	5-30-00
Caryn Woodruff	Caryn Woodruff	4677-B Alawai Rd	5-30-00
Wendell Kubotan	Wendell Kubotan	4655-D Alawai Rd	5-30-00
Wanda Kubotan	Wanda Kubotan	4655-D Alawai Rd	5-30-00
DAVID KUZEN	DAVID KUZEN	4764 B ALA WAI RD	5-30-00
Kathryn Kubo	Kathryn Kubo	4587 Alawai Rd	5/30/00
Georgia KAKUDA	Georgia KAKUDA	4693 ala wai Rd	5/30/00
Kyle Nakagawa	Kyle Nakagawa	4563 Alawai Rd	5/30/00
DEL ALDABERT	DEL ALDABERT	4201 Alawai Rd	5/30/00
Diana Albando	Diana Albando	" "	" "
Jubia Kakaia	Jubia Kakaia	4810 Kakaia Rd	5/30/00
Andy Kakaia	Andy Kakaia	5129 Menchune Rd	5/20/00
Sumner	Sumner	2803 PULOKO	5/20/00
Jodi HOOKANO	Jodi HOOKANO	9811-D Pule Road	5/20/00
Wayne R. SACHUNAN	Wayne R. SACHUNAN	4070 Aekalax RD	5/31/2000
Edwin R. DeLaCruz	Edwin R. DeLaCruz	9964 Puka Rd	5/21/00
Yun-ukok SUGIMOTO	Yun-ukok SUGIMOTO	7070 Alawai Rd	5/21/00
KALU H. KAKAIA	KALU H. KAKAIA	P.O. Box 624	5/21/00
GEORGE KOANI	GEORGE KOANI	P.O. Box 521 WAIMEA	" "
Clifford R. Apo	Clifford R. Apo	P.O. Box 297 WAIMEA	5/31/2000
Adam Long	Adam Long	P.O. Box 222 96796	5/31/00
CHADWICK L. WONG	CHADWICK L. WONG	P.O. Box 698 WAIMEA	5/31/00
KAYNARD J. APO	KAYNARD J. APO	P.O. Box 731 WAIMEA	5/31/00
NAROLA C. RUIZ	NAROLA C. RUIZ	PO General Delivery	5-31-00
Shigehiko NISHIKAWA	Shigehiko NISHIKAWA	9938 Kakaia	5-31
Ron S. Hasegawa	Ron S. Hasegawa	P.O. Box 347	5-31
J. DILLON	J. DILLON	Box 1116, Kakaia	5-31-00
L. NIRAUKA	L. NIRAUKA	P.O. Box 638 WAIMEA	5-31-00
Dr. Anna TANGALAN	Dr. Anna TANGALAN	PO Box 22 Waimea	5/31/00
Herbert J. Blaise	Herbert J. Blaise	PO Box 126 Waimea, HI 96796	5/31/00
Rosaline K.	Rosaline K.	PO 71 Makenahua	5/31/00
MICHIYO ALTOMARE	MICHIYO ALTOMARE	PO Box 777 WAIMEA	5/31/00
Carl Fukumoto	Carl Fukumoto	Box 78 Waimea	5-31-00
ALBERT NAUAI	ALBERT NAUAI	5021-D MENEHUNE RD	5-31-00
KEITH BLACKSTON	KEITH BLACKSTON	4983 MENEHUNE RD	5-31-00
Yoshie Yatsuo	Yoshie Yatsuo	Box 52 Waimea HI	5-31-00
Miriam T.S. Albarado	Miriam T.S. Albarado	Box 44 Waimea HI	5-31-00
Stanley S. Nagata	Stanley S. Nagata	4757 MENEHUNE RD	5/31/00
Thelma Y. Nagata	Thelma Y. Nagata	4751 Menehune Rd	5/31/00

Signature	Print Name	Waimea Address, HI 96796	Date
Myranda Kuapahi	Myranda Kuapahi	4762 B Menchum Rd.	5/31/00
L.B. Schraepfer	L.B. Schraepfer	4762 B Menchum Rd.	5/31/00
FARRIN C Black	FARRIN C Black	4721 ALAWAI RD	5/31/00
Lillian DeCosta	Lillian DeCosta	4605 Alawai Rd	5/31/00
ETARU YATSUOKA	ETARU YATSUOKA	4601 ALAWAI ROAD	5/31
C ALTOMARE	C ALTOMARE	APE Rd Waimea Hi	5/31
R. Hamada	R. Hamada	4600 Maive Rd	5/31
Berjnette P. Tera	Berjnette P. Tera	6097 Menchum Rd	5/31
Charles E. E.	Charles E. E.	6027 Menchum Rd	5/31
Michael V. Chandler Jr.	Michael V. Chandler Jr.	4481 Alawai Rd Waimea	6/1
Michael Shimatsu	Michael Shimatsu	Alawai Rd Waimea	6/1
Dean Manced	Dean Manced	4444 Alawai Rd.	6/1
Edna Bayot	Edna Bayot	9780 Keumaeii Hwy	6/1
ELM BETA G. VILLAGRATA	ELM BETA G. VILLAGRATA	9879 Haina Rd. Waimea	6/1
GARY K. TERA	GARY K. TERA	5571A Waimea	6/1/00
Lani Tera	Lani Tera	4425 Haina Rd Waimea	6/1/00
J. Murakami	J. Murakami	Menchum Rd.	6/1/00
Dolores Porting	Dolores Porting	4744 Menchum Rd	6/1/00
Crystal Shimatsu	Crystal Shimatsu	Alawai Rd Waimea	6/1/00
ERIC OKADA	ERIC OKADA	4472 Panako Rd Waimea	6/1/00
Valerie Dai	Valerie Dai	9325 Guy Rd	6/1/00
EDWARD TANIGUCHI	EDWARD TANIGUCHI	POB 1113 WAIMEA	6/1/00
Maggie Taniguchi	Maggie Taniguchi	POB 1113 Waimea	6/1/00
Shimune Taniguchi	Shimune Taniguchi	4701 A ALAWAI Rd waimea	6/1/00
Roxanne Kanda	Roxanne Kanda	4664 Kalioramanu Rd	6/1/00
PEGGY YATSUOKA	PEGGY YATSUOKA	4601 ALAWAI Rd.	6/1/00
Hisao Muneoka	Hisao Muneoka	453 Alawai R.	6/1/00
Sylvia Nakaakiki	Sylvia Nakaakiki	4577A ALAWAI Rd.	6/1/00
Ginny K. Hori	Ginny K. Hori	4687A Alawai Rd	6/1/00
JAMES H. HORI	JAMES H. HORI	4687 ALAWAI Rd	10/2/00
George Walker	George Walker	9915 Ape PL	6-2-00
ALEXA SAMIO	ALEXA SAMIO	4575 Alawai Rd	6-2-00
NICKLES TOGIORA	NICKLES TOGIORA	P.O. Box 652 PL.	6-4-00
DOUGLAS KAKUDA	DOUGLAS KAKUDA	4755 ALAWAI Rd.	6/15/00
WILFRED ITHI	WILFRED ITHI	PO BOX 259 WAIMEA	6/15/00
MICHIO TANAKA	MICHIO TANAKA	4571 MAILE RD	6/15/00

Waimea

# EXHIBIT 6



**PIONEER.**

**PIONEER HI-BRED INTERNATIONAL, INC.  
RESEARCH AND PRODUCT DEVELOPMENT**

RESEARCH CENTER  
1-385 KAUMUALII HIGHWAY  
P.O. BOX 609  
WAIMEA, HI 96796  
TELEPHONE: (808) 338-8300  
TELEFAX: (808) 338-8325

October 31, 2000

Klayton Kubo  
4587A Ala Wai Rd  
Waimea, HI 96796

Dear Mr. Kubo:

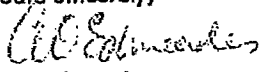
In June of this year a copy of a petition addressed to local growers was handed to a staff member of Pioneer Hi-Bred International, and, we presume, to other organizations and individuals farming near Waimea. The petition requested that steps be taken to reduce the amount of dust caused by vehicular traffic on dirt roads used in the planting and harvest of crops.

I am writing in an effort to address the concerns expressed in the petition. As one of many who practice farming in the area, and as local residents, Pioneer shares your concern for clean air. After all, many of us have to live and work in the same environment, and we are committed to keeping dust to a minimum. As a company we are also very strongly committed to being good neighbors in the communities where we have facilities.

Pioneer's Waimea Research Center on the east side of the Waimea River has been opened for only 16 months. This has been, and continues to be, an intensive period of development. Now that we have completed successfully our first crop season on this land, and are preparing for a much larger planting season this winter, we have increased our attention to dust reduction on the farm roads. We have sharply reduced vehicular traffic on the road running along the western edge of the property, and have installed irrigation along the western edge of our land to encourage the growth of a vegetation shield. We have reduced vehicle speeds on the station to 10 mph. We have graveled part of the access road to the farm, and have provided water emitters up each side of that road so it can be wetted down at least once each day. We are making every effort to restrict our field cultivation operations to times when the trade winds are not severe.

Please bear in mind, however, that all of these measures taken together are not going to eliminate dust in our community, since there are many other sources of wind-borne dust to the north and east of Pioneer's site, and these sources can also impact the town of Waimea. For the foreseeable future, it appears that living with some dust is a reality of life for us all on Kauai. Pioneer, however, remains committed to being good and responsible community members and neighbors. We want to contribute to the well being of the communities where our staff lives, and the businesses that provide essential services to our successful research activities. We welcome any of you to call us at 338-8300 extension 100 to make an appointment to visit our research facilities and fields so you can see first hand what it is we do and what measures we have taken to reduce the red dust problem that is so much a feature of all of our lives.

Yours sincerely,

  
G.O. Edmeades  
Senior Scientist

cc. Mrs. Bertha Kawakami, 14<sup>th</sup> Representative District, Hawaii State Capitol, Room 434, 415 South Beretania Street, Honolulu, HI 96813

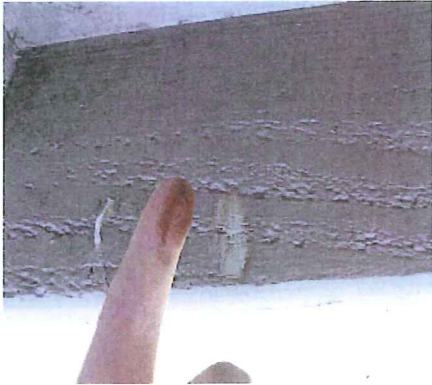
A DUPONT BUSINESS

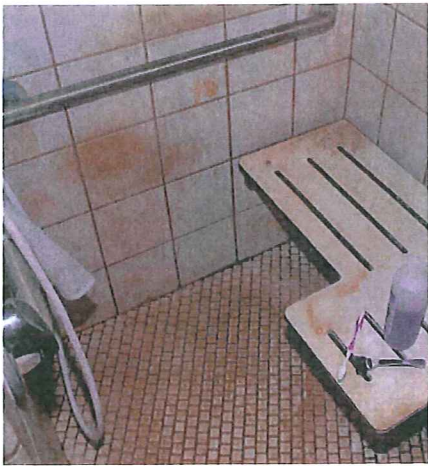
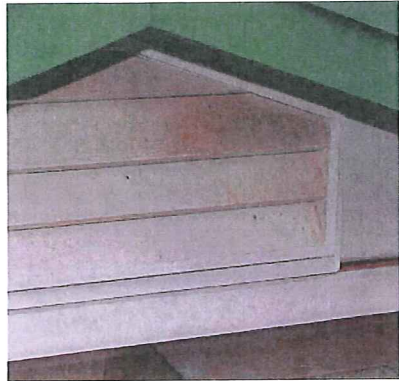
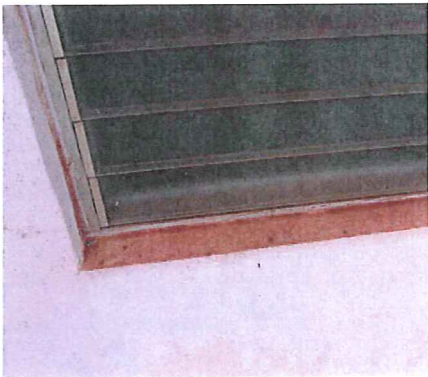




# EXHIBIT 7

Dust Photos from Waimea Homes





# EXHIBIT 8



DuPont Agriculture & Nutrition  
Pioneer Crop Genetics Research & Development  
Waimea Research Center  
1-385 Kaunualii Highway  
P.O. Box 609  
Waimea, Kauai, HI 96796  
(808) 338-8300 Tel  
(808) 338-8325 Fax

October 22, 2002

County Engineer  
4444 Rice St .  
Mo'ikeha Building, Suite 172  
Lihue, Hawaii  
Attn: Mario Antonio

Dear Sir:

Enclosed please find our application for an Ag Exemption for our Research Farm. I have included the following: 1) Conservation Plan. 2) Letter from Peter Tausend, the Chairman of the West Kauai Soil and Water Conservation Districts, approving the Conservation Plan. 3) The Hawaii Historic Preservation Division Review and associated map and table documenting the findings that no historic properties are present. 4) A 2-page map of our site with irrigation system, and plans for windbreaks, a waterway, and conservation cover drawn in. 5) The pertinent pages of our lease that should provide sufficient evidence that we have landowner permission to farm this parcel.

Please let me know as soon as possible if you need any further information.

Sincerely,

G. Douglas Tiffany, PhD.  
NRSP Research Scientist/Manager  
Pioneer Hi-Bred Int.  
Waimea Research Center  
1-385 Kaunualii Hwy  
PO Box 609  
Waimea, HI 96796-0609  
Office: (808)338-8300, ext. 102  
Cell: (808)635-6866

# EXHIBIT 9



Natural Resources Conservation Service  
 USDA NRCS LIHUE FIELD OFFICE  
 4334 Rice Street, Room 104  
 Lihue, HI 96766  
 (808)245-9014

Michelle Clark  
 Soil Conservationist

## Conservation Plan

Pioneer HI-Bred International, Mr. Robin Robinson  
 PO Box 596  
 Kekaha, HI 96752

Objective(s): Pioneer HI-Bred would like to conserve water and reduce soil erosion while conducting their field trials for superior seed.

### Crop

#### Conservation Cover

Establish perennial vegetative cover on land temporarily removed from agricultural production.

Field	Planned Amount	Month	Year	Applied Amount	Date
C	5.0 AC.	8	2002		
<b>Total:</b>	<b>5.0 AC.</b>				

### Windbreak/Shelterbelt Establishment

Plant single or multiple rows of trees or shrubs.

Field	Planned Amount	Month	Year	Applied Amount	Date
A	2,500.0 FT.	9	2002		
B	2,000.0 FT.	9	2002		
C	2,000.0 FT.	9	2002		
D	900.0 FT.	9	2002		
E	1,000.0 FT.	9	2002		
F	2,500.0 FT.	9	2002		
G	2,000.0 FT.	9	2002		
H	500.0 FT.	9	2002		
<b>Total:</b>	<b>13,400.0 FT.</b>				

### Grassed Waterway

Construct grassed waterway to prevent erosion by providing for the safe disposal of excess surface water.

Field	Planned Amount	Month	Year	Applied Amount	Date
F	2.0 AC.	8	2002		
<b>Total:</b>	<b>2.0 AC.</b>				

### Irrigation Water Management

Control the rate, amount and timing of irrigation water to minimize soil erosion and control water loss from runoff and deep percolation.

Field	Planned Amount	Month	Year	Applied Amount	Date
A	17.1 AC.	3	2002		
B	21.5 AC.	3	2002		
C	28.4 AC.	3	2002		
D	20.6 AC.	3	2002		
E	24.1 AC.	3	2002		
F	27.9 AC.	3	2002		
G	14.6 AC.	3	2002		
H	5.4 AC.	3	2002		
<b>Total:</b>	<b>159.6 AC.</b>				

CERTIFICATION OF PARTICIPANTS

*R. K. Robinson* 12/10/01  
Pioneer Hi-Bred International, Mr. Robin Robinson

CERTIFICATION OF:

Soil Conservationist  
*Michelle Clark* 12/14/01  
Michelle Clark Date

CONSERVATION DISTRICT  
*Peter C. Townsend*  
West Kauai Soil and Water Conservation District

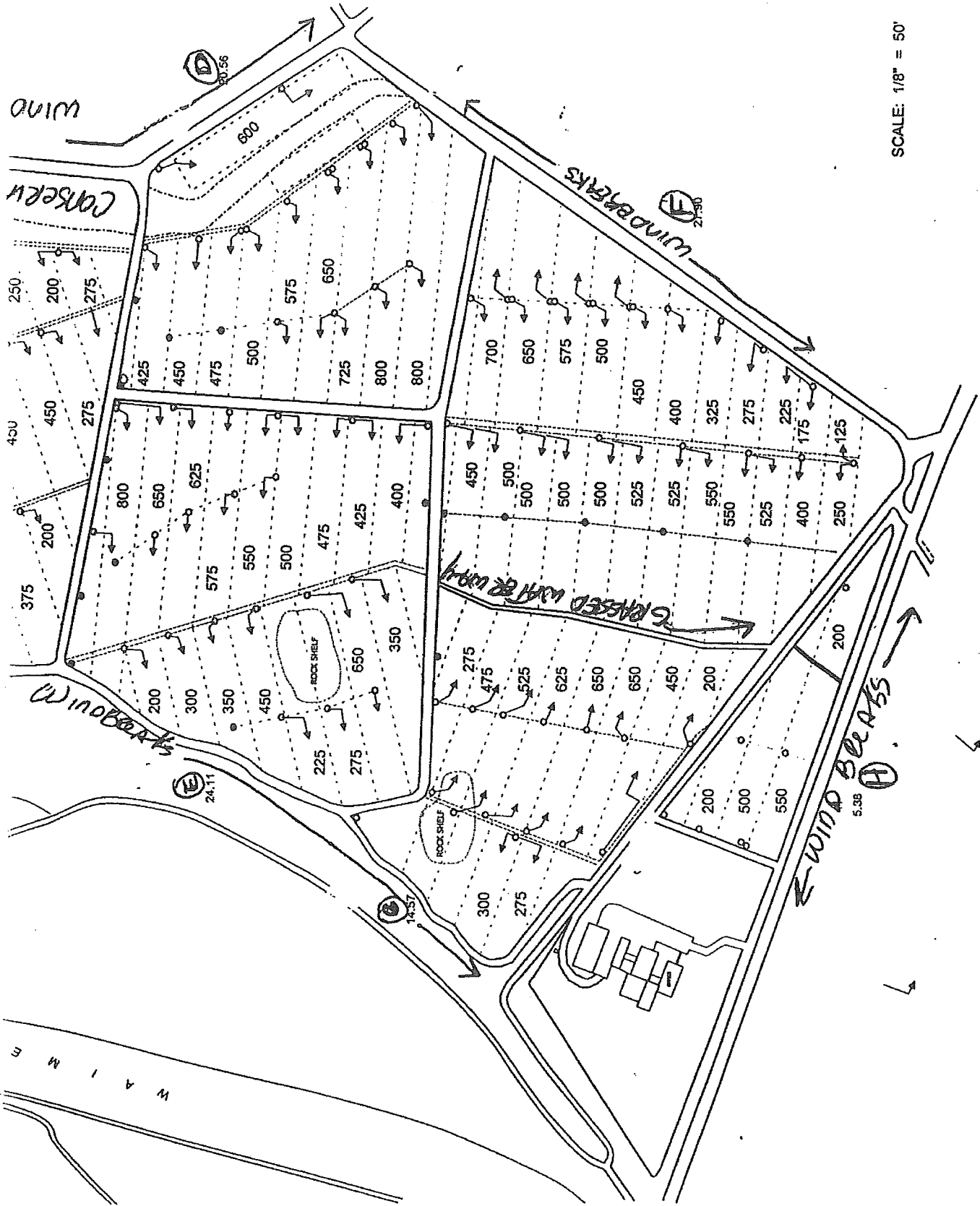
NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

*Ronald A. Peyton* 12/19/01  
District Conservationist





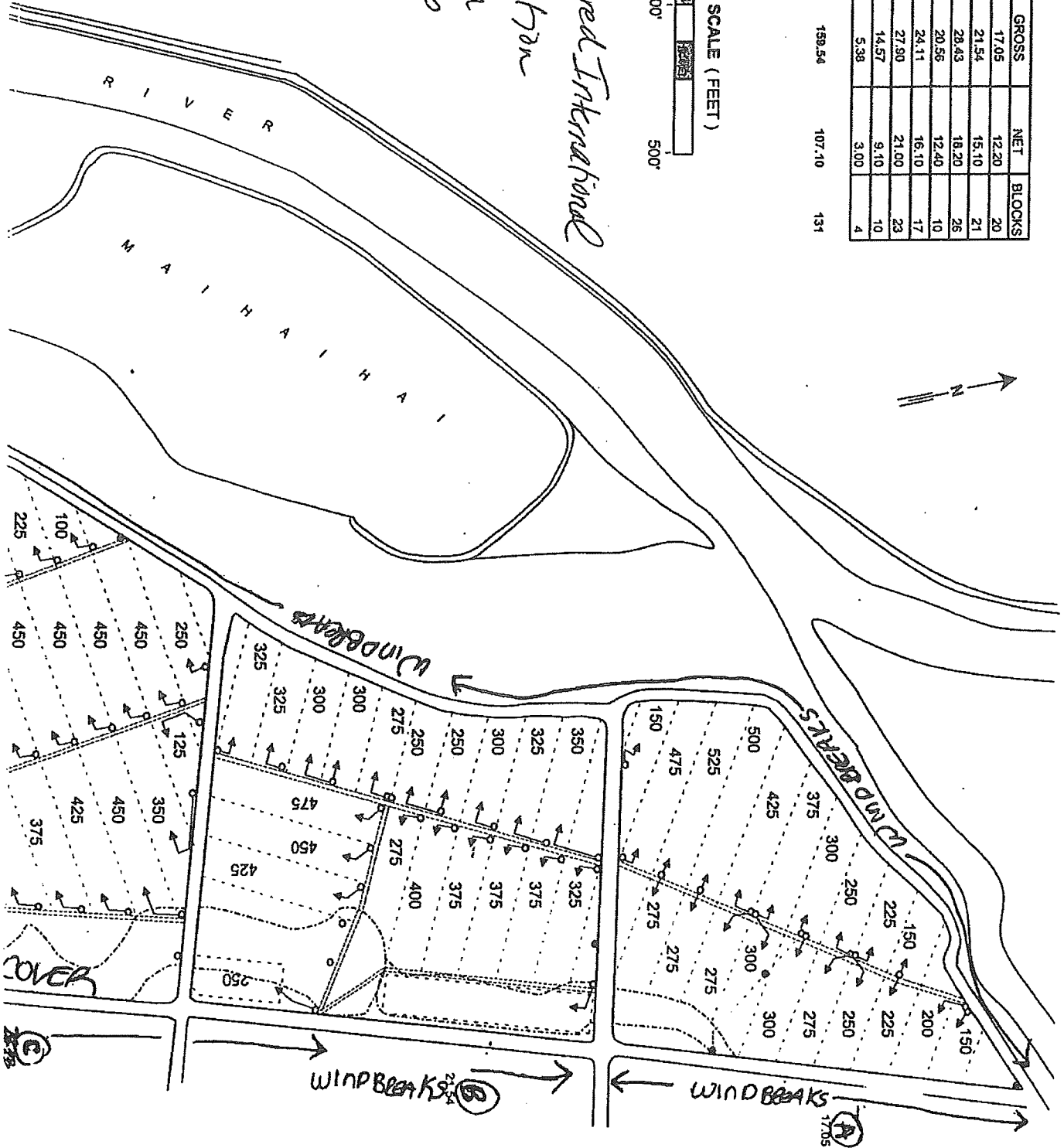
SCALE: 1/8" = 50'

Pines Hi-Bred International  
 Conservation  
 Plan  
 Map



MAP	GROSS	NET	BLOCKS
A	17.05	12.20	20
B	21.54	15.10	21
C	28.43	18.20	26
D	20.56	12.40	10
E	24.11	16.10	17
F	27.30	21.00	23
G	14.57	9.10	10
H	5.38	3.00	4

Total Acres 159.56 107.10 131



# EXHIBIT 10

**Bernard P. Carvalho, Jr.**  
Mayor



**Larry Dill, P.E.**  
County Engineer

**Gary K. Heu**  
Managing Director

**Lyle Tabata**  
Deputy County Engineer

**DEPARTMENT OF PUBLIC WORKS**  
**County of Kaua'i, State of Hawai'i**  
4444 Rice Street, Suite 275, Lihu'e, Hawai'i 96766  
TEL (808) 241-4992 FAX (808) 241-6604

March 3, 2011

**CERTIFIED MAIL**

Pioneer Hi-Bred International  
Waimea Research Center  
P.O. Box 609  
Waimea, HI 96796

**Robinson Family Partners**  
P.O. Box 88  
Makaweli HI, 96769

Gay and Robinson Inc.  
P.O. Box 156  
Kaumakani HI, 96747

**SUBJECT: NOTICE OF GRUBBING VIOLATION - SEDIMENTATION & EROSION  
CONTROL ORDINANCE NO. 808 TMK: (4) 1-7-005:004**

Dear Sir/ Madam,

It has been brought to our attention that on or about December 8, 2010 the above referenced property was in a condition that would not otherwise prevent damage by sedimentation to streams, watercourses, natural areas and or the property of others. This is to inform you that the grubbing work on the subject parcel is in violation of the Kaua'i County's Revised Code of Ordinance, Chapter 22, Article 7 as amended, "An Ordinance Regulating and Controlling Grading, Grubbing, and Stockpiling and Erosion and Sedimentation within the County of Kaua'i (ORDINANCE NO.808).

The violations are as follows:

- Section 22-7.6(h), Grubbing Area Exceeding 1-Acre.
- Section 22-7.8, Permit Requirement.
- Section 22-7.5, Lack of minimum Best Management Practices

You are required to comply with the following:

1. Cease and desist from further violating the above referenced sections of the Kaua'i County Code.
2. Correct the violations at your own expense within sixty (60) days from receipt of

*An Equal Opportunity Employer*

Gay and Robinson Inc.

March 3, 2011

Page (2)

this violation notice.

3. Implement and comply with best management practices as stated in Kaua'i County Code section 22-7.5 while pending receipt of an agricultural exemption pursuant to Kaua'i County Code section 22-7.6.
4. Obtain a retro-active grubbing permit from our office. Grubbing Permit Applications can be obtained from our County's website at <http://www.kauai.gov/Default.aspx?tabid=133>.
5. Retro-active Grubbing plans must be prepared by a professional engineer licensed in the State of Hawai'i and shall be submitted for our review and approval for the subject property. These plans need to reflect all existing ground elevations prior to the grubbing work and all as built finished grades and proposed grubbing activities and setbacks, temporary and permanent dust control, sediment and erosion control, slope control, soil compaction, drainage, and safety issues. The retro-active grubbing plan shall address and mitigate all drainage concerns affected by Pioneer Hi-Bred International and any abutting properties.
6. The authentication by the designer shall state "THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION WILL BE UNDER MY OBSERVATION."
7. Since we have observed the grubbing activities, we will insist that you retain a geotechnical soils engineer to certify the retroactive grubbing plans are in compliance with the County's Sediment and Erosion Control Ordinance No. 808.

Please note that you may be liable for damages that have or may have occurred as a result of the grubbing activities without an approved grubbing permit.

Your immediate compliance is required to resolve this grubbing violation. Please contact our office within seven (7) days upon receiving this notice violation to inform us of your course of action. Should you have any questions, please contact Paul Togioka of my staff at (808) 241-4889.

Very truly yours,

  
LARRY DILL, P.E.  
NY County Engineer

PT/WK

cc: Planning Department  
Building Division  
County Attorney  
Construction Inspection  
Prosecuting Attorney

# EXHIBIT 11



**SELLER'S REAL PROPERTY DISCLOSURE STATEMENT**  
**Hawaii Association of Realtors® Standard Form**  
 Revised 4/07 (NC) For Release 5/08



**COPYRIGHT AND TRADEMARK NOTICE:** This copyrighted Hawaii Association of REALTORS® Standard Form is licensed for use by the entire real estate industry on condition that there shall be no alteration of the printed portions, pagination, or paragraph numbers or breaks. The use of this form is not intended to identify the real estate licensee as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to its Code of Ethics.

Information Obtained from Public Records (May Be Completed by Listing Broker)	
Seller(s) Name(s) (All on Title): _____	
Property Reference or address: _____	
Tax Map Key: Div. _____/Zone _____/Sec. _____/Plat _____/Parcel _____/CPR _____ (if applicable).	
County Zoning: _____ State Land Use Designation: _____ [ ] Fee Simple [ ] Leasehold	
Licensee: _____ Brokerage Firm: _____	

**Purpose of Disclosure Statement:** Pursuant to Hawaii Revised Statutes, Chapter 508D (for residential real property), and under common law (for all other real estate transactions, including the sale of vacant land) a seller of residential real property is obligated to fully and accurately disclose in writing to a buyer all "material facts" concerning the property. "Material facts" are defined as "any fact, defect, or condition, past or present, that would be expected to measurably affect the value to a reasonable person of the residential real property being offered for sale." This Disclosure Statement is intended to assist Seller in organizing and presenting all material facts concerning the Property. It is very important that Seller exercise due care in preparing responses to questions posed in the Disclosure Statement, and that all responses are made in good faith, are truthful and complete to the best of Seller's knowledge. Seller's agent, Buyer and Buyer's agent may rely upon Seller's disclosures. SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR HAVE AN EXPERT INSPECT PROPERTY PRIOR TO PREPARING DISCLOSURE.

**MUST BE COMPLETED BY SELLER ONLY**

**Seller's Statement:** This is a statement concerning information relating to the condition of Property that: (i) is within the knowledge or control of Seller; (ii) can be observed from visible, accessible areas; or (iii) which is required by Section 508D-4.5 and 508D-15, Hawaii Revised Statutes. Seller may not be aware of problems affecting Property, and there may be material facts of which Seller is not aware that qualified experts may be able to discover or time may reveal. Unless Buyer has been otherwise specifically advised, Seller has not conducted any inspections of generally inaccessible areas of Property. BUYER SHOULD TAKE CARE TO PROTECT BUYER'S OWN INTEREST BY OBTAINING PROFESSIONAL ADVICE AND BY CONDUCTING THOROUGH INSPECTIONS AND OBTAINING EXPERT HELP IN EVALUATING PROPERTY AND BY OBTAINING BUYER'S OWN PUBLIC RECORDS. The statements made below are made by Seller and are not statements or representations of Seller's agent. The Disclosure Statement and the disclosures made by Seller are provided exclusively to Buyers involved in this transaction only, and do not apply to any subsequent sales not involving this Seller.

**THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY SELLER OR BY ANY AGENT REPRESENTING SELLER AND IS NOT A SUBSTITUTE FOR ANY EXPERT INSPECTION, PROFESSIONAL ADVICE, OR WARRANTY THAT BUYER MAY WISH TO OBTAIN.**

If not owner occupied, date of Seller's last visit \_\_\_\_\_.

<p><b>Instructions to Seller:</b> (1) Answer ALL questions. (2) Explain all material facts known to you. (3) If additional space is needed in Section I, attach new pages and sign at the bottom. (4) Each dwelling/structure shall have its own Disclosure. (5) NTMK means NOT TO MY KNOWLEDGE. (6) NA means NOT APPLICABLE and cannot be answered by "Yes," "No" or "NTMK."</p>
---

**A. ITEMS: Check items listed below if you are aware of any current or past defects/malfunctions or major repairs. If checked, use the same number and describe in Section I.**

- |   |                                      |                                       |
|---|--------------------------------------|---------------------------------------|
| (1) [ ] Appliances                        | (12) [ ] Fire Sprinkler System       | (23) [ ] Smoke Detectors              |
| (2) [ ] Bathtubs/showers/Basins/Toilets   | (13) [ ] Fireplace/Chimney           | (24) [ ] Solar/Water/Electric Systems |
| (3) [ ] Ceilings                          | (14) [ ] Floors/Floor Coverings      | (25) [ ] Spa                          |
| (4) [ ] Ceiling Fans                      | (15) [ ] Foundations/Stabs           | (26) [ ] Swimming Pool                |
| (5) [ ] Central Vacuum Systems            | (16) [ ] Gutters                     | (27) [ ] Walkways                     |
| (6) [ ] Counters/Cabinets                 | (17) [ ] Heating/Ventilating/Cooling | (28) [ ] Walls Exterior               |
| (7) [ ] Decking/Railings/Lanai            | (18) [ ] Lawn Sprinkler System       | (29) [ ] Walls Interior               |
| (8) [ ] Doors/Door Bells/Garage Door      | (19) [ ] Plumbing                    | (30) [ ] Water Features               |
| (9) [ ] Driveways                         | (20) [ ] Roofs                       | (31) [ ] Water Heater                 |
| (10) [ ] Electric Outlets/Switches/Lights | (21) [ ] Security Systems            | (32) [ ] Windows/Jalousies/Skylights  |
| (11) [ ] Fences/Perimeter Walls           | (22) [ ] Sinks/Faucets               | (33) [ ] Other _____                  |

BUYER'S INITIALS \_\_\_\_\_

SELLER'S INITIALS & DATE \_\_\_\_\_



**B. GENERAL: Do any of the following conditions exist? If "yes", use the same number and describe in Section I.**

- |      | YES | NO  | NTMK | NA  |  |
|------|-----|-----|------|-----|--|
| 34)  | [ ] | [ ] | [ ]  | [ ] | Does any other party have an unrecorded interest in this Property and/or a say in its disposition?   |
| 35)  | [ ] | [ ] | [ ]  | [ ] | Are there any lawsuits or foreclosure actions affecting this Property?   |
| 36)  | [ ] | [ ] | [ ]  | [ ] | Are there any easements affecting this Property?   |
| 37)  | [ ] | [ ] | [ ]  | [ ] | Are there any roadways, driveways, walls, fences, and/or other improvements which are shared with adjoining land owners?   |
| 38)  | [ ] | [ ] | [ ]  | [ ] | Are there any known encroachments?   |
| 39)  | [ ] | [ ] | [ ]  | [ ] | Are there any written agreements concerning items 36, 37 or 38?  |
| 40)  | [ ] | [ ] | [ ]  | [ ] | Have there ever been substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, contaminated soil or water? |
| 41)  | [ ] | [ ] | [ ]  | [ ] | Is there filled land on this Property?   |
| 42)  | [ ] | [ ] | [ ]  | [ ] | Has there ever been any settling or slippage, sliding, subsidence, or other soil problem?  |
| 43)  | [ ] | [ ] | [ ]  | [ ] | Has there ever been any drainage, water infiltration, seepage, flooding, or grading problems?  |
| 44)  | [ ] | [ ] | [ ]  | [ ] | Are there any violations of government regulations/ordinances related to this Property?  |
| 44a) | [ ] | [ ] | [ ]  | [ ] | (a) Are there any zoning or setback violations and/or citations?   |
| 44b) | [ ] | [ ] | [ ]  | [ ] | (b) Are there any nonconforming uses or restrictions on rebuilding?  |
| 45)  | [ ] | [ ] | [ ]  | [ ] | Are there any violations of existing land leases?  |
| 46)  | [ ] | [ ] | [ ]  | [ ] | Is this Property subject to Covenants, Conditions and Restrictions (CC&Rs)?  |
| 46a) | [ ] | [ ] | [ ]  | [ ] | (a) Are there any violations of the Covenants, Conditions and Restrictions covering this Property?   |
| 47)  | [ ] | [ ] | [ ]  | [ ] | Are there any rental, lease or license agreements affecting this Property?   |
| 47a) | [ ] | [ ] | [ ]  | [ ] | (a) Are there any violations of the rental, lease or license agreements?   |
| 48)  | [ ] | [ ] | [ ]  | [ ] | Has there been any sign of, or are you aware of any pest problems (e.g., roaches, fleas, ticks, ants, rats, etc.)?   |
| 49)  | [ ] | [ ] | [ ]  | [ ] | Is there any damage caused by tree roots?  |
| 50)  | [ ] | [ ] | [ ]  | [ ] | Is the Property located in a Special Management Area?  |
| 51)  | [ ] | [ ] | [ ]  | [ ] | Is this Property located in a geothermal subzone or near a geothermal facility?  |
| 52)  | [ ] | [ ] | [ ]  | [ ] | Is the Property located in a tsunami (tidal wave) inundation area and/or flood zone?   |
| 53)  | [ ] | [ ] | [ ]  | [ ] | Is the Property located in volcanic hazard Zone 1 or 2? (Only applicable to Island of Hawaii)  |
| 54)  | [ ] | [ ] | [ ]  | [ ] | Is there any existing or past damage to this Property or any of the structures from earthquake, fire, flooding, landslides, falling rocks, tsunami, volcanic activity, or wind?  |
| 55)  | [ ] | [ ] | [ ]  | [ ] | Is this Property subject to excessive air pollution? (e.g., "VOG")   |
| 56)  | [ ] | [ ] | [ ]  | [ ] | Are you aware of any adverse conditions existing in this general neighborhood/area (e.g., pesticides, soil problems, irrigation, odors etc.)?  |
| 57)  | [ ] | [ ] | [ ]  | [ ] | Is this Property located in an aircraft path and/or does it experience regular excessive aircraft noise?   |
| 58)  | [ ] | [ ] | [ ]  | [ ] | Is this Property exposed to other types of recurring excessive noise (e.g., night club, school, coqui frogs etc.)?   |
| 59)  | [ ] | [ ] | [ ]  | [ ] | Are there any additional material facts you should disclose regarding this Property or neighborhood (e.g., history of homicide, felony, or suicide, pending development in the area, road widening projects, zoning changes; etc.)?        |
| 60)  | [ ] | [ ] | [ ]  | [ ] | Is this Property located within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy, or Marine Corps airport as officially designated by military authorities?                                      |
| 61)  | [ ] | [ ] | [ ]  | [ ] | Are you aware of the presence of or removal of unexploded military ordnance in this general area?  |
| 62)  | [ ] | [ ] | [ ]  | [ ] | Is access to this Property restricted?   |

\_\_\_\_\_ → [ ] Public [ ] Private Road [ ] By easement

**C. IMPROVEMENTS: Do any of the following conditions exist? If "yes", use the same number and describe in Section I.**

- |      | YES     | NO  | NTMK | NA  |  |
|------|---------|-----|------|-----|--|
| 63)  | [ ]     | [ ] | [ ]  | [ ] | Has there ever been any sign of mold, mildew and/or fungus?  |
| 64)  | [ ]     | [ ] | [ ]  | [ ] | Were the original improvements or any additions, structural modifications, or alterations built without building permits?  |
| 65)  | [ ]     | [ ] | [ ]  | [ ] | Were any of the building permits not finalized (closed) by the permitting agency?  |
| 66)  | [ ]     | [ ] | [ ]  | [ ] | Were any of the improvements to this Property built under an owner-builder permit?   |
| 66a) | _____ → |     |      |     | (a) Date of Completion of the improvements covered under the owner-builder permit: _____   |
| 67)  | [ ]     | [ ] | [ ]  | [ ] | Is the Seller/Builder a licensed contractor who is providing warranties?   |
| 68)  | [ ]     | [ ] | [ ]  | [ ] | Have you given any release or waiver of liability, or release from a warranty to any government agency, contractor, engineer, architect, land surveyor, or landscape architect, for any defect, mistake, or omission in the design or construction of this Property? |
| 69)  | [ ]     | [ ] | [ ]  | [ ] | Has the roof been repaired or replaced?  |
| 69a) | _____ → |     |      |     | (a) When and by whom? _____  |
| 69b) | _____ → |     |      |     | (b) What is the age of the roof? _____   |
| 69c) | [ ]     | [ ] | [ ]  | [ ] | (c) Are there any transferable warranties? List dates of expiration: _____   |

\_\_\_\_\_  
BUYER'S INITIALS

\_\_\_\_\_  
SELLER'S INITIALS & DATE



- YES NO NTMK NA
- 70) [ ] [ ] [ ] [ ] [ ] Is there any presence of wood destroying organisms (e.g., termites, powder post beetles, dry rot, carpenter ants, etc.) in the improvements?
- 70a) [ ] [ ] [ ] [ ] [ ] (a) Is there any known damage to the improvements caused by wood destroying organisms?
- 70b) [ ] [ ] [ ] [ ] [ ] (b) Has the problem been treated?
- 70c) [ ] [ ] [ ] [ ] [ ] (c) Has the damage been repaired?
- 71) [ ] [ ] [ ] [ ] [ ] Has there been any termite treatment? List type and date. \_\_\_\_\_
- 71a) [ ] [ ] [ ] [ ] [ ] (a) Are there any warranties? List type and expiration dates. \_\_\_\_\_
- 72) [ ] [ ] [ ] [ ] [ ] Is there any structural damage due to dry rot or other wood destroying organisms?

**D. ASSOCIATIONS: Do any of the following conditions exist? If "yes", use the same number and describe in Section I.**

- YES NO NTMK NA
- 73) [ ] [ ] [ ] [ ] [ ] Is this Property part of a Condominium Property Regime (CPR)?
- 74) [ ] [ ] [ ] [ ] [ ] Are there any "common area" facilities (such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others?
- 75) [ ] [ ] [ ] [ ] [ ] Is this Property subject to a Homeowners' and/or Community Association?
- 75a) [ ] [ ] [ ] [ ] [ ] (a) If yes, what are the fees and payments? \_\_\_\_\_
- 75b) [ ] [ ] [ ] [ ] [ ] (b) Has your Association notified you of future maintenance fee increases, special assessments, and/or association loans?
- 75c) [ ] [ ] [ ] [ ] [ ] (c) Is membership mandatory?

**E. UTILITIES:**

- 76) What is your source of water supply?  
 a) [ ] Public [ ] Private  
 Is this Property separately metered? [ ] Yes [ ] No  
 Is this a submeter? [ ] Yes [ ] No  
 Is there a shared water supply? [ ] Yes [ ] No  
 b) [ ] Catchment: Tank type \_\_\_\_\_ Capacity \_\_\_\_\_ Age \_\_\_\_\_ Condition \_\_\_\_\_  
 c) [ ] Other \_\_\_\_\_  
 Describe existing problems in Section I.
- 77) What type of waste water/sewage system do you have?  
 [ ] Public Sewer [ ] Private Sewer [ ] Connected? If not, is connection currently required? [ ] Yes [ ] No  
 [ ] Cesspool [ ] Septic System [ ] Individual Sewage Treatment Plant Location \_\_\_\_\_  
 Last Pumped \_\_\_\_\_ How Often? \_\_\_\_\_  
 Does the cesspool serve more than one dwelling or living unit, including "ohana" homes? (A "dwelling" or "living unit" is defined as having its own kitchen/food preparation area, bathroom and sleeping/living area.) [ ] Yes [ ] No  
 Describe existing problems in Section I.
- 78) What is your source of electrical power?  
 [ ] Public [ ] Other: \_\_\_\_\_  
 a) Is the Property subject to Special Subdivision Project Provision (SSPP) connection fees? [ ] Yes [ ] No
- 79) Propane Gas: [ ] Piped [ ] Tank [ ] None
- 80) Telephone Service: [ ] Yes [ ] No [ ] Only party line
- 81) Television Cable Service: [ ] Yes [ ] No [ ] Not available
- 82) Broadband Internet [ ] DSL [ ] Cable [ ] None  
 Describe existing problems in Section I.

**F. CONDO SPECIFIC: Do any of the following conditions exist? If "yes", use the same number and describe in Section I.**

- YES NO NTMK NA
- 83) [ ] [ ] [ ] [ ] [ ] Do you have knowledge of any parking problems for your apartment?
- 84) [ ] [ ] [ ] [ ] [ ] Do you have assigned and/or deeded storage space outside of your apartment?
- 85) [ ] [ ] [ ] [ ] [ ] Were additions, modifications, and/or alterations made to your Property without obtaining required association approval?
- 86) [ ] [ ] [ ] [ ] [ ] Are there restrictions on pets?
- 87) [ ] [ ] [ ] [ ] [ ] Is your dwelling sprinklered for fire protection?
- 88) [ ] [ ] [ ] [ ] [ ] Do you have any leaks or water damage in or to your Property?
- 89) [ ] [ ] [ ] [ ] [ ] Has there been any leakage or water penetration from apartments above or adjacent to your apartment or leakage or water penetration to apartments below your apartment?

BUYER'S INITIALS

SELLER'S INITIALS & DATE

**G. PLANNED COMMUNITIES:** Hawaii law requires that if the Property being offered for sale is in a Planned Community, "disclosure statement" includes the Planned Community declaration and association documents as those terms are defined in Section 421J-2, Hawaii Revised Statutes.

YES NO NA

90) [ ] [ ] [ ] Are the Planned Community declaration and association documents attached to this Disclosure Statement?

**H. FURTHER CONDO NOTICES TO BUYER:**

**UNIT MODIFICATIONS & LANAI ENCLOSURES:** If Buyer is contemplating enclosing a lanai or making other modifications to this Property, an attorney, architect or other professionals knowledgeable in such matters should be consulted first. Obtaining permission to make enclosures or other modifications may involve more than approval by the Association's Board of Directors. Approval may be complex and may require approval from the City & County Building Department.

**RESERVE STUDY:** State law requires certain common interest properties to perform a study and make projections of upcoming maintenance expenses for the common elements. The Association must set aside appropriate reserves for those needs. Currently, there is no standardized reserve study. Some studies are very short and simple, while others are long and complex. Some properties may have a summary of the reserve study. It is recommended that Buyer obtain a copy of the summary of the reserve study or if unavailable, the reserve study. Buyer should read the information and seek the guidance of an attorney, accountant and/or other competent professionals to analyze its contents.

**I. Question Number and Explanation:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Under Hawaii law, unless otherwise agreed in the Purchase Contract, Buyer shall have fifteen (15) calendar days from the date of receiving the Disclosure Statement to examine the Disclosure Statement and to rescind the Purchase Contract. Such rescission must be made in writing and provided to Seller directly or Seller's agent. If timely written notice is provided, then all deposits made by Buyer shall be immediately returned to Buyer.

Seller gives permission to any Broker to provide this statement to any Buyer whose identity has been made known to Seller, a lending institution, or the escrow company involved in the transaction between the parties.

\_\_\_\_\_  
SELLER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SELLER

\_\_\_\_\_  
DATE

**NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE.** An effort has been made to put this agreement into plain language. But there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Buyer, Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).

\_\_\_\_\_  
BUYER'S INITIALS