



## PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

RECEIVED

GERALD AKO, CHAIR  
MELVIN CHIBA, VICE CHAIR  
FRANCIS DEGRACIA, MEMBER

'22 JUN -8 AIO :22

Pursuant to Hawai'i Revised Statutes Section 92-3.7, which codified Act 220, SLH 2021, the meetings of the County of Kaua'i Planning Commission will be conducted as follows:

- **The meeting location that will be open to the public with audiovisual connection is:**
  - Līhu'e Civic Center, Moikeha Building
  - Meeting Room 2A-2B
  - 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i
- In addition to attendance in-person, the public may also attend the meeting by phone using the "join by phone" telephone number provided on the agenda.
- The public may also attend the meeting through Zoom using link provided on the agenda.
- Also, the meeting will be live streamed and available as an archived meeting after completion at [www.kauai.gov/Webcast-Meetings](http://www.kauai.gov/Webcast-Meetings). Please note that the livestream broadcast does not allow interaction between the viewer and Planning Commission. Also, video production services or enhancements of the recorded video will not be available.
- **Written testimony** may be submitted on any agenda item and submitted to [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov) or mailed to the Kauai County Planning Department 4444 Rice Street., Ste A473, Lihue, Hawaii 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be distributed to all Planning Commissioners prior to the meeting. Any testimony received after this time and up to the start of the meeting will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.
- **Oral testimony** will be taken during the public comment portions of the meeting **in-person at the public meeting location, by using the 'join by phone' number, or via Zoom link as an additional accommodation** listed on the agenda.
  - All testifier audio and video will be disabled until it is your turn to testify.
  - Per the Planning Commission's and Chairs practice, there is three-minute time limit per testifier, per agenda item.
  - If there are temporary technical glitches during your turn to testify, we may have to move on to the next person due to time constraints; we appreciate your understanding.
- If the remote telephone connection is lost and cannot be restored within 30 minutes during the meetings, the Planning Commission will continue all matters and reconvene at the next scheduled Planning Commission Meeting.

**SUBDIVISION COMMITTEE MEETING NOTICE AND AGENDA**

Tuesday, June 14, 2022  
8:30 a.m. or shortly thereafter  
Līhu'e Civic Center, Moikeha Building  
Meeting Room 2A-2B  
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i

**To Join by Phone:**

US: +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799  
or +1 346 248 7799 or +1 646 558 8656 or +1 720 707 2699

Webinar ID: 891 8643 5052

Participant ID: #

**To Join by ZOOM Link:**

<https://us06web.zoom.us/j/89186435052>

**Webcast Link:** <https://www.kauai.gov/Webcast-Meetings>

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF AGENDA**

**D. MINUTES of the meeting(s) of the Subdivision Committee**

**E. RECEIPT OF ITEMS FOR THE RECORD**

- F. HEARINGS AND PUBLIC COMMENT** The Planning Commission will accept written testimony for any agenda item herein. Written testimony indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted in writing to [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov) or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department before 9:00 a.m. on Monday, June 13, 2022, will be distributed to all Planning Commissioners prior to the meeting. Written testimony received after 9:00 a.m. on Monday, June 13, 2022, will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.

Oral testimony will be taken during the public comment portion of the meeting in-person at the public meeting location, by using the 'join by phone' number, or via Zoom link as an additional accommodation listed on the agenda. After oral testimony has been taken, members of the public may watch the meeting via the live stream link found at [www.kauai.gov/webcastmeetings](http://www.kauai.gov/webcastmeetings).

**G. GENERAL BUSINESS MATTERS**

- a. None for this meeting.

#### H. UNFINISHED BUSINESS

- a. None for this meeting.

#### I. NEW BUSINESS (For Action)

##### 1. Preliminary Subdivision Map Approval

- a. Subdivision Application No. S-2022-6  
**(Kukui'ula Development Company, LLC./  
MP Kaua'i HH Development Fund, LLC.)**  
Kukui'ula Parcel HH Subdivision  
Proposed 51-lot Subdivision  
TMK: (4) 2-6-019: 026, 029 & 031  
Kōloa, Kaua'i  
  - 1) Subdivision Report pertaining to this matter.
  - 2) Memorandum No. 1 to Subdivision Committee.

##### 2. Final Subdivision Map Approval

- a. Subdivision Application No. S-2021-1  
**(Kukui'ula Development Company, LLC.)**  
Kukui'ula Parcel I Subdivision  
Proposed 40-lot Subdivision  
TMK: (4) 2-6-015: 001  
Kōloa, Kaua'i  
  - 1) Subdivision Report pertaining to this matter.
  - 2) Supplement #1 to Subdivision Report.
  - 3) Memorandum No. 1 to Subdivision Committee.

#### J. EXECUTIVE SESSION

EXECUTIVE SESSION: The Commission may go into executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a) Hawai'i Revised Statutes ("H.R.S."), without noticing the executive session on the agenda where the executive session was not anticipated in advance. HRS Section 92-7(a). The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced.

1. Subdivision Application No. S-2022-6  
**(Kukui'ula Development Company, LLC./  
MP Kaua'i HH Development Fund, LLC.)**  
Kukui'ula Parcel HH Subdivision  
Proposed 51-lot Subdivision  
TMK: (4) 2-6-019: 026, 029 & 031  
Kōloa, Kaua'i



2. Subdivision Application No. S-2021-1  
**(Kukui'ula Development Company, LLC.)**  
Kukui'ula Parcel I Subdivision  
Proposed 40-lot Subdivision  
TMK: (4) 2-6-015: 001  
Kōloa, Kaua'i

K. ADJOURNMENT

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR [ASEGRETI@KAUAI.GOV](mailto:ASEGRETI@KAUAI.GOV) AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.



# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

## SUBDIVISION REPORT (REVISED)

### I. SUMMARY

**Action Required by Planning Commission:** Consideration of Subdivision Application No. S-2022-6 that involves a fifty-one (51) lot subdivision. It is before the Commission for Revised Tentative Approval to recognize revised conditions.

**Subdivision Permit No.** Application No. S-2022-6

**Name of Applicant(s)** KUKUI'ULA DEVELOPMENT COMPANY, LLC.

### II. PROJECT INFORMATION

<b>Map Title</b>	Parcel HH Subdivision. Consolidation of Lots 26, 29, and 31 Kukui'ula Residential Subdivision, Phase III-A Being Portion of R.P. 6714, L.C. Aw. 7714-B, AP. 2 to M. Kekuaiwa no M. Kekuanaoa Resubdivision of said Consolidation into Lots 1 through 51, Inclusive and Designation of Easements D-10 through D-14, Inclusive at Kōloa, Kona, Kaua'i, Hawai'i.				
<b>Tax Map Key(s):</b>	2-6-019:026, 029, 031	<b>Area:</b>	84.13 acres		
<b>Zoning:</b>	Open / Special Treatment-Open / Resort RR-10 / Residential R-10 / Residential R-4				
<b>State Land Use District(s):</b>	Urban	<b>General Plan Designation:</b>	Resort / Residential Comm. / Golf Course		
<b>AGENCY COMMENTS</b>					
<input checked="" type="checkbox"/> COK Public Works	11.01.2021	<input type="checkbox"/> State DOT-Highways:			
<input checked="" type="checkbox"/> COK Water:	12.23.2021	<input checked="" type="checkbox"/> State Health:	11.10.2021		
<input type="checkbox"/> Other(s)		<input checked="" type="checkbox"/> DLNR – SHPD:	01.21.2021		
<b>EXISTING ROAD RIGHT-OF-WAY(S)</b>					
Road Name	Existing Width	Required Width	Pavement YES	NO	Reserve
'Alihilani Street	44 feet	44 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ke Alaula Street	56 feet	56 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Lāwa'i Road	60 feet	60 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<b>APPLICABLE FEES</b>					
Environmental Impact Assessment (EIA)	\$23,500.00				
Park Dedication	TBD. Appraisal required				
Appraisal Report Required	Yes				

I.1.a.1.  
June 14, 2022

I.1.a.1.  
MAY 24 2022

I.1.a.1.  
FEB 08 2022

### III. EVALUATION

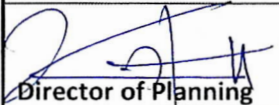

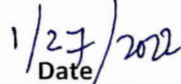

As previously noted, the action required is a consideration of Revised Tentative Approval. The application was granted Tentative Approval, as amended, by the Planning Commission on January 11, 2022. The revision involves the removal of Condition 1.p., relating to unpermitted improvements (tennis courts) involving the clubhouse facility on proposed Lot 49 and proposed improvements to the facility that includes a pickle-ball court and an expansion to the existing pool. After further review of the existing tennis courts, the department has discovered that the tennis court facility was approved through Class I Zoning Permit Z-300-17. In addition, the Applicant has represented to the department that they will not pursue an expansion of the existing pool. In considering the proposed pickle-ball and multi-sport courts, the department has determined that it could be considered as a part of the existing clubhouse facility previously approved through Class IV Zoning Permit Z-IV-2006-18 since the proposed development would be considered as "associated resort amenities and ancillary uses".

However, the Applicant should also be made aware that the proposed subdivision would be subject to the requirements associated with the Ka Pa'akai O' Ka'aina Analysis. This requirement was not included in the previous tentative approval that was granted on January 11, 2022; however, it is required by law to fulfill the constitutional duty to preserve and protect traditional customary native Hawaiian rights and resources. This requirement is included into this Subdivision Report as the "new" Condition 1.p. (shown underscored for reference only).

The proposed development establishes forty-seven (47) lots within the Residential District (R-10), one (1) roadway lot (Lot 48), one remnant Lot (Lot 50), proposed Lot 49 that encompasses The Club at Kukui'ula facility, and proposed Lot 51 that encompasses the Kukui'ula golf course. It is noted that the proposed residential lots are outside of the Special Management Area (SMA); however, proposed Lots 50 and 51 have portions of the lots that are within the SMA. Any new "development", as defined in Section 1.4 of the SMA Rules and Regulations of the County of Kaua'i, may require an SMA Permit and if so, the applicant is subject to all applicable requirements/conditions of the permit.

It should also be noted that the Public Path and Trails Exhibit dated October 2020 shows the proposed subdivision as part of the trail system within the planned community. The applicant will need to work with the Planning Department to address the provision of public access.

### IV. RECOMMENDATION

TENTATIVE APPROVAL	FINAL APPROVAL
<input checked="checked" type="checkbox"/> Approval <input type="checkbox"/> Denied	<input type="checkbox"/> Approval <input type="checkbox"/> Denied
Tentative Approval subject to all requirements as noted on the follow pages:	All conditions have been complied with
 Director of Planning	 Director of Planning
 Date	 Date

## **V. AGENCY REQUIREMENTS**

### **1. Requirements of the Planning Department:**

- a. An updated preliminary title report for the existing lot shall be submitted to the Planning Department for review.
- b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- c. Pursuant to Ordinance No. PM-2004-370, the Applicant is allowed to credit Environmental Impact Assessment and Park Dedication fees for developments within their Project Area. Since the Applicant has not resolved with the Planning Department whether they will pay fees or provide improvements for credit, the following fees are being assessed:
  - 1) An Environmental Impact Assessment Fee of Twenty Three Thousand Five Hundred Dollars (\$23,500.00) shall be paid to the County of Kaua'i; and
  - 2) The Applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kaua'i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Properties Division to help calculate the fee amount.

The Applicant shall resolve with the Planning Department the method that will be utilized to satisfy these fee requirements prior to final subdivision approval.

- d. Relative to Condition No. 1.c. and prior to final subdivision map approval, the Applicant shall meet with the Planning Department to resolve the applicable requirements of Ordinance No. PM-2004-370. Specifically, the following conditions shall apply to this subdivision:

#### **Conditions of Ordinance No. PM-2004-370:**

- o 3. (prohibition of Additional Dwelling Units)
  - o 7. (improvements to roadway system)
  - o 14. (EIA credit)
  - o 15. (recreation)
  - o 16. (park dedication credit)
  - o 23. (wastewater system master plan)
  - o 27. (solid waste management plan)
  - o 30. (blasting plan)
- e. Prior to final subdivision approval, Lot 26 (existing) shall be amended to be labeled as Lot 10 as shown on the final subdivision map of Subdivision Application No. S-2019-9 (Kukui'ula Parcel FF Subdivision) that was approved on March 24, 2020. Lot



26 was initially a part of the 10-lot subdivision that was approved through S-2019-9 where it subsequently became Lot 10 on the final subdivision map.

- f. Relative to the requirements/standards set forth in Ordinance No. 777, the Applicant shall resolve with the Planning Department the provision of public access.

The subdivider shall incorporate the features of the Conceptual Trail Master Plan (dated April 2004) within the project area, if applicable. The access plan shall be reviewed and approved by both the Planning and Parks & Recreation Departments. Furthermore, proper documents shall be prepared and ready for execution prior to final subdivision approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

- g. There shall be no vehicular access permitted onto Lāwai Road from proposed Lot 50. Semi-circles denoting no vehicular access permitted shall be shown on the final subdivision map. These provisions shall be incorporated as a restrictive covenant for the subject lot, draft copies of which shall be submitted to the Planning Department for review and approval.
- h. The Applicant is made aware that the streets designated within the subdivision must be officially named before the Department approves the construction plans. Street names should be in Hawaiian and be submitted to our Department for review and approval, along with a request letter and 12 maps (on 8½" x 14" paper). The maps should be detailed such that emergency vehicles, police services, postal deliveries, etc., are able to locate the street. References to roadway, such as the highway and other surrounding roads, should be shown on the street-naming map.
- i. The Subdivider shall comply with the requirements in Section 9-2.3(e) of the Kaua'i County Code (1987) relating to the provision of curbs, gutters and sidewalks along Roadway Lot 48. The extent of improvements shall be resolved with the Planning Department and Department of Public Works prior to final subdivision map approval.
- j. The Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
- k. The Applicant shall establish bus stops/shelters pursuant to Ordinance No. 406. The details shall be resolved with the Planning Department and Department of Public Works prior to construction plan approval.
- l. The Applicant shall identify on the final subdivision map whether the proposed lots will be utilized for Transient Vacation Rental (TVR) purposes. If so, the total amount of the lots within the Kukui'ula Parcel HH Subdivision, shall be counted towards the total amount approved through Ordinance No. PM-2004-370.

- m. The subdivider is informed that a portion of the subject property is located within the Special Management Area (SMA). Additional lots within the SMA or any new "Development," as defined in Section 1.4 of the SMA Rules and Regulations of the County of Kaua'i, may require an SMA Permit and if so, the applicant is subject to all applicable requirements/conditions of the SMA Permit.
- n. The applicant shall depict with a dotted line on the final subdivision map zoning lines delineating the boundaries between each County Zoning District as shown on the "Kukui'ula South Shore, Kaua'i, Zoning Refinement Area Map" dated June 8, 2020.
- o. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.
- p. In Ka Pa'akai O Ka'aina v. Land Use Commission, the Hawai'i Supreme Court established a three-part analytical framework to fulfill the constitutional duty to preserve and protect traditional and customary native Hawaiian rights and resources while reasonably accommodating competing private interests. Prior to final subdivision approval the Applicant shall describe the actions taken and examination conducted to analyze the following:
  - 1) Identify whether any valued cultural, historical, or natural resources are present within the project area, and identify the extent to which traditional and customary Native Hawaiian rights are exercised. This part may include but not be limited to the following analyses:
    - o Describe the project area in relation to traditional and customary practices that occurred in the region or district.
    - o Describe the extent that traditional and customary practices were practiced in the ahupua'a and project area.
    - o Describe the community members you consulted with including their genealogical ties, long-standing residency, and relationship to region, ahupua'a and project area.
    - o Describe the Land Commission Awards provided on the property?
    - o Describe the prior archaeological studies that were conducted for the property.

- Are you aware of any resources that found any evidence of subsurface habitation or excavation on the property?
- Does the property contain any evidence that trails were in existence on the property?
- Have any individuals ever requested access to the property for any reason?
- 2) Identify the extent to which the identified resources and rights will be affected or impaired by the proposed project.
- 3) Specify any mitigative actions to be taken to reasonably protect native Hawaiian rights if they are found to exist.

2. Requirements of the Department of Public Works (DPW):

- a. We have no site-specific comments for the preliminary map for the proposed consolidation of Lots 26, 29, and 31 and Resubdivision of said consolidation into Lots 1 through 51 (Parcel HH).

In general, the applicant shall comply with all the provisions of the "Sediment and Erosion Control Ordinance" to safeguard the public health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. This shall include, but not limited to, a grading and/or grubbing permit, which is required if any of the following conditions apply:

- 1) The work area exceeds one (1) acre.
- 2) Grading involving excavation or embankment, or combination thereof exceeds 100 cubic yards.
- 3) Grading exceeds five (5) feet in vertical height or depth at its deepest point.
- 4) The work area unreasonably alters the general drainage pattern to the detriment of abutting properties.

- b. Best management practices (BMPs) shall be incorporated to the maximum extent practicable to prevent damage by sedimentation, erosion, or dust to watercourses, natural areas, and other properties. The permittee and the property owner shall be responsible to ensure that BMPs are satisfactorily implemented at all times.

- c. The existing grass strip and sidewalk on Lāwai Road previously built by Kukui'ula Development Corporation is difficult for the County of Kaua'i Public Works Department to maintain due to limited equipment available. Therefore, we recommend that the Planning Commission include the following condition with this subdivision:

"The applicant shall maintain the portion of the County right-of-way of Lāwai Road between the curb (or edge of pavement where there is no curb) and the property line separating the County right-of-way and the properties being subdivided as part of this subdivision. The maintenance shall include mowing or otherwise maintaining the grass



or other vegetation within this area, maintaining the concrete sidewalk to be free of obstructions and debris, and replacing the concrete sidewalk in the event it is broken or uneven in the future.”

3. Requirements of the Department of Water (DOW):

- a. Pay the Department of Water the following charges in effect at the time of receipt. At the present time, these charges include:
  - 1) A Facilities Reserve Charge (FRC) of \$705,750 (50 lots at \$14,115 per lot).
- b. Prepare and receive DOW’s approval of construction drawings for the necessary water system facilities and either construct the said facilities or post a performance bond for construction. These facilities shall also include:
  - 1) All facilities required in the approved Kukui’ula Water Master Plan for the proposed project.
- c. Prepare and convey to the Department of Water a Right-of-Entry and Temporary Grant of Easement for the purpose of construction, repair, maintenance, and operation of the subdivision water system improvements installed in other than County-owned property.
- d. If a bond is filed, to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map, and deeds:

“Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kaua’i.”

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.
- e. Kukui’ula Development Company (KDC) will be required to:
  - 1) Submit an updated Kukui’ula Water Demand and System Capacity Tracking Matrix.
  - 2) Be made aware that the Facilities Reserve Charge and the adequacy of source, storage and transmission facilities for the proposed development will be dependent on the approved updated Kukui’ula Water Demand and System Capacity Tracking Matrix.

- 3) Show water service assignments on the subdivision map for DOW's review and approval. The DOW comments may change depending on the approved subdivision map.
4. Requirements of the Department of Health (DOH):
  - a. The property may harbor rodents which will disperse to the surrounding areas when the site is cleared. In accordance with Title 11, Hawaii Administrative Rules (HAR), Chapter 11-26, "Vector Control", the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
  - b. Noise will be generated during the construction and grading phases of this project. The applicable maximum permissible sound levels as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control" shall not be exceeded unless a noise permit is obtained from the State Department of Health.
  - c. Temporary fugitive dust emissions could be emitted when the subdivided lots are prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1 "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
  - d. The construction waste that is to be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1 "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.
5. Requirements of the State Historic Preservation Department (SHPD):
  - a. The subdivider shall comply with the requirements of the State Historic Preservation Department, if any, prior to final subdivision approval.
6. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.

7. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for FEBRUARY 8, 2022 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

By   
KENNETH A. ESTES  
Planner





of Kauai  
PLANNING DEPT.

22 JAN 26 P2:08

Planning Department  
County of Kauai  
ATTN:

RECEIVED

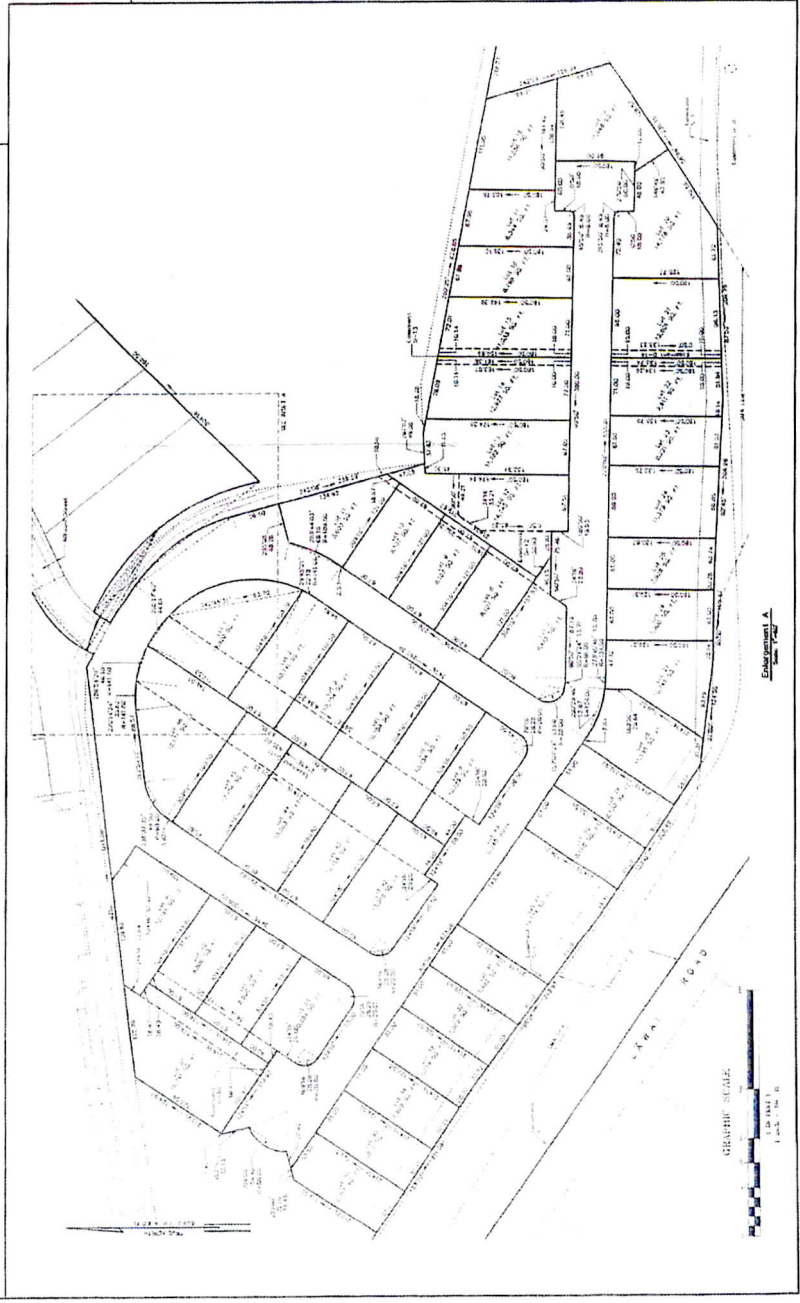
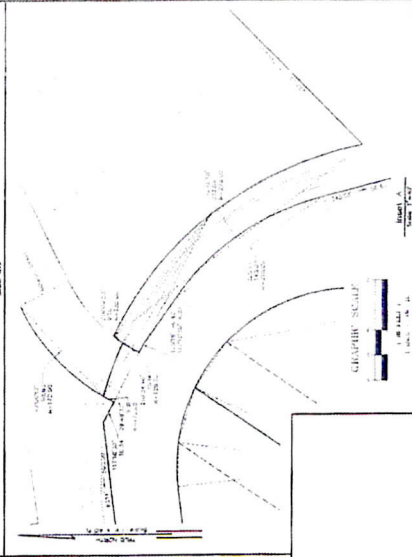
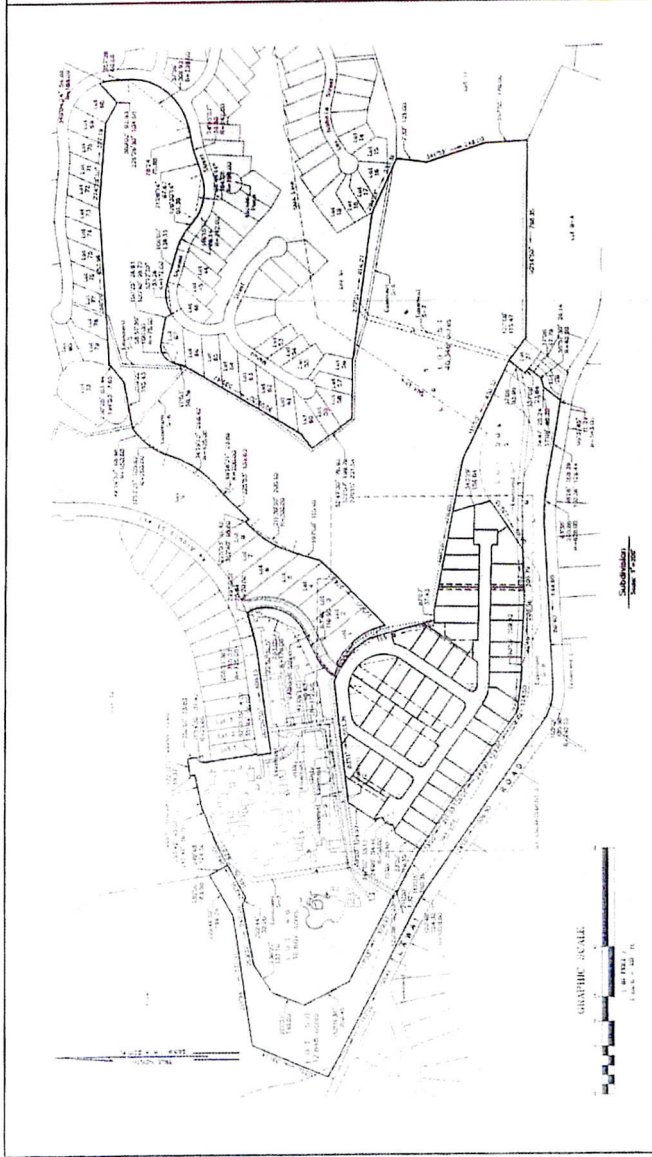
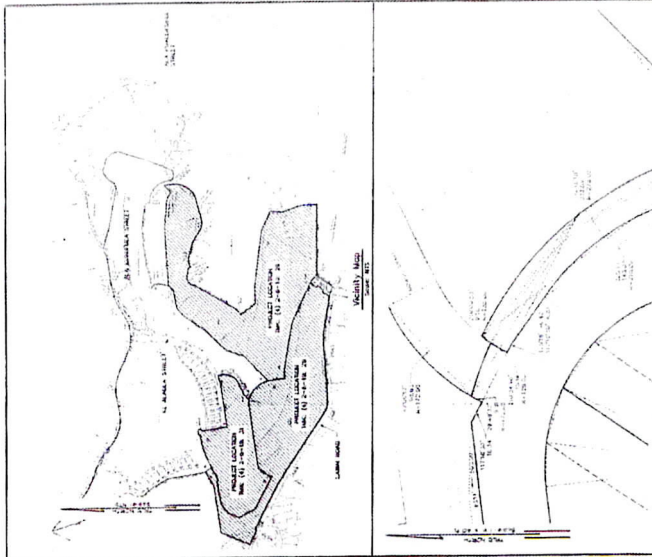
Mr. Ka'aina Hull  
Mr. Dale Cua  
Mr. Kenneth Estes  
Ms. Jodi Higuchi Sayegusa

Kukui'ula Development Company (Hawaii), LLC ("Kukuiula") has elected to withdraw its request to add a second pool to the Club at Kukui'ula facility. The application for the pool, two pickle-ball courts and one multi-sport court were submitted to the Department of Public Works and subsequently forwarded to the Planning Department in the clearinghouse review process. The application for the pickle-ball, multi-sport and existing tennis courts have been approved by Department of Public Works and remain pending with the Planning Department. Kukui'ula recognizes that the pickle-ball, multi-sport and existing tennis courts will be considered "associated resort amenities and ancillary uses" under the existing and current Class IV Zoning Permit Z-IV-2006-18 for the Club at Kukui'ula; however, the parcel where the proposed pickle-ball, multi-sport and existing tennis courts is located will need to be consolidated in to the parcel associated with Class IV Zoning Permit Z-IV-2006-18 with the final map approval for the Parcel HH Subdivision.

Through these actions, Kukui'ula respectfully requests that Tentative Approval Condition 1.p. of Subdivision Action S-2022-6 for the Parcel HH Subdivision be removed or modified as noted above.

Regards,

Dave Hutchinson  
Vice President of Land Development  
BBCP Kukui'ula Development LLC

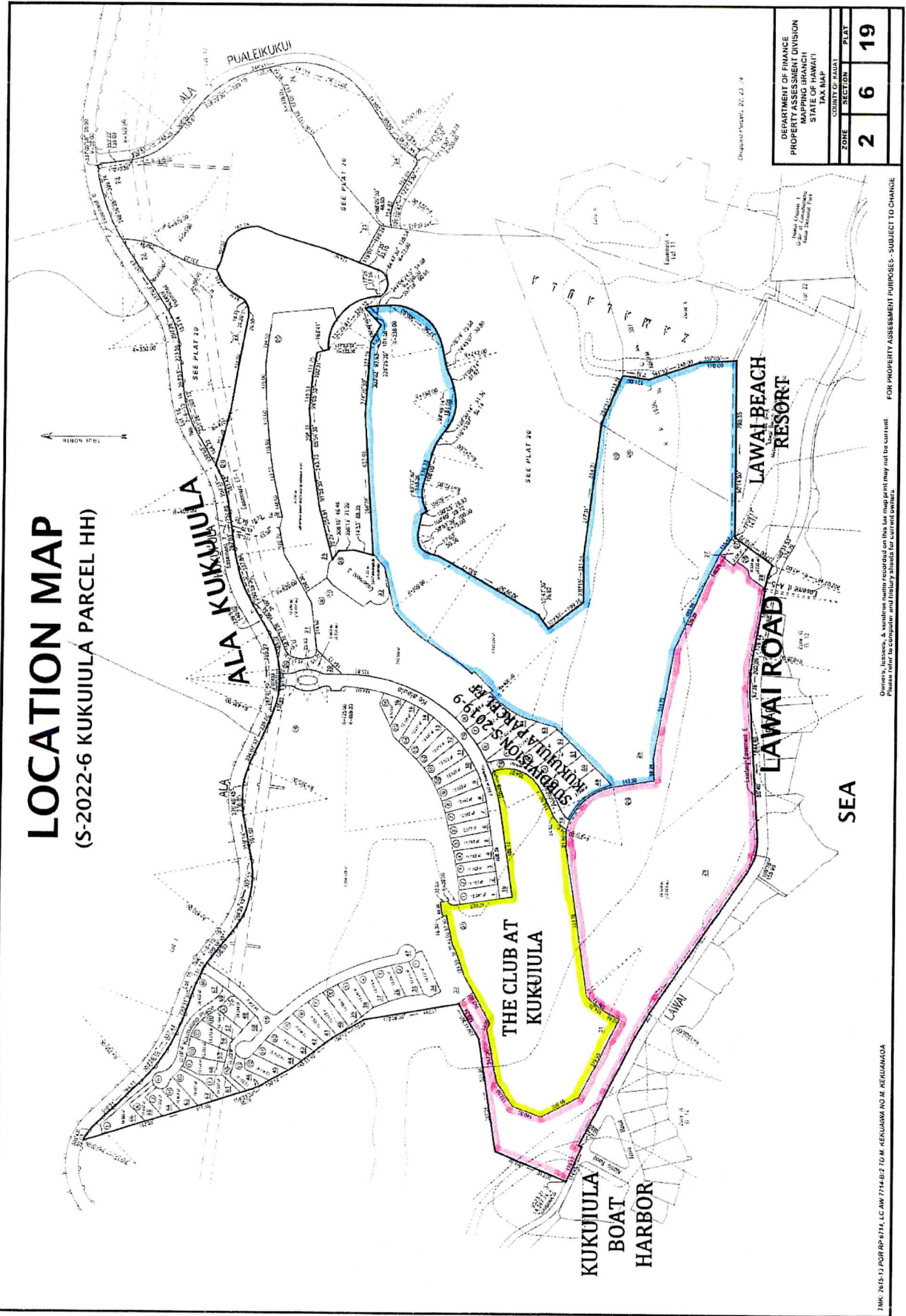


PRELIMINARY MAP  
(Parcel HH)  
CONSOLIDATION OF LOTS 26, 29, AND 31  
Kukuiula Residential Subdivision, Phase III-A  
Being Portion of R.P. 6714,  
L.C. No. 7714-B, Ap. 2 to  
M. Kekuaia no M. Kekuaia  
RESUBDIVISION OF SAID CONSOLIDATION INTO  
LOTS 1 THROUGH 51, INCLUSIVE  
AND DESIGNATION OF EASEMENTS  
D-10 THROUGH D-14, INCLUSIVE  
Owner: Kukuiula Development Co., LLC  
Map: (4) 2-6-19: 26  
(4) 2-6-19: 29  
(4) 2-6-19: 31  
Date: October 9, 2021

10/1/2021, 10:10:10 AM, 10/1/2021, 10:10:10 AM

# LOCATION MAP

(S-2022-6 KUKUIULA PARCEL HH)



DEPARTMENT OF FINANCE PROPERTY ASSESSMENT DIVISION MAPPING BRANCH STATE OF HAWAII TAX MAP			
COUNTY OF HAWAII	ZONE	SECTION	PLAT
	2	6	19

Owner's, lessee's, & vendee's number recorded on this tax map print may not be current. Please refer to computer and map's printouts for current owners. FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE





COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4444 RICE STREET, SUITE A473 LIHU'E, HAWAII 96766  
(808) 241-4050

**SUBDIVISION APPLICATION ROUTING FORM** 21 DEC -3 AB:01  
DATE: November 1, 2021

Subdivision Map Review and Approval		<b>RECEIVED</b>	
REQUEST:	<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> Final	
	<input type="checkbox"/> Pre-Final	<input type="checkbox"/> Extension	
SUDIVISION APPLICATION NO:		Subdivision Permit NO. S-2022-6,	
Owner(s)/Applicant(s):		Kukuiula Development Company	
Name of Surveyor/Engineer/Authorized Agent:		Dennis M. Esaki	
Tax Map Key:	Tax Map Key: (4) 2-6-019:026, 29, 31	Assigned to:	Kenny
Improvements:			

**Route To:**

<input checked="" type="checkbox"/> DPW-Engineering	<input type="checkbox"/> Department of Transportation - STP
<input type="checkbox"/> DPW-SolidWaste	<input type="checkbox"/> DOT-Highway, Kauai
<input checked="" type="checkbox"/> DPW-Wastewater	<input checked="" type="checkbox"/> State Department of Health
<input type="checkbox"/> Fire-Department	<input type="checkbox"/> State Historic Preservation Division
<input type="checkbox"/> Department of Parks & Recreation	<input type="checkbox"/> UH Sea Grant
<input checked="" type="checkbox"/> County Housing-Agency	<input checked="" type="checkbox"/> U.S. Postal Department
<input type="checkbox"/> KHPRC	<input type="checkbox"/> Other:
<input checked="" type="checkbox"/> County Water Department	
<input checked="" type="checkbox"/> County Transportation Agency	

COMMENTS FROM DPW ENGINEERING (Comment Due Date: 12/1/2021): PW#11.21.002

We have no site-specific comments for the preliminary map for the proposed consolidation of Lots 26, 29, and 31 and Resubdivision of said consolidation into Lots 1 through 51 (Parcel HH).

In general, the applicant shall comply with all provisions of the "Sediment and Erosion Control Ordinance" to safeguard the public health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. This shall include, but not be limited to, a grading and/or grubbing permit, which is required if any of the following conditions apply:

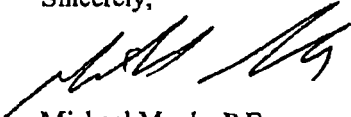
- The work area exceeds one (1) acre.
- Grading involving excavation or embankment, or combination thereof exceeds 100 cubic yards.
- Grading exceeds five (5) feet in vertical height or depth at its deepest point.
- The work area unreasonably alters the general drainage pattern to the detriment of abutting properties.

Best management practices (BMPs) shall be incorporated to the maximum extent practicable to prevent damage by sedimentation, erosion, or dust to watercourses, natural areas, and other properties. The permittee and the property owner shall be responsible to ensure that BMPs are satisfactorily implemented at all times.

The existing grass strip and sidewalk on Lāwa'i Road previously built by Kukui'ula Development Corporation is difficult for the County of Kaua'i Public Works Department to maintain due to limited equipment available. Therefore, we recommend that the Planning Commission include the following condition with this subdivision:

"The applicant shall maintain the portion of the County right-of-way of Lāwa'i Road between the curb (or edge of pavement where there is no curb) and the property line separating the County right-of-way and the properties being subdivided as part of this subdivision. This maintenance shall include mowing or otherwise maintaining the grass or other vegetation within this area, maintaining the concrete sidewalk to be free of obstructions and debris, and replacing the concrete sidewalk in the event it is broken or uneven in the future."

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Moule', is written over a horizontal line.

Michael Moule, P.E.  
Chief, Engineering Division



4398 PUA LOKE STREET  
LIHU'E, KAUAI, HAWAII 96766  
PHONE: (808) 245-5400 / FAX: (808) 245-5813

Water has no substitute. Conserve it.

### SUBDIVISION REPORT

TO: PLANNING DEPARTMENT  
FROM: DEPARTMENT OF WATER

DATE: December 22, 2021

TMK: 2-6-019:026, Kuku'ula Development, Dennis  
029, 031 NAME: Company SURVEYOR: Esaki REPORT NO: S-2022-6

1. Domestic water is adequate. Tentative approval is recommended. ☒
2. All requirements have been fully met and; therefore, Final approval is recommended. ☐
3. Before final approval can be recommended, the subdivider must: ☐
  - A. Pay the Department of Water the following charges in effect at the time of receipt. At the present time, these charges include: ☐
    - 1) The Facilities Reserve Charge (FRC): ☒  
50 Lots @ \$14,115 per lot = \$ \* \$705,750 (See Item 5)
    - 2) Payment to install \_\_\_\_\_, or relocate \_\_\_\_\_, service connection(s) at the fixed cost of \$ \_\_\_\_\_. If the subdivider causes a delay in the service connection installation after one year since final map approval, the subdivider shall be charged the increase in the fixed cost, if any. ☐
    - 3) Deposit (the subdivider will either be billed or returned the difference between this deposit and the actual cost of construction of \$ \_\_\_\_\_ for construction by the DOW. ☐
  - B. Submit to the Department of Water a copy of the subdivider's permit to perform work upon a State highway from the State Highways Division ☐
  - C. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and either construct said facilities or post a performance bond for construction. These facilities shall also include: ☒
    - 1) All facilities required in the approved Kuku'ula Water Master Plan for the proposed project. ☒
  - D. Prepare and convey to the Department of Water a Right-of-Entry and Temporary Grant of Easement for the purpose of construction, repair, maintenance and operation of the subdivision water system improvements installed in other than County-owned property. ☒
  - E. If a bond is filed, to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map, and deeds: ☒

"Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kaua'i."

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.
4. Installation of service connections will not be required until request for water service is made. The applicant for service will be charged the applicable service connection charges at that time. ☐
5. Other (or remarks): ☒
  - a. Submit an updated Kuku'ula Water Demand and System Capacity Tracking Matrix.
  - b. \*\* Be made aware that the Facilities Reserve Charge and the adequacy of source, storage and transmission facilities for the proposed Development will be dependent on the approved updated Kuku'ula Water Demand and System Capacity Tracking Matrix
  - c. Show water service assignments on subdivision map for the DOW's review and approval. The DOW comments may change depending on the approved subdivision map.

*Michael R. Hinazumi*

Michael Hinazumi, P.E.  
Program Administrator  
Engineering Division

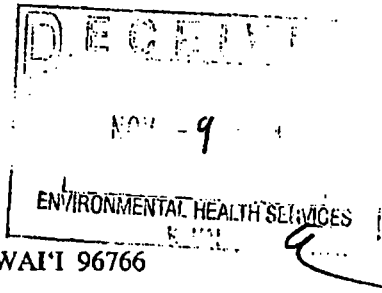
Dec 23, 2021

Date

SUBDIVISION REPORT NO. S-2022-6



COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4444 RICE STREET, SUITE A473 LIHU'E, HAWAII 96766  
(808) 241-4050



**SUBDIVISION APPLICATION ROUTING FORM**

DATE: November 1, 2021

Subdivision Map Review and Approval			
REQUEST:	<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> Final	
	<input type="checkbox"/> Pre-Final	<input type="checkbox"/> Extension	
SUDIVISION APPLICATION NO:		Subdivision Permit NO. S-2022-6,	
Owner(s)/Applicant(s):		Kukuiula Development Company	
Name of Surveyor/Engineer/Authorized Agent:		Dennis M. Esaki	
Tax Map Key:	Tax Map Key: (4) 2-6-019:026, 29, 31	Assigned to:	Kenny
Improvements:			

**Route To:**

<input checked="" type="checkbox"/> DPW-Engineering	<input type="checkbox"/> Department of Transportation - STP
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<input checked="" type="checkbox"/> County Water Department	
<input checked="" type="checkbox"/> County Transportation Agency	

COMMENTS (Comment Due Date: 12/1/2021):

SEE ATTACHED

*Dan Long* 11/1/21

Subdivision Application No.: **S-2022-6**  
Applicant: **Kukui'ula Development Co.**

Based on our review of the application at this time, we have these environmental health concerns or comments for your consideration at this time.

1. The property may harbor rodents which will disperse to the surrounding areas when the site is cleared. In accordance with Title 11, Hawaii Administrative Rules (HAR), Chapter 11-26, "Vector Control", the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
2. Noise will be generated during the construction and grading phases of this project. The applicable maximum permissible sound levels as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control" shall not be exceeded unless a noise permit is obtained from the State Department of Health.
2. Temporary fugitive dust emissions could be emitted when the subdivided lots are prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1 "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
4. The construction waste that is be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1 "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when information that is more detailed is submitted.



COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4444 RICE STREET, SUITE A473 LĪHU'E, HAWAII 96766  
(808) 241-4050

**SUBDIVISION APPLICATION ROUTING FORM**

**DATE: November 1, 2021**

Subdivision Map Review and Approval			
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<input checked="" type="checkbox"/> County Water Department	
<input checked="" type="checkbox"/> County Transportation Agency	

COMMENTS (Comment Due Date: 12/1/2021 ):

*Not on County Sewer.*





PLANNING

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4444 RICE STREET, SUITE A473 LIHU'E, HAWAII 96766  
(808) 241-4050

21 NOV -9 13:55

**SUBDIVISION APPLICATION ROUTING FORM**

DATE: November 1, 2021

RECEIVED

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<input checked="" type="checkbox"/>	County Housing-Agency	<input checked="" type="checkbox"/>	U.S. Postal Department
<input type="checkbox"/>	KHPRC	<input type="checkbox"/>	Other:
<input checked="" type="checkbox"/>	County Water Department		
<input checked="" type="checkbox"/>	County Transportation Agency		

COMMENTS (Comment Due Date: 12/1/2021 ):

CTA HAS NO FURTHER COMMENT ON THIS PROJECT.

THANKS

11-8-2021

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING  
601 KAMOKILA BLVD., STE 555  
KAPOLEI, HI 96707

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

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

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

January 21, 2022

Michael Moule, P.E., P.T.O.E., Division Chief  
County of Kaua'i  
Department of Public Works  
4444 Rice Street, Suite 175  
Lihue, Hawai'i 96766  
[mmoule@kauai.gov](mailto:mmoule@kauai.gov)

IN REPLY REFER TO:  
Project No. 2015PR20199  
Doc. No. 2201DB03  
Archaeology

Dear Mr. Moule:

**SUBJECT: HRS Chapter 6E-42 Historic Preservation Review –  
Kukui'ula Residential Development Tennis Center (Parcel HH) – Subdivision S-2006-05  
Clearinghouse Permit Application – CL – 2021-010 (PW 05.21.075)  
Applicant: Kukui'ula Development Company  
Kōloa Ahupua'a, Kona District, Island of Kaua'i  
TMK: (4) 2-6-019:029**

This letter provides the State Historic Preservation Division's (SHPD's) HRS §6E-42 review of the County of Kaua'i Clearinghouse Permit Application CL-2021-010 for the Kukui'ula Residential Development Tennis Center (Submission No. 2015PR20199.003). SHPD received the submittal via HICRIS on November 19, 2021 which included a SHPD HRS 6E Submittal Form, a County of Kaua'i Department of Public Works Clearinghouse Form, construction plans, and a report titled *Draft Archaeological Field Inspection Letter Report for Parcel HH of the Kukui'ula Community Development Project*. TMK: (4) 2-6-019:029, Kōloa Ahupua'a, Kōloa District, Kaua'i (Hammatt, June 2021).

The proposed project scope of work involves the construction of new pickleball courts, a multi-game court, associated shade structures, and a concrete walkway. The project area comprises a 17.16-acre portion of the 29.23-acre property located at 2700 Ke Alaula Street, Kōloa. Parcel HH is bounded by Lāwa'i Road to the south, the existing tennis courts to the west, Kukui'ula Clubhouse and parking to the north, and Parcel FF to the northeast. Proposed ground disturbance includes general grading of the area and excavation several feet deep for a new pickle ball court and associated utilities. The graded area will be approximately 14,043 sq. ft., with an excavation of 620 cubic yards and an embankment of 65 cubic yards.

Previous ground disturbance within the project area includes development of the property in the 1980s. SHPD correspondence dated April 24, 2017 (Log No. 2017.00475, Doc. No. 1704LS01) indicates our office made a HRS 6E project determination of "No historic properties affected" for proposed grading and excavation of 2.58 acres within TMK: (4) 2-6-019:029 [County Clearinghouse Permit CL-2017-006 for Parcel HH-II Subdivision]. The USDA (Foote et al. 1972) identifies the soils within this project area as Waikomo very rocky silty clay (Wt).

An archaeological inventory survey (AIS) conducted for the Kukui'ula Bay Community (Hammatt et al. 1988) identified 58 archaeological sites, including 150 features within a 1,000-acre area from Poipu Rd. on the east to the edge of Lawai Valley to the west. Three previously identified historic properties were documented in the western portion of the project area: a habitation and agricultural site (Site # 50-30-10-01947), and two habitation sites (Site # 50-30-10-01949 and Site # 50-30-10-01950). Additional work within the Kukui'ula development included data recovery (Hammatt 1998, Hammatt 1989) and the establishment of five archaeological preserves. No preserves are within the current Parcel HH project area. The three sites (Site #s 50-30-10-01947, 50-30-10-01949, and 50-30-10-

Mr. Michael Moule  
January 21, 2022  
Page 2

01950) were not slated for preservation and the 2021 archaeological field inspection conducted in support of the current project (Hammatt, June 2021) indicates the three sites are no longer present and that they likely were removed during permitted mass grading activities in the 1980s. No historic properties are present in the current project area.

Although the archaeological field inspection letter report (Hammatt, June 2021) does not fulfill the requirements of an archaeological inventory survey as specified in HAR §13-276-5, it serves to facilitate project planning and supports the historic preservation review process. Please provide two hard copies and one text-searchable pdf copy of the report, clearly marked Final, along with a copy of this letter, to the SHPD Kapolei office, attention Library. Additionally, provide a text-searchable pdf copy, clearly marked Final, to HICRIS Project 2015PR20199 using the project supplement option, and a pdf copy to [lehua.k.soares@hawaii.gov](mailto:lehua.k.soares@hawaii.gov).

Based on current information, SHPD's determination is "**No historic properties affected**" for the current project. Pursuant to HAR §13-284-7(e), when the SHPD agrees that the action will not affect any significant historic properties, this is the SHPD's written concurrence and historic preservation review ends. The historic preservation review process is ended. The permitting and/or project initiation process may continue.

Please attach to permit: In the unlikely event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance, and contact the State Historic Preservation Division, at (808) 462-3225.

Please contact David Buckley, Kaua'i Lead Archaeologist, at (808) 462-3225 or at [David.Buckley@hawaii.gov](mailto:David.Buckley@hawaii.gov) for questions regarding this letter.

Mahalo,  
*Alan Downer*

Alan S. Downer, PhD  
Administrator, State Historic Preservation Division  
Deputy State Historic Preservation Officer

cc: Ka'āina S. Hull, County of Kaua'i Planning Department, [khull@kauai.gov](mailto:khull@kauai.gov)  
Paul Togioka, County of Kaua'i Department of Public Works, [ptogioka@kauai.gov](mailto:ptogioka@kauai.gov)  
Chris Rivera, Kukui'ula Development Company, [crivera@kukuiula.com](mailto:crivera@kukuiula.com)  
Dave Hutchinson, Kukui'ula Development Company, [dhutchinson@kukuiula.com](mailto:dhutchinson@kukuiula.com)  
Hallett Hammatt, Cultural Surveys Hawai'i, [hhammatt@culturalsurveys.com](mailto:hhammatt@culturalsurveys.com)  
David Shideler, Cultural Surveys Hawai'i, [dshideler@culturalsurveys.com](mailto:dshideler@culturalsurveys.com)  
William Folk, Cultural Surveys Hawai'i, [wfolk@culturalsurveys.com](mailto:wfolk@culturalsurveys.com)  
Mishalla Spearing, Cultural Surveys Hawai'i, [mspearing@culturalsurveys.com](mailto:mspearing@culturalsurveys.com)

## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

### MEMORANDUM NO. 1 TO SUBDIVISION COMMITTEE

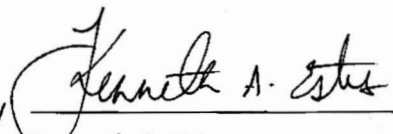
**RE:**                    **Subdivision Application No. S-2022-6**  
                              (Kukui'ula Parcel HH Subdivision)  
                              Kukui'ula Development Company, LLC./  
                              MP Kaua'i HH Development Fund, LLC.

**Subdivision Application No. S-2021-1**  
(Kukui'ula Parcel I Subdivision)  
Kukui'ula Development Company, LLC.

#### ADDITIONAL FINDINGS

Attached for the Planning Commission's reference are public testimony concerning the above referenced subdivisions:

- Correspondence from Kaimana Chapa received February 6, 2022.
- Correspondence from Elizabeth Okinaka received February 7, 2022.
- Correspondence from Roslyn Cummings received February 7, 2022.
- Correspondence from Holly Ka'iakapu received February 7, 2022.

By   
Kenneth A. Estes  
Staff Planner

Date: 05.12.2022

I.1.a.2.

I.2.a.3.

June 14, 2022

I.1.a.2.  
I.2.a.3.  
**X**  
MAY 24 2022



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**From:** Kaimana Chapa <kchapa808@gmail.com>  
**Sent:** Sunday, February 6, 2022 6:44 PM  
**To:** Planning Department  
**Subject:** Kukui'ula requesting 90 lot subdivision

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

My name is Kiara Kele Luka Ana Lorenzo- Rodrigues. I am a wahine kanaka Maoli and I write to you in opposition of this new development, the site is not only sacred to the kanaka people but also hold the iwi (bones) of my tutu wahine. Not only my tutu but the bones of many other kanaka. It is also home to a Heiaus and lava caves that are home to endangered species. For me it's more then a nice vacation spot for tourist, it's my history. That would simply be erased if you continue to develop and cut off our access to these places of worship.

As a young mother I worry about the future of my child. Not only does this development have no local housing, it would only lead to more displacement of local family's.

Coupled with the massive amounts of tourism out island chain has seen within a world wide pandemic building more homes to house people that bring variants of COVID-19 from all over the world this would not only be unwise to continue It directly affects the health and well being of the local community. With all this said I can only ask of you all to do your duty to protect the locals. And not only the locals that are living but all that have come before us and buried themselves in their homelands.

Mahalo piha,

Kele luka Ana

S.A.I.  
C.A.S.I.



---

**From:** Elizabeth Okinaka <elizabeth.eolakakouhawaii@gmail.com>  
**Sent:** Monday, February 7, 2022 1:18 AM  
**To:** Alan.S.Downer@hawaii.gov; Susan.A.Lebo@hawaii.gov; Council Members; Mayor; Planning Department; reptokioka  
**Subject:** Oppose Subdivision Application S-2022-6 and S-2021-1  
**Attachments:** Letter re Kukuiula for Feb 8 Planning Commission Meeting-LO.pdf

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

**Aloha Planning Commission and Department, please accept this testimony in opposition of subdivision application S-2022-6 and S-2021-1 requested by Kukuiula Development Company LLC. Please see attached file regarding Ka Pa'akai O Ka'aina**

SHPD did not adhere to guidelines in Ka Pa'akai O Ka'aina that states "they must consult and report on the consultation with community members". I was never contacted nor was I never offered to give input regarding cultural concerns. I have already witnessed machines bulldozed obvious sections of heiau. In the past Kukuiula had referred to these as "mere rock piles".

As a member of E Ola Kakou Hawai'i 501C3 I would like to formally request to be consulted with future archeological consulting pertaining to this greater area. Please see others issues in attachment.

**Critical Habitat for Koloa Cave Spider and Amphipod-**

Why wont the County Of Kauai push for more protection for 2 species that are found no where else in the world! These species are increasingly at risk, with all the planned development planned directly on or next to critical habitat.

**April 9, 2003, the USFWS designated 272 acres in southern Kauai as critical habitat. One year earlier, the agency had proposed that 4,193 acres should be designated as critical habitat, but changed the proposal because it would have been very costly to private landowners in Hawaii.**

***The Koloa lava tubes of Kauai and their associated endangered fauna were identified as one of the ten most endangered cave communities in the world (Tongvig and Mylroie, in litt. 1998; Belson 1999)***

**Other issues :**

**There are also multiple Burial Caves with iwi kupuna in this direct area.**

**NO Local Housing**

**These outdated developments were originally approved based on the agreement there would move lots sold to local families. After decades of going back and forth eventually all local housing was scrapped. Yes we got affordable apartments, BUT no matter how long a families pays rent they can never own the apartment. This is cultural genocide and should in NO way be considered a viable excuse while dozens of multiple Million Dollar homes are built in return. This is further**

displacing the local community while raising the cost of living and property taxes from local families that are lucky enough to own their home.

Even if some of these lots being subdivided are for tennis courts, pickle ball courts NONE of these will serve the local community. Just like how Kukui'ula got approved claiming they would build local homes. But instead we got more measly apartments that we can NEVER own. Why are we prioritizing multi million dollar developments at a time like now? Outer islands and County Council on Maui are STOPPING further development right now! But in 2022 alone I was already witnessed 90 lots subdivision request fly through the planning Commission with no concerns.

The Planning Department and Commission members really need to have a deep think about what they are leaving behind for future generations. I already as a mother cannot even take my children to our local beach anymore because of the insane amount of tourist at Poipu Beach Park.

how many agreements does the county of kauai have in place with Kukuiula? Do you understand how deeply this will affect the south side community for generations to come? Will there be homes directly across the street from the harbor? There is a deep conflict of interest when we have people like Laurel Loo who had inside knowledge with these projects as then county attorney. Did she also sign off on any agreements for Kukuiula like she did Kiahuna? Those developments still happening today because of her approval of those agreements, yet now she is representing the developers. And this is also not an isolated issues, as she now represents multiple developers. Don't you think the general public deserves to have this information disclosed?

The fact that the planning department is even moving forward with any more tourist accommodations at this time is unthinkable. Or these gentrified Multi Million Dollar developments that are pushing out the local community. And this is not isolated we there will be a 400 million dollar boutique hotel not far from here, how about the 282 condos you guys are also allowing to be built? The lots at makahuena that are selling for 10+ million dollars but were once set for local home lots we could actually own and pass down to our children. Stop continuing the genocide of the local community. Our children should not have to suffer the consequences of these poor choices today.

I am deeply saddened to read reports from only 10-15 years ago were the county council and planning commission were stopping entire developments. County Council in the past were calling out SHPD for there lack of involvement and not protecting more historical sites. County stopped them because they realized it was not a priority for the community at the time . Covid should have made you each realize how quickly tourism can disappear. Why are we not focusing on the better ment of our community. Making sure NO more local families are forced to move off island because they can simply no longer afford to live in the place they were born and raised. 90 lots for foreigners -but when will local families become a priory to the county again?

Aloha  
Elizabeth Okinaka

Feb 6, 2022

Aloha Planning Commission,

Re: Revised Application - Tentative Map Subdivision Application S-2022-6 Proposed 51 Lot Subdivision TMK (4) 2-6-019:026,029,031 Koloa, Kauai and

Re: Final Subdivision Application S-2021-1 Kukui'ula Proposed 40 Lot Subdivision TMK (4) 2-6-015:001 Koloa Kauai

### **51 Lot Tentative Subdivision**

We appreciate several aspects of this proposal and also have significant concerns:

- 1) **No Lawai Road Access** - We appreciate the Commission has made it clear there will be no access on to Lawai Road from this area and highlighted that the developer make it clear on all plans that there will not be any entrance/egress on this important and historic road leading to the boat harbor.
- 2) **We will assume and would like confirmation that:**
  - a. This includes NO ACCESS now or in the future on to ANY Road that may be constructed parallel or otherwise in the vicinity of Lawai Road or any portion of Lawai Road that serves as transit to the Board Harbor and Spouting Horn or any portion of any access under any name (Lawai Rd or other) with the same or similar transit pattern.
- 3) **Trail Master Plan** – We appreciate focus on public access. Please confirm trail plan is in place.
- 4) **Ka Pa'akai O'Ka'aina Analysis/SHPD** – We appreciate this condition was added in – it seems to have been an oversight it was not included originally.
  - a. We are concerned however that the SHPD conclusion 'No Historic Properties Affected' has become boiler plate text. It does not or may not accurately reflect the current state of archeology and historic properties **as the required guidelines of Ka Pa'akai O' Ka'aina were not followed to inform this assessment.**
    - **Community Consultation Not Identified** - Of note we do not see in the correspondence from SHPD/Alan Downer to Michael Moule on Jan 21, 2022 that any community members were contacted or consulted with. Not a single member has been identified.
  - b. **Overlooking Ongoing Issues** – Separately in the same letter re: Hammatt Report (June 201) that the report cites: "Historic properties were identified, Habitation and Agricultural Site (50-30-10-01947) 2

Habitation Sites (50-30-10-01949 and (50-30-10-01950) and note that it suggests these areas 'were not slated for preservation'

We Question Why? We note the report goes on to say they were likely removed during 'Permitted mass grading in the 1980s'.

- Oversight, intentional removal or destruction appears to be the 'Developer's Choice' process for removing any 'obstacles' to construction.
- Let this inform ALL decisions made today with regard to allowing further grubbing, grading, clearing, building that once historic sites are gone – they are gone for good.
- It is the responsibility of the Planning Commission to ensure this does not happen.

- c. **Guidelines not Adhered To** - It appears that SHPD correctly recognized that the guidelines were not adhered to as the letter notes: "Although the archeological field inspection report (Hammatt June 21) does not fulfil the requirements of an archeological inventory survey as specified in HAR13-276-5, it serves to support project planning and facilitates the historic preservation review process."
- d. **SHPD Conclusion in Correspondence is Without Merit** - as the activities required to make such a conclusion were not performed. The next paragraph asserts that 'No Historic Properties Affected' then goes on to say that because this determination was conveyed via correspondence that it signals the "end of the historic preservation review process. The permitting and or project initiation process may continue."
- e. **Inaccurate Assertion** - Importantly - the determination made by SHPD that '**No Historic Properties Affected**' – **cannot be considered accurate and should be voided.**  
This assertion cannot be determined as the guidelines - focusing on Consulting Community - and steps associated with Ka Pa'akai O' Ka'alina were not followed.
- f. **It should be noted that there are Land Commission Awards associated with this parcel which make it imperative the community is consulted.**

#### **40 Lot Subdivision**

#### **Re: Final Subdivision Application S-2021-1 Kukui'ula Proposed 40 Lot Subdivision TMK (4) 2-6-015:001 Koloa Kauai**

- 1) We encounter the same issue here as above, in a letter to Michael Moule Feb 21, SHPD again states that 'No Historic Significance' but is based on an incomplete assessment – there is no evidence or suggestion that anyone from SHPD consulted with the community
- 2) The letter states: "While LRFI does not fulfil the requirements of an AIS as specified in HAR 13-276-5, it serves to support project planning and the historic review process.

The LRFI meets the minimum requirements of HAR 13-282-3".

- a. It noted: As with the 51 Lot subdivision proposal, SHPD claims that once their correspondence has been sent indicating 'No Historic Properties Affected', the issue is final.
- b. There is no finalization until the steps and guidelines in Ka Pa'akai O' Ka'aina have been followed, that is the intent and was the outcome of the case. SHPD cannot make this determination short of following and including its report - all the steps

Given the above, there can be no forward motion on either of these subdivisions as SHPD's conclusion does not follow from its action (or inaction).

Mahalo

– Elizabeth Okinaka and E Ola Kakou Hawai'i



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**From:** Roslyn Cummings <mana.eolakakouhawaii@gmail.com>  
**Sent:** Monday, February 7, 2022 8:29 AM  
**To:** Planning Department  
**Subject:** Public Testimony No. S-2022-6, S-2021-1

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

**ROSLYN CUMMINGS**  
c/o Roslyn Cummings  
Living, Breathing Human Being  
c/o General Delivery (Box 315)  
Kalaheo Station  
Kalaheo, Kauai, Hawaii Nei  
(U.S.P.Z. Exempt - 96741)

(NOTICE TO AGENT IS NOTICE TO PRINCIPAL, NOTICE TO PRINCIPAL IS NOTICE TO AGENT)

Attention Planning Commission,

**Members**

- Donna Apisa, Chair
- Helen Cox, Vice Chair
- Francis DeGracia, Subdivision Committee Chair
- Gerald Ako
- Melvin Chiba
- Glenda Nogami-Streufert
- Lori Otsuka

I'm here to speak on the cultural religious significance of these upcoming developments. Listed on the Agenda February 8, 2022,

Targeting cultural sites is a war crime under the 1954 Hague Convention.

Hawaiian Kingdom, the law is very clear who are heirs in law, the Civil Codes from 1859

break in the links in the chain of title, to demonstrate an issue of material fact, probate records and or references to them.

Anything after 1893 is null and void. Any laws established after the alodial is null avoid cannot be used for said property.

Grave breaches of the Geneva Conventions today form part of a complex set of crimes under international law, consisting of serious violations of international humanitarian law often referred to as war crimes, as well as gross human rights violations, such as crimes against humanity and genocide. Grave breaches are part of the wider category of serious violations of humanitarian law that States are called upon to suppress in both international and non-international armed conflict.[6] They remain 'segregated from other categories of war crimes',[7] as the list of grave breaches contained in the Geneva Conventions and Additional Protocol I is a limitative one which is only applicable in international armed conflict.[8] Furthermore, the grave breaches regime imposes on States Parties the obligation to either prosecute or extradite alleged offenders, regardless of their nationality, as opposed to a right to do so recognized in international law in connection with alleged perpetrators of war crimes.[9]

#### HRS §711-1107 Desecration.

(1) A person commits the offense of desecration if the person intentionally desecrates:

(a) Any public monument or structure;

(b) A place of worship or burial; or

(c) In a public place the national flag or any other object of veneration by a substantial segment of the public.

(2) "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant's action.

(3) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both.

I demand that proof of rightful ownership through clear title be made clear; request for chain of title and the contract which states the County of Kauai Planning Department has to do business lawfully in regards to these lands.

Secretary of State Calhoun responded to the Hawaiian Commission on July 6, 1844. He wrote that the appointment of a United States Commissioner to the Hawaiian Islands was "regarded by the President as a full recognition on the part of the United States, of the Independence of the Hawaiian Government." A Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the United States was signed in Washington, D.C., on December 20, 1849.

There is no political question for the United States to raise in its Motion to Dismiss because the United States, by its President, formally recognized the Hawaiian Kingdom as a sovereign and independent State. On December 18, 1893, President Grover Cleveland acknowledged the United States' overthrow of the government of the Hawaiian Kingdom was an act of war and unlawful. The overthrow of the Government of an independent State does not equate to the overthrow of the State itself and its existence. The State would still exist and the situation would be called "belligerent occupation."

Unlawful means doing something that you do not have the right to do.

The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing of which there may be ownership is called "property." Civ.

, a trust is a right in property (real or personal) which is held in a fiduciary relationship by one party for the benefit of another. The trustee is the one who holds title to the trust property, and the beneficiary is the person who receives the benefits of the trust.

What is the great Mahele?

for the record-

The mayor's responsibilities are primarily to preside at council meetings and to act as head of the city for ceremonial purposes and for purposes of military law. The mayor votes as a councilmember and does not have any veto power.

The county mayor is the accounting officer and chief financial officer of the county; he or she is charged with the care and custody of county property (unless the law specifically places the care and custody on another official, such as the chief administrative officer of the highway department for highway equipment).

A fiduciary is a person who holds a legal or ethical relationship of trust with one or more other parties (person or group of persons). Typically, a fiduciary prudently takes care of money or other assets for another person. One party, for example, a corporate trust company or the trust department of a bank, acts in a fiduciary capacity to another party, who, for example, has entrusted funds to the fiduciary for safekeeping or investment. Likewise, financial advisers, financial planners, and asset managers, including managers of pension plans, endowments, and other tax-exempt assets, are considered fiduciaries under applicable statutes and laws.[1] In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance, and trust in another whose aid, advice, or protection is sought in some matter.[2]:at p. 68[3] In such a relation, good conscience requires the fiduciary to act at all times for the sole benefit and interest of the one who trusts.

What is COUNTY?

The name given to the principal subdivisions of the kingdom of England and of most of the states of the American Union, denoting a distinct portion of territory organized by itself for political and judicial purposes. The etymology of the word shows it to have been the district anciently governed by a count or earl. In modern use, the word may denote either the territory marked off to form a county, or the citizens resident within such territory, taken collectively and considered as invested with political rights, or the county regarded as a municipal corporation possessing subordinate governmental powers, or an organized jural society invested with specific rights and duties. *Patterson v. Temple*, 27 Ark. 207; *Eagle v. Beard*, 33 Ark. 501; *Wooster v. Plymouth*, 62 N. H. 205.

If you want a legal definition, Black's Law Dictionary says that a Trust is "an equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery."

A claim is a violation  
A complaint is criminal

## RESTITUTION

According to Black's Law Dictionary, restitution is an "Act of restoring; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification".

### What is FRAUD?

Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. *Maher v. Hibernia Ins. Co.*, 67 N. Y. 292; *Alexander v. Church*, 53 Conn. 501, 4 Atl. 103; *Studer v. Bleistein*, 115 N.Y. 316, 22 X. E. 243, 7 L. R. A. 702; *Moore v. Crawford*, 130 U. S. 122, 9 Sup. Ct. 447, 32 L. Ed. 878; *Fechheimer v. Baum (C. C.)* 37 Fed. 167; *U. S. v. Beach (D. C.)* 71 Fed. 160; *Gardner v. Heartt*, 3 Denio (N. Y.) 232; *Monroe Mercantile Co. v. Arnold*, 108 Ga. 449, 34 S. E. 176. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Civil Code La. art. 1547. Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq. Jur.

breach

### Definition of breach (Entry 1 of 2)

1 : infraction or violation of a law, obligation, tie, or standard  
a breach of trust

**PENALTIES FOR PUBLIC OFFICERS U.S. CODE Title 42 Penalties for Government Officers.** The authority for fines (damages) caused by crimes by government officers. These Damages were determined by GOVERNMENT itself for the violation listed. Breach Penalty Authority Violation of Oath of Office \$ 250,000. 18 USC 3571 Denied Proper Warrant(s) \$ 250,000. 18 USC 3571 Denied Right of Reasonable Defense Arguments \$ 250,000. 18 USC 3571 Defense Denied Evidence (records) \$ 250,000. 18 USC 3571 Denied Right to Truth In Evidence \$ 250,000. 18 USC 3571 Slavery (Forced Compliance to contracts not held) \$ 250,000. 18 U.S. CODE 3571 Denied Provisions in the Constitution \$ 250,000. 18 U.S. CODE 3571 Treason (combined above actions) \$ 250,000. 18 U.S. CODE 3571 Genocide \$1,000,000. 18 U.S. CODE 1091 Misprision of Felony \$500. 18 U.S. CODE 4 Conspiracy \$ 10,000. 18 U.S. CODE 241 Extortion \$ 5,000. 18 U.S. CODE 872 Mail Threats \$5,000. 18 U.S. CODE 876 Fraud \$ 10,000. 18 U.S. CODE 1001 Falsification of Documents \$ 10,000. 18 U.S. CODE 1001 Perjury \$ 2,000. 18 U.S. CODE 1621 1 **PENALTIES FOR PUBLIC OFFICERS** Subornation of Perjury \$ 2,000. 18 U.S. CODE 1622 Grand Theft each \$ 250,000. 18 U.S. CODE 2112 To determine multiply no. of counts by damage 18 U.S. CODE 3571 Racketeering (Criminal) \$ 25,000. 18 U.S. CODE 1963 Racketeering (Civil) Wages Taken  $\times 3 = 5?$  18 U.S. CODE 1964 (Sustained Damages [total]  $\times 3$ ) Thirty-seven (37) Constitutional violations from Count 1: = \$ 9,250,000. Damages Dealing with

claims of "immunity." Any claim of "immunity" is a fraud because, if valid, it would prevent removal from office for crimes against the people, which removal is authorized and or mandated under U.S. Constitution Article 2, Section IV; as well as 18 U.S. CODE 241, 42 U.S. CODE 1983, 1985, 1986, and other state Constitutions. Precedents of Law established by COURT cases, which are in violation of law, render violations of law legally unassailable. Such a situation violates several specifically stated intents and purposes of the Constitution set forth in the Preamble; to establish justice, insure domestic tranquility, and secure the blessings of liberty. This is for JUDGES, ATTORNEYS, POLICE or anyone affiliated with or in any branch of government. 2

The Kingdom of Hawai'i is actually a reference to the island kingdom of Hawai'i prior to Kamehameha's unification of the pae 'āina, just as the Kingdom of Maui refers to the island kingdom of Maui, Lāna'i Kaho'olawe, Moloka'i, and O'ahu, and the Kingdom of Kaua'i refers to the island kingdom Kaua'i and Ni'ihau. Kamehameha united the three kingdoms/the entire pae 'āina under one country in 1810, which became known as the Hawaiian Kingdom

It marks the 129 years since the illegal US overthrow of the Hawaiian Kingdom government.

Much of modern Hawaiian history, is based on illegality. The bayonet constitution in 1887. The illegal overthrow of the Hawaiian Kingdom government on January 17th 1893. The illegal and so-called "annexation" (which is quotation marks because it WASN'T a treaty of annexation but a joint resolution or an american law passed in congress, which has no jurisdiction outside of america's border) in 1898. All of these illegalities created these false narratives, stories, mo'olelo that Hawai'i is apart of the US, when really it isn't.

Now today, we see things like "the sovereignty movement" which inaccurately maintains that aboriginal Hawaiians have a right to self-determination, which implies that aboriginal Hawaiians were never nationals of a sovereign and Independent State (aka country). Self determination also implies that aboriginal Hawaiians are an ethnic group residing within the united states of america. Hawaiian history cannot support this position. Aboriginal Hawaiians are the majority of the population of Hawaiian subjects who have been subjected to americanization and indoctrination. As an occupied State (aka country) under an illegal and prolonged occupation, the proper framework to understand Hawai'i's unique situation is through international law and the laws of occupation and not through the laws of the united states, and, by extension, the laws of the state of Hawai'i. In this way, not only is Hawai'i's vibrant political and legal history embraced, but it honors and respects all of our kūpuna who established the Hawaiian Kingdom and acknowledges our kūpuna who endured the brutalization of american indoctrination.

Hawai'i was not invaded or colonized by the United States before it gained its sovereignty and became a State under international law in 1843, and therefore its people cannot be considered as indigenous. Instead, international law protects and maintains the continuity of the State despite it being under an illegal and prolonged occupation since the Spanish-American War, which is similar to Germany's occupation of Luxembourg from 1914-1918 during World War I.

To help contextualize what I am talking about, I'll give you an analogy. How do you justify walking into someone's house and declaring unilaterally that said house is now yours when there is a whole family that is living there and has been living there for generations. You then tell them "give me the deed to your house" and they tell you "no." You tell them again "give me the deed to your house" and again they tell you "no." You then go and create a fraudulent deed and then state "This house is mine" and tell all your friends and those living nearby that this house is now yours. That's basically the current situation with Hawai'i.

This isn't some movement that defines Hawaiian identity by blood lineage and seeks to enhance native rights through justice within the existing social and political framework of american state and federal laws. Instead the provisional government of the Hawaiian Kingdom is utilizing the framework of international law to end a foreign occupation that has existed since 1898.

The Hawaiian state that existed in the 19th century had already transformed itself into a nation that had political structure similar to those of European nation states of the time. It was a multi-ethnic constitutional monarchy that had equal treaties with foreign powers, embassies, and international recognition as an independent state.



The provisional government's use of international law to restore a dormant government and revive a disappearing culture should not be confused with indigenous struggles that lack this history of having once been a fully independent state recognized within the global order of the 19th century. Furthermore, Hawai'i is an island nation, so its geographical isolation means there is even less reason for it to negotiate the nation-within-a-nation status that is the norm for aboriginal groups on the North American continent. Pointing out this advantageous legal position, it should not be viewed as an attempt to place ourselves above other groups. We have always expressed solidarity with aboriginal groups that had different experiences with Western contact, but we are in a unique situation that requires a different strategy.

Hawai'i is also different from another category of independence struggle, that of ethnic groups seeking self-determination after a history of colonization. We also appeal to international law and the right to self-determination promised by UN resolutions, but Hawai'i doesn't belong in this category, as Hawai'i was never colonized in the political sense of the word.

Hawai'i's unique situation is an important case for the global community to pay attention to because of the implications for the continued projection of US military power. Hawai'i is the headquarters of the US Pacific Command and thus a highly strategic asset for the placement of conventional military installations and nuclear weapons. The illegal status of the Pacific Command, since the first landing of American troops in 1893 and 1898 should not be forgotten. The United States knowingly occupied a neutral territory, violating international law of the day, in order to conduct operations against another belligerent in the Spanish colonies of Guam and the Philippines.

Not only are we the descendant of the ones who survived every attempt to end us, we literally are NOT even Americans and Hawai'i is NOT America.

He āina Hawai'i

### **Ua Mau ke Ea o ka 'Āina I ka Pono**

The life of the land is perpetuated in righteousness

Mo'okuauhau to be looked upon by truthful and honest eyes and protected by the highest 'I'o  
May no harm come upon manawa,

'O iwi, O ku'u iwi, 'O Koko, 'O ku'u koko  
I am of your bones, I am of your blood

'O Ulumahehei Hoapili Ke Kane 'O Kalilikauoha Ka Wahine noho pu laua hanau ia 'O Kuini Liliha  
He Wahine, 'O Kekuanaoa Ke Kane 'O Kianu Ka Wahine noho pu laua hanau ia 'O Lota Kamehameha V  
He Kane, 'O Kamehameha nui Ke Kane 'O

Kalakauakahehemaile Ka Wahine noho pu laua hanau ia 'O Kina'u He Wahine, 'O Koakanu Ke  
Kane 'O Loeau (W) 'O Kuini Liliha Ka Wahine Namaile Ke Kane, 'O Namaile, Kamaile Ke Kane 'O Kuini  
Liliha Ka Wahine noho pu laua ia 'O Abigail Maheha He Wahine, 'O Keaupuni, Kamehameha V Lota Ke  
Kane noho pu laua hanau ia 'O Kanaloiki Keanolani He Wahine, 'O James Kaliokalani Kali Ke Kane 'O  
Anna Ka'iulani Ka Wahine noho pu laua hanau ia Nuanua Kawanui Kaawanui He Kane, 'O Kanaloiki  
Keanolani Ka Wahine 'O Nuanua Ke Kane noho pu laua hanau ia 'O Kikaha, 'O Waikaka Kanakanui Kauai  
Kauaiiki Kauhi Abrehama Ke Kane 'O Kikaha Ka Wahine noho pu laua hanau ia 'O William Nuiāola  
Waikaka Kualu He Kane, 'O William Nuiāola Waikaka Kanakanui Ke Kane 'O Helen Lahapa Kailiokalani Ka  
Wahine noho pu laua hanau ia 'O Kamakaeha, 'O Llawahine Haupū Ka Wahine 'O Kaliokalani Ke Kane  
noho pu laua hanau ia 'O Helen Lahapa Kailiokalani, 'O Kaumualii Ke Kane 'O Akahi Kawalu Kapuaamohu  
Ka Wahine noho pu laua hanau ia 'O George Humeleme, 'O Humeleme 'O Pakeke noho pu laua  
hanau ia 'O Kawahine Makua, 'O Humeleme 'O Kawahinemakua noho pu laua hanau ia 'O Eke Eke

Oponui , 'O Kailiokalani , 'O Kaapumohu Kaapuwai 'O Kaumualii noho pu laua hanau ia 'O Kealiihahonui ,  
'O Ponoanui Haupu 'O Julia Kulia Nawahine noho pu laua hanau ia 'O Helen Liawahine Haupu, 'O  
Kailiokalani Ke Kane 'O Liawahine noho pu laua hanau ia 'O Helen Lahapa Kailiokalani , 'O Haupu , 'O  
Kapule Kekiahaakulou 'O Kahekilii II , 'O Kekulapoiwa II , 'O Naluahi Ka Wahine 'O Kealiihahonui noho pu  
laua hanau ia 'O Kaolei , 'O Haupu 'O Kaolei noho pu laua hanau ia 'O Ponoanui Haupu He Kane, 'O  
Kamakaeha 'O Ipac noho pu laua hanau ia 'O Kawaikini, 'O Aileen Kawaikini Ipac Ka Wahine 'O Robert  
Stanley Rita Ke Kane noho pu laua hanau ia 'O Darlene Rita, 'O Edmund Francis Malama Jr 'O Darlene  
Joyce Rita noho pu laua hanau ia 'O Roslyn Nicole Manawaiakea Malama He Wahine

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**From:** Holly K <hkaiaikapu@gmail.com>  
**Sent:** Monday, February 7, 2022 9:49 AM  
**To:** Planning Department  
**Subject:** Oppose Subdivision Application S-2022-6 and S-2021-1

**CAUTION:** This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

I oppose the subdivision application S-2022-6 and S-2021-1. By continuing to approve multi-million dollar projects like Kukui'ula, the Planning Department is choosing to continue the displacement of our local communities. I cannot stand behind that, and I hope the Planning Department makes the most pono decision for our island's community.

Mahalo,  
Holly Ka'iakapu

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
SUBDIVISION REPORT

## I. SUMMARY

<b>Action Required by Planning Commission:</b>	Consideration of Subdivision Application No. S-2021-1 that subdivides a parcel into a total of forty (40) lots.
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Subdivision Permit No.      Application No. S-2021-1

**Name of Applicant(s)** KUKUI'ULA DEVELOPMENT COMPANY, LLC.

## II. PROJECT INFORMATION

<b>Map Title</b>	Kukui'ula Parcel I Subdivision – Subdivision of Lot 1 of Kukui'ula Large-Lot Subdivision, Phase III into Lots 1 to 40, Inclusive, and Designation of Easements AU-1 and AU-2, at Kōloa, Kona, Kaua'i, Hawai'i.				
<b>Tax Map Key(s):</b>	2-6-015:001	<b>Area:</b>	139.867 acres		
<b>Zoning:</b>	Residential (R-4)/Open – Special Treatment Open (O/ST-O)				
<b>State Land Use District(s):</b>	Urban	<b>General Plan Designation:</b>	Residential Community/ Open Space		
<b>AGENCY COMMENTS</b>					
<input checked="" type="checkbox"/> COK Public Works	10/06/2020	<input type="checkbox"/> State DOT-Highways:			
<input checked="" type="checkbox"/> COK Water:	11/18/2020	<input checked="" type="checkbox"/> State Health:	10/08/2020		
<input type="checkbox"/> Other(s)		<input checked="" type="checkbox"/> DLNR – SHPD:	10/23/2020		
<b>EXISTING ROAD RIGHT-OF-WAY(S)</b>					
Road Name	Existing Width	Required Width	Pavement YES	NO	Reserve
Ala Kukui'ula	60 feet	60 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
<b>APPLICABLE FEES</b>					
<b>Environmental Impact Assessment (EIA)</b>	\$16,500.00				
<b>Park Dedication</b>	To be determined				
<b>Appraisal Report Required</b>	Yes				

### III. EVALUATION

The proposed development subdivides Lot 15 of the Kukui'ula CC West Subdivision into a total of thirty-five (35) residential lots, 3 remnant parcels and 2 roadway lots. The development shall be subject to the applicable requirements/conditions of Ordinance No. PM-2004-379 and the EIA & Park Fees shall be credited, as specified by the ordinance.

#### IV. RECOMMENDATION

TENATIVE APPROVAL		FINAL APPROVAL	
<input checked="" type="checkbox"/> Approval		<input checked="" type="checkbox"/> Approval	
<input type="checkbox"/> Denied		<input type="checkbox"/> Denied	
Tentative Approval subject to all requirements as noted on the follow pages:		All conditions have been complied with	
Director of Planning	Date	Director of Planning	Date

**X**

### I.2.a.1.

**June 14, 2022**

## V. MODIFICATION OF REQUIREMENT

As represented, the Applicant is requesting deviations from requirements in the Kaua'i County Code, 1987 (KCC) that would exempt roadway requirements specified by the Subdivision Ordinance as it relates to construction of curbs, gutters, and sidewalks along the roadway frontages, pursuant to Section 9-2.3(e), and to allow the use of drainage swales in lieu of raised curbs and gutters on both sides of the proposed roadways.

In considering the proposal, it should be noted that the primary access road serving the master planned community (Ala Kukui'ula) have been previously approved to deviate from the roadway standards typically found in the residential developments in this area. At the time (circa. 2004), the roadway standards did not feature sidewalks for residential development except where the density allows for 10 or more units per acre. Since then, the roadway standards have been revised.

It is noted that the construction of curbs, gutters and sidewalks is a standard requirement for subdivisions within the Residential District where the density allows for four (4) or more units per acre (R-4), Resort District, as well as developments within the Commercial District. The requested deviation would allow the subdivider to continue the character of the interior roadways within the project area (refer to Applicant's correspondence dated October 30, 2020). The Applicant's exhibit shows there is an existing sidewalk along the makai side of Ala Kukui'ula and the request to deviate from this standard would allow the Applicant to have a subdivision that would be similar to the completed residential subdivisions in this community. For those completed subdivisions, there are sidewalks on only one side of the roadway or for only a portion of the interior roadways.

The roadways within this planned community are private and maintained by the developer. In the event the roadways are dedicated to the County, then the roadways should be retrofitted to comply with the present roadway standards.

In evaluating the Applicant's request, no problems are foreseen in granting the Modification of Requirement to allow a deviation from the requirement to construct curbs, gutters and sidewalks along a roadway and to allow a drainage system featuring drainage swales in lieu of raised curbs and gutters based on the following reasons:

- a. The proposed roadways would be constructed similar to completed roadways within the planned community and be consistent with the infrastructure serving this area. Furthermore, the roadways within this development are not intended to function as part of the County's public street system for the Southshore area (Poipu/Kukui'ula). Its primary design is to promote slower traffic speeds within the community and provide a more rural character;
- b. The Public Path and Trails Exhibit dated October 2020, and previous versions provided to the department by the Applicant, do not show this area as a part of the trail system within the planned community, which is required by Condition No. 15 of Ordinance No. PM-2004-370; and
- c. In the event the private roadways are dedicated to the County, the developer would be required to retrofit the roadway to comply with the present roadway standards.

## VI. AGENCY REQUIREMENTS

1. Approve the Applicant's request for a Modification of Requirement, subject to the following requirements as noted below.
2. Requirements of the Planning Department:
  - a. An updated preliminary title report for the existing lot shall be submitted to the Planning Department for review.

- b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- c. Pursuant to Ordinance No. PM-2004-370, the Applicant is allowed to credit Environmental Impact Assessment and Park Dedication fees for developments within their Project Area. Since the Applicant has not resolved with the Planning Department whether they will pay fees or provide improvements for credit, the following fees are being assessed:
  - 1) An Environmental Impact Assessment Fee of Sixteen Thousand Five Hundred Dollars (\$16,500.00) shall be paid to the County of Kaua'i; and
  - 2) The Applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kaua'i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Properties Division to help calculate the fee amount.

The Applicant shall resolve with the Planning Department the method that will be utilized to satisfy these fee requirements prior to final subdivision approval.

- d. Relative to Condition No. 1.b. and prior to final subdivision map approval, the Applicant shall meet with the Planning Department to resolve the applicable requirements of Ordinance No. PM-2004-370. Specifically, the following conditions shall apply to this subdivision:

**Conditions of Ordinance No. PM-2004-370:**

- o 3. (prohibition of Additional Dwelling Units)
  - o 7. (improvements to roadway system)
  - o 14. (ELA credit)
  - o 15. (recreation)
  - o 16. (park dedication credit)
  - o 23. (wastewater system master plan)
  - o 27. (solid waste management plan)
  - o 30. (blasting plan)
- e. There shall be no direct access permitted onto Ala Kukui'ula from Lots 37 and 40. Semi-circles denoting no direct access permitted shall be shown on the final subdivision map. These provisions shall be incorporated as a restrictive covenant for the subject lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- f. As represented on the preliminary subdivision map, Lots 36 & 37 are "unique" shaped lots that qualify for residential density based on the R-4 zoning designation. Prior to final subdivision approval, the Applicant shall disclose whether these lots will be further developed, and if so, the layout of these lots may be revised in order to accommodate future development. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.
- g. As represented on the preliminary subdivision map, Lots 6 to 8 do not comply with the length-to-width ratio requirement specified in Section 8-4.4(a)(3)(A) Kaua'i County Code (1987), as amended. Prior to final subdivision map approval, the Applicant shall revise the subdivision layout to comply with the foregoing requirement OR obtain a Variance Permit to deviate from this development standard. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.
- h. The Applicant shall establish bus stops/shelters pursuant to Ordinance No. 406. The details shall be resolved with the Planning Department and Department of Public Works prior to construction plan approval.



- i. The Applicant is made aware that the streets designated within the subdivision must be officially named before the Department approves the construction plans. Street names should be in Hawaiian and be submitted to our Department for review and approval, along with a request letter and 12 maps (on 8½" x 14" paper). The maps should be detailed such that emergency vehicles, police services, postal deliveries, etc., are able to locate the street. References to roadway, such as the highway and other surrounding roads, should be shown on the street-naming map
- j. Relative to Condition No. 1.i., the Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
- k. Relative to the requirements/standards set forth in Ordinance No. 777, the Applicant shall resolve with the Planning Department the provision of public access.

The subdivider shall incorporate the features of the Conceptual Trail Master Plan (dated April 2004) within the project area, if applicable. The access plan shall be reviewed and approved by both the Planning and Parks & Recreation Departments. Furthermore, proper documents shall be prepared and ready for execution prior to final subdivision approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

- l. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.

3. Requirements of the Department of Public Works (DPW):

- a. A Drainage Report shall be prepared and submitted for the department's review to ensure storm water quality is maintained and detain any increase in storm runoff to pre-development levels in accordance with the County's Storm Water Runoff System Manual.
- b. Grading plans, construction plans, and specifications showing details and road construction, drainage structures, sewers, water mains, and all other utilities proposed to be construction in the subdivision shall be submitted for the department's review and approval.
- c. Best Management Practices (BMP's) shall be provided at all times to the maximum extent practicable to prevent damage by sedimentation, erosion, and dust to streams, watercourses, natural areas, and the property of others.
- d. Macrons and okinas need to be provided for all Hawaiian places and names consistently throughout the project documents.

4. Requirements of the Department of Water (DOW):

- a. Prior to final subdivision approval, the Applicant shall be required to:
  - 1) Pay the DOW the following charges in effect at the time of receipt. At the present time, these charges include the Facilities Reserve Charge (FRC): 35 Lots @ \$14,115 per lot.
- b. Kukui'ula Development Company will be required to:
  - 1) Submit an updated Kukui'ula Water Demand and System Capacity Tracking Matrix;
  - 2) Be aware that the Facilities Reserve Charge and the adequacy of source, storage, and transmission facilities for the proposed development will be dependent on

the approved updated Kukui'ula Water Demand and System Capacity Tracking Matrix; and

- 3) Identify the proposed subdivision lots that will not be assigned water service. DOW comments may change depending on the approved subdivision map.

5. Requirements of the Department of Health (DOH):

- a. Any project and its potential impacts to State waters must meet the following criteria:
  - 1) Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
  - 2) Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
  - 3) Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
- b. The Applicant may be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit coverage for discharges of wastewater, include storm water runoff, into State surface waters (HAR, Chapter 11-55).

For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for a NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit coverage, you must submit the applicable form ("CWB Individual NPDES Form" or CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES Permit or \$500 for a Notice of General Permit Coverage). Please open the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and located the appropriate form. Follow the instructions to complete and submit the form.

- c. The Applicant is made aware that if the project involves work in, over, or under waters of the United States, it is highly recommended that the Army Corp of Engineers, Regulatory Branch (Tel: 835-4303) be contacted regarding their permitting requirements.
- d. Pursuant to Federal Water Pollution control Act (commonly known as the "Clean water Act" (CWA), Paragraph 401(a)(1), Section 401 Water Quality Certification (WQC) is required for "[a]ny Applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters..." (emphasis added). The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40 of the Code of Federal Regulations, Section 122.2; and Hawaii administrative Rules (HAR), chapter 11-54.
- e. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54 and/or permit requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.

- f. It is the State's position that all project must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:
- 1) Treat storm water as a resource to be protect by integrating it into project planning and permitting. Storm water has long been recognized as a source of irritation that will not deplete potable water resources. What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disrupted, storm water cannot be relegated as a waste product of impervious surfaces. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of State waters, like community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bioengineering of drainage ways must be identified in the planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction or building permits.
  - 2) Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g. Minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.
  - 3) Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge groundwater to revitalize natural hydrology, and treat storm water which is to be discharged.
  - 4) Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive fertilization, respectively.
  - 5) Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Particular consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.

For any questions, please visit website at <http://health.hawaii.gov/cwb/>, or contact the Engineering Section, CWB, at (808) 586-4309.

- g. National Pollutant Discharge Elimination System (NPDES) permit coverage is required for pollutant discharges into State surface waters and for certain situations involving storm water (HAR, Chapter 11-55).
- 1) Discharges into Class 2 or Class I State water can be covered under an NPDES general permit only if all of the NPDES general permit requirements are met. Please see the DOH-CWB website (<http://health.hawaii.gov/cwb/>) for the NDES general permits and instructions to request coverage.
  - 2) All other discharges into State surface waters (including discharges from Concentrated Animal Feed Operations) and discharges into Class 1 or Class AA State water require an NPDES individual permit. To request NPDES individual permit coverage, please see the DOW-CWB forms website located at: <http://health.hawaii.gov/cwb/site-map/clean-water-branch-home-page/forms/>
  - 3) NPDES permit coverage for storm water associated with construction activities is required if your project will result in the disturbance of one (1) acre or more of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules

under a larger common plan of development or sale. NPDES permit coverage is required before the start of the construction activities.

Land disturbances includes, but is not limited to clearing, grading, grubbing, uprooting of vegetation, demolition (even if leaving foundation slab), staging, stockpiling, excavation into pavement areas which go down to the base course, and storage areas (including areas on the roadway to park equipment if these areas are blocked off from public usage, grassed areas, or bare ground).

#### BMP Comments

- h. Effective site-specific Best Management Practice (BMP) measures shall be implemented to confine and isolate the construction site/activities; minimize the potential adverse impacts to the adjacent receiving State waters; and to ensure the projects' associated discharges will comply with the applicable requirements of Title 11, HAR Chapter 11-54 "Water Quality Standards" requirements and HAR Chapter 342D.


#### Army Corps

- i. The Applicant shall contact the Army Corps of Engineers at (808) 438-9258 to determine if the project requires a Department of Army (DA) Permit. Permits may be required for work performed in, over, and under navigable waters of the United States. Projects requiring a DA Permit also require a Section 401 Water Quality Certification (WQC) from the State DOH.
- j. Noise will be generated during the construction phase of this project. The applicable maximum permissible sound levels as stated in Title 11, Hawai'i Administrative Rules (HAR), Chapter 11-46, entitled "Community Noise Control" shall not be exceeded unless a noise permit is obtained from the State Department of Health (DOH).
- k. The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Title 11, Hawai'i Administrative Rules (HAR), chapter 11-26, "Vector Control", the Applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the Applicant shall eradicate the rodents prior to clearing the site.
- l. Temporary fugitive dust emissions could be emitted when Lots 1-16 are developed. At that time, in accordance with Title 11, HAR, Chapter 11-60.1, entitled "Air Pollution Control", effective measures for air pollution control shall be provided to minimize or prevent any fugitive dust emissions caused by the construction work from impacting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
- m. A copy of the plans, construction schedule and/or written measures that is required to be submitted by the Contractor (DUST CONTROL MEASURES/PLANS) should also be sent to the DOH for monitoring purposes.
- n. The construction waste generated from the project shall be at a solid waste disposal facility that is in compliance with the applicable provisions of Title HAR, Chapter 11-58.1, entitled "Solid Waste Management Control", the open burning of any of these wastes on or off site is prohibited).

- o. The subject project is located within HOH's Poipu Water Reclamation Facility wastewater sewer system. All wastewater generated shall be disposed into HOH's Poipu Water Reclamation Facility sewer system. All lots in the proposed development/subdivision shall connect to HOH's Poipu Water reclamation Facility sewer system.
6. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
7. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for DECEMBER 8, 2020 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

By   
DALE A. CUA  
Planner

## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

### SUPPLEMENT #1 TO SUBDIVISION REPORT


**RE:** Subdivision Application No. S-2021-1  
Kukui'ula Parcel I Subdivision

**APPLICANT:** Kukui'ula Development Company, LLC.

#### Condition of Final Subdivision Map Approval

The department is recommending Final Subdivision Map Approval of the above referenced subdivision with the following condition:

"Applicant shall ensure that Easement AU-3, Easement A-1, Easement A-2, and Easement A-3 (the "Easements") are perpetual non-exclusive easements that run with the land for the benefit of the respective owners of Lots 24 through 36 and their tenants, licensees, invitees, permittees, successors and assigns for vehicular and pedestrian access, and any other easement purpose. The Easements shall be properly recorded with the Bureau of Conveyances prior to the conveyance of any interest in any lot or parcel. The Easements shall not be terminated or extinguished by any means unless pedestrian and vehicular access as well as any other easement purpose provided in the Easements are permanently and perpetually provided."

By   
KA'ĀINA S. HULL  
Director of Planning  
Date: 1/26/2022

I.2.a.2.

June 14, 2022

~~I.2.a.2.~~

MAY 24 2022

~~I.2.a.2.~~

FEB 03 2022









**COUNTY OF KAUAI**  
**PLANNING DEPARTMENT**  
**4444 RICE STREET, SUITE A473 LIHU'E, HAWAII 96766**  
**(808) 241-4050**

FROM: Ka'aina S. Hull, Director (Kenneth)

December 28, 2021

SUBJECT: PRE-FINAL Subdivision Map Review and Approval  
Subdivision No. S-2021-1  
Applicant: Kukui'ula Development Co. (Hawaii) LLC  
**Kukui'ula Parcel I Subdivision**

TO:

<input type="checkbox"/>	Department of Transportation - STP	<input checked="" type="checkbox"/>	DPW-Engineering
<input type="checkbox"/>	DOT-Highway, Kauai(info only)	<input type="checkbox"/>	DPW-Wastewater
<input checked="" type="checkbox"/>	DOT-Airports, Kauai (info only)	<input type="checkbox"/>	DPW-Building
<input type="checkbox"/>	DOT-Harbors, Kauai (info only)	<input type="checkbox"/>	DPW-SolidWaste
<input checked="" type="checkbox"/>	State Department of Health	<input type="checkbox"/>	Department of Parks & Recreation
<input type="checkbox"/>	State Department of Agriculture	<input checked="" type="checkbox"/>	Fire-Department
<input type="checkbox"/>	State Office of Planning	<input type="checkbox"/>	County Housing-Agency
<input type="checkbox"/>	State Dept. of Bus. & Econ. Dev. Tourism	<input type="checkbox"/>	County Economic Development
<input type="checkbox"/>	State Land Use Commission	<input type="checkbox"/>	KHPRC
<input checked="" type="checkbox"/>	State Historic Preservation Division	<input checked="" type="checkbox"/>	Water Department
<input type="checkbox"/>	DLNR- Land Management	<input type="checkbox"/>	Kaua'i Civil Defense
<input type="checkbox"/>	DLNR- Forestry & Wildlife	<input type="checkbox"/>	U.S. Postal Department
<input type="checkbox"/>	DLNR- Aquatic Resources	<input type="checkbox"/>	UH_Sea_Grant
<input checked="" type="checkbox"/>	DLNR- OCCL	<input checked="" type="checkbox"/>	County Transportation Agency
<input type="checkbox"/>		<input type="checkbox"/>	Other:

COMMENTS FROM DPW Engineering:

January 3, 2022

We have no further comments. Recommend proceeding to Final Map.

Sincerely,

Digitally signed by Michael Moule  
Date: 2022.01.03 16:17:06 -10'00'

Michael Moule, P.E.  
Chief, Engineering Division





4398 PUA LOKE STREET  
LIHU'E, KAUAI, HAWAII 96766  
PHONE: (808) 245-5400 / FAX: (808) 245-5813

Water has no substitute      Conserves it

### SUBDIVISION REPORT

TO: PLANNING DEPARTMENT  
FROM: DEPARTMENT OF WATER

TRK 2-6-015:001 NAME: Kukuiula Development Co. SURVEYOR Austin Tsutsumi REPORT NO. S-2021-1

1. Domestic water is adequate. Tentative approval is recommended. ☐
2. All requirements have been fully met and; therefore, Final approval is recommended. ☒
3. Before final approval can be recommended, the subdivider must:
  - A. Pay the Department of Water the following charges in effect at the time of receipt. At the present time, these charges include:
    - 1) The Facilities Reserve Charge (FRC):  
Lots @ \$14,115 per lot = \$ \*See Items 5a and 5b ☐
    - 2) Payment to install \_\_\_\_\_, or relocate \_\_\_\_\_, service connections(s) at the fixed cost of \$ \_\_\_\_\_. If the subdivider causes a delay in the service connection installation after one year since final map approval, the subdivider shall be charged the increase in the fixed cost, if any. ☐
    - 3) Deposit (the subdivider will either be billed or returned the difference between this deposit and the actual cost of construction of \$ \_\_\_\_\_ for construction by the DOW. ☐
  - B. Submit to the Department of Water a copy of the subdivider's permit to perform work upon a State highway from the State Highways Division ☐
  - C. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and either construct said facilities or post a performance bond for construction. These facilities shall also include:
    - 1) All facilities required in the approved Kukui'ula Water Master Plan for the proposed project. ☐
  - D. Prepare and convey to the Department of Water a Right-of-Entry and Temporary Grant of Easement for the purpose of construction, repair, maintenance and operation of the subdivision water system improvements installed in other than County-owned property. ☐
  - E. If a bond is filed, to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map, and deeds: ☐

"Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kauai."

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.
4. Installation of service connections will not be required until request for water service is made. The applicant for service will be charged the applicable service connection charges at that time. ☐
5. Other (or remarks): ☐
  - A. Submit an updated Kukuiula Water Demand and System Capacity Tracking Matrix.  
(Received 12/01/2021)
  - B. Be made aware that the Facilities Reserve Charge and the adequacy of source, storage and transmission facilities for the proposed Development will be dependent on the approved updated Kukuiula Water Demand and System Capacity Tracking Matrix.

*Michael S. Hinazumi*

Michael Hinazumi, P.E.  
Program Administrator  
Engineering Division

Dec 10, 2021

Date

SUBDIVISION REPORT NO. S-2021-1

DAVID Y. IGE  
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.  
INTERIM DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
KAUAI DISTRICT HEALTH OFFICE  
3040 UMI STREET  
LIHUE, HAWAII 96766

JANET M. BERREMAN, M.D., M.P.H., F.A.A.P.  
DISTRICT HEALTH OFFICER

October 22, 2021

Mr. Ka'aina Hull, Director  
County of Kauai  
Planning Department  
4444 Rice Street, Suite A473  
Lihue, HI 96766

Dear Mr. Hull

SUBJECT: **PRE-FINAL** Subdivision Map Review and Approval  
Subdivision No.: **S-2021-1**  
Applicant: **Kukui'ula Development Co. (Hawaii) LLC**

All concerns have been addressed and the Department has no objections with final approval of this subdivision application.

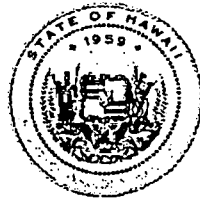
Should you have any questions, please call me at 241-3323.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Tamekazu".

Darren Tamekazu, Chief (Acting)  
District Environmental Health Program Kaua'i

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING  
601 KAMOKILA BLVD, STE 555  
KAPOLEI, HAWAII 96707

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

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

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

February 16, 2021

Michael Moule, P.E., P.T.O.E., Division Chief  
County of Kaua'i Department of Public Works  
Engineering Branch  
4444 Rice St., Suite 275  
Līhu'e, Kaua'i 96766-1340  
Paul Togioka, [ptogioka@kauai.gov](mailto:ptogioka@kauai.gov)

IN REPLY REFER TO:  
Project No. 2019PR32025  
Log No. 2019.02764  
Doc No. 2102GC06  
Archaeology

Ka'āina Hull, Director  
County of Kaua'i Planning Division  
444 Rice Street, Suite A473  
Līhu'e, Kaua'i 96766-1340  
c/o Kenny Estes, [kestes@kauai.gov](mailto:kestes@kauai.gov)

Dear Sirs:

**SUBJECT: Chapter 6E-42 Historic Preservation Review  
Clearinghouse Application No. CL-2019-041, PW 10.19.112 – Grading & Drainage Only  
Clearinghouse Application No. CL-2020-014, PW 01.20.021 – Subdivision  
Field Inspection Letter Report for Improvements to Parcel I  
Kukui'ula Community Development Project  
Kōloa Ahupua'a, Kōloa District, Island of Kaua'i  
TMK: (4) 2-6-015:001 por.**

This letter provides the State Historic Preservation Division's (SHPD's) review of the subject *Clearinghouse Application Nos. CL2020-011, PW 01.20.021, Kukui'ula Development Parcel-I, Subdivision; CL-2019-041, PW 10.19.112, Kukui'ula Development Parcel-I, Grading and Drainage Only*; and a supporting document titled *Field Inspection Letter Report for Improvements to Parcel I of the Kukui'ula Community Development Project, TMK: [4] 2-6-015:001 por., Kōloa Ahupua'a, Kōloa District, Kaua'i* (Hammatt, February 2021). The SHPD received the original submission on December 20, 2019. On February 5, 2021, SHPD requested via email [Garnet Clark (SHPD) to Hallett Hammatt (Cultural Surveys Hawai'i, Inc.; CSH) additional information and revisions to the field inspection report. On February 12, 2021, SHPD received the revised document and requested information via email [Hallett Hammatt (CSH) to Garnet Clark (SHPD)].

**Project Description**

The submittal materials indicate that the project area comprises a 31.32-acre portion of the 139.9-acre parcel within the Kukui'ula Development Parcel I. Subsurface disturbances include excavation of 292,00 cubic yards and embankment of 270,000 cubic yards, construction of Roads A through E, and installation of subsurface utilities and infrastructure. Parcel I is situated just west of Parcel K and north of Hole #8 of the Kukui'ula Golf Course, south of Ala Makani Kai Road, and Aepoeka Reservoir.

The archaeological literature review and field inspection (LRFI) report (Hammatt, February 2021) includes a brief description of the project area, and a synthesis of previous archaeological investigations conducted within the Kukui'ula Development. Per the additional information provided by Hal Hammatt, a remnant 'auwai (SIHP 50-30-

10-1902) is located in an undeveloped area of TMK: (4) 2-6-015:001, well outside of the current project area. The field inspection identified a probable plantation earthen ditch extending north-south in the eastern portion of Parcel I between the eastern unpaved access road and the golf course. Most of the earthen ditch was filled with grubbing- and clearing-related vegetation debris; no sluice gates, culverts, or other improvements were observed. Parcel I becomes increasingly elevated in the mauka/north direction, with a steep drop north of Parcel I, along an unpaved access road leading to Kukui'ula Farm. The north-central portion of Parcel I also drops off into a low-lying area (LRFI report Figure 15). The raised areas of the low-lying area contained modern trash and overgrown landscaping plants, suggesting the area was formerly used, likely as a base yard. The western portion of Parcel I, just south of Kukui'ula Farm, contained a landscaped and manicured BBQ area with open patio shelters.

In 2015, an archaeological inventory survey (AIS) was conducted within the adjacent Parcel H. Twenty backhoe-assisted test excavations were conducted with negative findings. The AIS documentation was submitted as an archaeological assessment (AA) report. SHPD accepted the AA report on January 22, 2016 (Log No. 2015.04309, Doc No. 1601MN06). In 1988, CSH conducted an AIS (Hammatt et al. 1988) of a large portion of Kukui'ula Development. The study documented 58 archaeological sites, including 150 features within a 1,000-acre area, from Poipu Road on the east to the edge of Lawai Valley to the west, which included the current project area. The majority of the historic properties were documented within the southeastern area of the Kukui'ula Development. No historic properties were identified within Parcel I.

Based on the LRFI (Hammatt, February 2021) and other information provided, SHPD's HRS §6E-42 project effect determination is "No historic properties affected" for Clearinghouse Application No. CL-2019-041, PW 10.19.112 and CL-2020-014, PW 01.20.021. Pursuant to HAR §13-284-7(e), when the SHPD comments that the action shall not affect any significant historic properties, this is the SHPD's written concurrence and the HRS 6E historic preservation review ends. The HRS 6E historic preservation review process is ended for the subject project.

**SHPD hereby notifies the County of Kauai that the permit process may continue.**

Although the LRFI report does not fulfill the requirements of an AIS, as specified in HAR §13-276, it serves to facilitate project planning and supports the historic preservation review process. The LRFI meets the minimum requirements of HAR §13-282-3. **It is accepted.** Please send two hard copies of the document, clearly marked FINAL, along with a copy of this review letter to the Kapolei SHPD office, attention SHPD Library. Additionally, please upload a text-searchable PDF version of the report to HICRIS Project No. 2019PR32025 using the Project Supplement option and send a second PDF copy to [lehua.k.soares@hawaii.gov](mailto:lehua.k.soares@hawaii.gov).

Attach to permit in the event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance, and contact the State Historic Preservation Division, at (808) 462-3225.

Please contact Susan A. Lebo, Archaeology Branch Chief at (808) 692-8019 or at [Susan.A.Lebo@hawaii.gov](mailto:Susan.A.Lebo@hawaii.gov) for any questions regarding this letter.

Aloha

*Alan Downer*

Alan S. Downer, PhD  
Administrator, State Historic Preservation Division  
Deputy, State Historic Preservation Officer

cc: Lindsay Crawford, [lcrawford@kukuiula.com](mailto:lcrawford@kukuiula.com)  
Dave Hutchinson, [dhutchinson@kukuiula.com](mailto:dhutchinson@kukuiula.com)  
Hallett H. Hammatt, CSH, [hhammatt@culturalsurveys.com](mailto:hhammatt@culturalsurveys.com)  
David Shideler, CSH, [dshideler@culturalsurveys.com](mailto:dshideler@culturalsurveys.com)



## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

### MEMORANDUM NO. 1 TO SUBDIVISION COMMITTEE

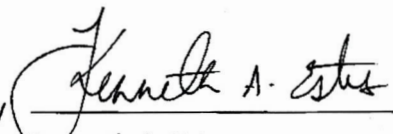
**RE:**                    **Subdivision Application No. S-2022-6**  
                              (Kukui'ula Parcel HH Subdivision)  
                              Kukui'ula Development Company, LLC./  
                              MP Kaua'i HH Development Fund, LLC.

**Subdivision Application No. S-2021-1**  
(Kukui'ula Parcel I Subdivision)  
Kukui'ula Development Company, LLC.

#### ADDITIONAL FINDINGS

Attached for the Planning Commission's reference are public testimony concerning the above referenced subdivisions:

- Correspondence from Kaimana Chapa received February 6, 2022.
- Correspondence from Elizabeth Okinaka received February 7, 2022.
- Correspondence from Roslyn Cummings received February 7, 2022.
- Correspondence from Holly Ka'iakapu received February 7, 2022.

By   
Kenneth A. Estes  
Staff Planner

Date: 05.12.2022

I.1.a.2.

I.2.a.3.

June 14, 2022

I.1.a.2.  
I.2.a.3.  
**X**  
MAY 24 2022

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**From:** Kaimana Chapa <kchapa808@gmail.com>  
**Sent:** Sunday, February 6, 2022 6:44 PM  
**To:** Planning Department  
**Subject:** Kukui'ula requesting 90 lot subdivision

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

My name is Kiara Kele Luka Ana Lorenzo- Rodrigues. I am a wahine kanaka Maoli and I write to you in opposition of this new development, the site is not only sacred to the kanaka people but also hold the iwi (bones) of my tutu wahine. Not only my tutu but the bones of many other kanaka. It is also home to a Heiaus and lava caves that are home to endangered species. For me it's more then a nice vacation spot for tourist, it's my history. That would simply be erased if you continue to develop and cut off our access to these places of worship.

As a young mother I worry about the future of my child. Not only does this development have no local housing, it would only lead to more displacement of local family's.

Coupled with the massive amounts of tourism out island chain has seen within a world wide pandemic building more homes to house people that bring variants of COVID-19 from all over the world this would not only be unwise to continue It directly affects the health and well being of the local community. With all this said I can only ask of you all to do your duty to protect the locals. And not only the locals that are living but all that have come before us and buried themselves in their homelands.

Mahalo piha,

Kele luka Ana

S.A.I.  
C.A.S.I.

---

**From:** Elizabeth Okinaka <elizabeth.eolakakouhawaii@gmail.com>  
**Sent:** Monday, February 7, 2022 1:18 AM  
**To:** Alan.S.Downer@hawaii.gov; Susan.A.Lebo@hawaii.gov; Council Members; Mayor; Planning Department; reptokioka  
**Subject:** Oppose Subdivision Application S-2022-6 and S-2021-1  
**Attachments:** Letter re Kukuiula for Feb 8 Planning Commission Meeting-LO.pdf

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

**Aloha Planning Commission and Department, please accept this testimony in opposition of subdivision application S-2022-6 and S-2021-1 requested by Kukuiula Development Company LLC. Please see attached file regarding Ka Pa'akai O Ka'aina**

SHPD did not adhere to guidelines in Ka Pa'akai O Ka'aina that states "they must consult and report on the consultation with community members". I was never contacted nor was I never offered to give input regarding cultural concerns. I have already witnessed machines bulldozed obvious sections of heiau. In the past Kukuiula had referred to these as "mere rock piles".

As a member of E Ola Kakou Hawai'i 501C3 I would like to formally request to be consulted with future archeological consulting pertaining to this greater area. Please see others issues in attachment.

**Critical Habitat for Koloa Cave Spider and Amphipod-**

Why wont the County Of Kauai push for more protection for 2 species that are found no where else in the world! These species are increasingly at risk, with all the planned development planned directly on or next to critical habitat.

**April 9, 2003, the USFWS designated 272 acres in southern Kauai as critical habitat. One year earlier, the agency had proposed that 4,193 acres should be designated as critical habitat, but changed the proposal because it would have been very costly to private landowners in Hawaii.**

***The Koloa lava tubes of Kauai and their associated endangered fauna were identified as one of the ten most endangered cave communities in the world (Tongvig and Mylroie, in litt. 1998; Belson 1999)***

**Other issues :**

**There are also multiple Burial Caves with iwi kupuna in this direct area.**

**NO Local Housing**

**These outdated developments were originally approved based on the agreement there would move lots sold to local families. After decades of going back and forth eventually all local housing was scrapped. Yes we got affordable apartments, BUT no matter how long a families pays rent they can never own the apartment. This is cultural genocide and should in NO way be considered a viable excuse while dozens of multiple Million Dollar homes are built in return. This is further**

displacing the local community while raising the cost of living and property taxes from local families that are lucky enough to own their home.

Even if some of these lots being subdivided are for tennis courts, pickle ball courts NONE of these will serve the local community. Just like how Kukui'ula got approved claiming they would build local homes. But instead we got more measly apartments that we can NEVER own. Why are we prioritizing multi million dollar developments at a time like now? Outer islands and County Council on Maui are STOPPING further development right now! But in 2022 alone I was already witnessed 90 lots subdivision request fly through the planning Commission with no concerns.

The Planning Department and Commission members really need to have a deep think about what they are leaving behind for future generations. I already as a mother cannot even take my children to our local beach anymore because of the insane amount of tourist at Poipu Beach Park.

how many agreements does the county of kauai have in place with Kukuiula? Do you understand how deeply this will affect the south side community for generations to come? Will there be homes directly across the street from the harbor? There is a deep conflict of interest when we have people like Laurel Loo who had inside knowledge with these projects as then county attorney. Did she also sign off on any agreements for Kukuiula like she did Kiahuna? Those developments still happening today because of her approval of those agreements, yet now she is representing the developers. And this is also not an isolated issues, as she now represents multiple developers. Don't you think the general public deserves to have this information disclosed?

The fact that the planning department is even moving forward with any more tourist accommodations at this time is unthinkable. Or these gentrified Multi Million Dollar developments that are pushing out the local community. And this is not isolated we there will be a 400 million dollar boutique hotel not far from here, how about the 282 condos you guys are also allowing to be built? The lots at makahuena that are selling for 10+ million dollars but were once set for local home lots we could actually own and pass down to our children. Stop continuing the genocide of the local community. Our children should not have to suffer the consequences of these poor choices today.

I am deeply saddened to read reports from only 10-15 years ago were the county council and planning commission were stopping entire developments. County Council in the past were calling out SHPD for there lack of involvement and not protecting more historical sites. County stopped them because they realized it was not a priority for the community at the time . Covid should have made you each realize how quickly tourism can disappear. Why are we not focusing on the better ment of our community. Making sure NO more local families are forced to move off island because they can simply no longer afford to live in the place they were born and raised. 90 lots for foreigners -but when will local families become a priory to the county again?

Aloha  
Elizabeth Okinaka

Feb 6, 2022

Aloha Planning Commission,

Re: Revised Application - Tentative Map Subdivision Application S-2022-6 Proposed 51 Lot Subdivision TMK (4) 2-6-019:026,029,031 Koloa, Kauai and

Re: Final Subdivision Application S-2021-1 Kukui'ula Proposed 40 Lot Subdivision TMK (4) 2-6-015:001 Koloa Kauai

### **51 Lot Tentative Subdivision**

We appreciate several aspects of this proposal and also have significant concerns:

- 1) **No Lawai Road Access** - We appreciate the Commission has made it clear there will be no access on to Lawai Road from this area and highlighted that the developer make it clear on all plans that there will not be any entrance/egress on this important and historic road leading to the boat harbor.
- 2) **We will assume and would like confirmation that:**
  - a. This includes NO ACCESS now or in the future on to ANY Road that may be constructed parallel or otherwise in the vicinity of Lawai Road or any portion of Lawai Road that serves as transit to the Board Harbor and Spouting Horn or any portion of any access under any name (Lawai Rd or other) with the same or similar transit pattern.
- 3) **Trail Master Plan** – We appreciate focus on public access. Please confirm trail plan is in place.
- 4) **Ka Pa'akai O'Ka'aina Analysis/SHPD** – We appreciate this condition was added in – it seems to have been an oversight it was not included originally.
  - a. We are concerned however that the SHPD conclusion 'No Historic Properties Affected' has become boiler plate text. It does not or may not accurately reflect the current state of archeology and historic properties **as the required guidelines of Ka Pa'akai O' Ka'aina were not followed to inform this assessment.**
    - **Community Consultation Not Identified** - Of note we do not see in the correspondence from SHPD/Alan Downer to Michael Moule on Jan 21, 2022 that any community members were contacted or consulted with. Not a single member has been identified.
  - b. **Overlooking Ongoing Issues** – Separately in the same letter re: Hammatt Report (June 201) that the report cites: "Historic properties were identified, Habitation and Agricultural Site (50-30-10-01947) 2

Habitation Sites (50-30-10-01949 and (50-30-10-01950) and note that it suggests these areas 'were not slated for preservation'

We Question Why? We note the report goes on to say they were likely removed during 'Permitted mass grading in the 1980s'.

- Oversight, intentional removal or destruction appears to be the 'Developer's Choice' process for removing any 'obstacles' to construction.
- Let this inform ALL decisions made today with regard to allowing further grubbing, grading, clearing, building that once historic sites are gone – they are gone for good.
- It is the responsibility of the Planning Commission to ensure this does not happen.

- c. **Guidelines not Adhered To** - It appears that SHPD correctly recognized that the guidelines were not adhered to as the letter notes: "Although the archeological field inspection report (Hammatt June 21) does not fulfil the requirements of an archeological inventory survey as specified in HAR13-276-5, it serves to support project planning and facilitates the historic preservation review process."
- d. **SHPD Conclusion in Correspondence is Without Merit** - as the activities required to make such a conclusion were not performed. The next paragraph asserts that 'No Historic Properties Affected' then goes on to say that because this determination was conveyed via correspondence that it signals the "end of the historic preservation review process. The permitting and or project initiation process may continue."
- e. **Inaccurate Assertion** - Importantly - the determination made by SHPD that '**No Historic Properties Affected**' – **cannot be considered accurate and should be voided.**  
This assertion cannot be determined as the guidelines - focusing on Consulting Community - and steps associated with Ka Pa'akai O' Ka'alina were not followed.
- f. **It should be noted that there are Land Commission Awards associated with this parcel which make it imperative the community is consulted.**

#### **40 Lot Subdivision**

#### **Re: Final Subdivision Application S-2021-1 Kukui'ula Proposed 40 Lot Subdivision TMK (4) 2-6-015:001 Koloa Kauai**

- 1) We encounter the same issue here as above, in a letter to Michael Moule Feb 21, SHPD again states that 'No Historic Significance' but is based on an incomplete assessment – there is no evidence or suggestion that anyone from SHPD consulted with the community
- 2) The letter states: "While LRFI does not fulfil the requirements of an AIS as specified in HAR 13-276-5, it serves to support project planning and the historic review process.

The LRFI meets the minimum requirements of HAR 13-282-3".

- a. It noted: As with the 51 Lot subdivision proposal, SHPD claims that once their correspondence has been sent indicating 'No Historic Properties Affected', the issue is final.
- b. There is no finalization until the steps and guidelines in Ka Pa'akai O' Ka'aina have been followed, that is the intent and was the outcome of the case. SHPD cannot make this determination short of following and including its report - all the steps

Given the above, there can be no forward motion on either of these subdivisions as SHPD's conclusion does not follow from its action (or inaction).

Mahalo

– Elizabeth Okinaka and E Ola Kakou Hawai'i



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**From:** Roslyn Cummings <mana.eolakakouhawaii@gmail.com>  
**Sent:** Monday, February 7, 2022 8:29 AM  
**To:** Planning Department  
**Subject:** Public Testimony No. S-2022-6, S-2021-1

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

**ROSLYN CUMMINGS**  
c/o Roslyn Cummings  
Living, Breathing Human Being  
c/o General Delivery (Box 315)  
Kalaheo Station  
Kalaheo, Kauai, Hawaii Nei  
(U.S.P.Z. Exempt - 96741)

(NOTICE TO AGENT IS NOTICE TO PRINCIPAL, NOTICE TO PRINCIPAL IS NOTICE TO AGENT)

Attention Planning Commission,

**Members**

- Donna Apisa, Chair
- Helen Cox, Vice Chair
- Francis DeGracia, Subdivision Committee Chair
- Gerald Ako
- Melvin Chiba
- Glenda Nogami-Streufert
- Lori Otsuka

I'm here to speak on the cultural religious significance of these upcoming developments. Listed on the Agenda February 8, 2022,

Targeting cultural sites is a war crime under the 1954 Hague Convention.

Hawaiian Kingdom, the law is very clear who are heirs in law, the Civil Codes from 1859

break in the links in the chain of title, to demonstrate an issue of material fact, probate records and or references to them.

Anything after 1893 is null and void. Any laws established after the alodial is null avoid cannot be used for said property.

Grave breaches of the Geneva Conventions today form part of a complex set of crimes under international law, consisting of serious violations of international humanitarian law often referred to as war crimes, as well as gross human rights violations, such as crimes against humanity and genocide. Grave breaches are part of the wider category of serious violations of humanitarian law that States are called upon to suppress in both international and non-international armed conflict.[6] They remain 'segregated from other categories of war crimes',[7] as the list of grave breaches contained in the Geneva Conventions and Additional Protocol I is a limitative one which is only applicable in international armed conflict.[8] Furthermore, the grave breaches regime imposes on States Parties the obligation to either prosecute or extradite alleged offenders, regardless of their nationality, as opposed to a right to do so recognized in international law in connection with alleged perpetrators of war crimes.[9]

#### HRS §711-1107 Desecration.

(1) A person commits the offense of desecration if the person intentionally desecrates:

(a) Any public monument or structure;

(b) A place of worship or burial; or

(c) In a public place the national flag or any other object of veneration by a substantial segment of the public.

(2) "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant's action.

(3) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both.

I demand that proof of rightful ownership through clear title be made clear; request for chain of title and the contract which states the County of Kauai Planning Department has to do business lawfully in regards to these lands.

Secretary of State Calhoun responded to the Hawaiian Commission on July 6, 1844. He wrote that the appointment of a United States Commissioner to the Hawaiian Islands was "regarded by the President as a full recognition on the part of the United States, of the Independence of the Hawaiian Government." A Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the United States was signed in Washington, D.C., on December 20, 1849.

There is no political question for the United States to raise in its Motion to Dismiss because the United States, by its President, formally recognized the Hawaiian Kingdom as a sovereign and independent State. On December 18, 1893, President Grover Cleveland acknowledged the United States' overthrow of the government of the Hawaiian Kingdom was an act of war and unlawful. The overthrow of the Government of an independent State does not equate to the overthrow of the State itself and its existence. The State would still exist and the situation would be called "belligerent occupation."

Unlawful means doing something that you do not have the right to do.

The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing of which there may be ownership is called "property." Civ.

, a trust is a right in property (real or personal) which is held in a fiduciary relationship by one party for the benefit of another. The trustee is the one who holds title to the trust property, and the beneficiary is the person who receives the benefits of the trust.

What is the great Mahele?

for the record-

The mayor's responsibilities are primarily to preside at council meetings and to act as head of the city for ceremonial purposes and for purposes of military law. The mayor votes as a councilmember and does not have any veto power.

The county mayor is the accounting officer and chief financial officer of the county; he or she is charged with the care and custody of county property (unless the law specifically places the care and custody on another official, such as the chief administrative officer of the highway department for highway equipment).

A fiduciary is a person who holds a legal or ethical relationship of trust with one or more other parties (person or group of persons). Typically, a fiduciary prudently takes care of money or other assets for another person. One party, for example, a corporate trust company or the trust department of a bank, acts in a fiduciary capacity to another party, who, for example, has entrusted funds to the fiduciary for safekeeping or investment. Likewise, financial advisers, financial planners, and asset managers, including managers of pension plans, endowments, and other tax-exempt assets, are considered fiduciaries under applicable statutes and laws.[1] In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance, and trust in another whose aid, advice, or protection is sought in some matter.[2]:at p. 68[3] In such a relation, good conscience requires the fiduciary to act at all times for the sole benefit and interest of the one who trusts.

What is COUNTY?

The name given to the principal subdivisions of the kingdom of England and of most of the states of the American Union, denoting a distinct portion of territory organized by itself for political and judicial purposes. The etymology of the word shows it to have been the district anciently governed by a count or earl. In modern use, the word may denote either the territory marked off to form a county, or the citizens resident within such territory, taken collectively and considered as invested with political rights, or the county regarded as a municipal corporation possessing subordinate governmental powers, or an organized jural society invested with specific rights and duties. *Patterson v. Temple*, 27 Ark. 207; *Eagle v. Beard*, 33 Ark. 501; *Wooster v. Plymouth*, 62 N. H. 205.

If you want a legal definition, Black's Law Dictionary says that a Trust is "an equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery."

A claim is a violation  
A complaint is criminal

## RESTITUTION

According to Black's Law Dictionary, restitution is an "Act of restoring; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification".

### What is FRAUD?

Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. *Maher v. Hibernia Ins. Co.*, 67 N. Y. 292; *Alexander v. Church*, 53 Conn. 501, 4 Atl. 103; *Studer v. Bleistein*, 115 N.Y. 316, 22 X. E. 243, 7 L. R. A. 702; *Moore v. Crawford*, 130 U. S. 122, 9 Sup. Ct. 447, 32 L. Ed. 878; *Fechheimer v. Baum (C. C.)* 37 Fed. 167; *U. S. v. Beach (D. C.)* 71 Fed. 160; *Gardner v. Heartt*, 3 Denio (N. Y.) 232; *Monroe Mercantile Co. v. Arnold*, 108 Ga. 449, 34 S. E. 176. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Civil Code La. art. 1547. Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq. Jur.

breach

### Definition of breach (Entry 1 of 2)

1 : infraction or violation of a law, obligation, tie, or standard  
a breach of trust

**PENALTIES FOR PUBLIC OFFICERS U.S. CODE Title 42 Penalties for Government Officers.** The authority for fines (damages) caused by crimes by government officers. These Damages were determined by GOVERNMENT itself for the violation listed. Breach Penalty Authority Violation of Oath of Office \$ 250,000. 18 USC 3571 Denied Proper Warrant(s) \$ 250,000. 18 USC 3571 Denied Right of Reasonable Defense Arguments \$ 250,000. 18 USC 3571 Defense Denied Evidence (records) \$ 250,000. 18 USC 3571 Denied Right to Truth In Evidence \$ 250,000. 18 USC 3571 Slavery (Forced Compliance to contracts not held) \$ 250,000. 18 U.S. CODE 3571 Denied Provisions in the Constitution \$ 250,000. 18 U.S. CODE 3571 Treason (combined above actions) \$ 250,000. 18 U.S. CODE 3571 Genocide \$1,000,000. 18 U.S. CODE 1091 Misprision of Felony \$500. 18 U.S. CODE 4 Conspiracy \$ 10,000. 18 U.S. CODE 241 Extortion \$ 5,000. 18 U.S. CODE 872 Mail Threats \$5,000. 18 U.S. CODE 876 Fraud \$ 10,000. 18 U.S. CODE 1001 Falsification of Documents \$ 10,000. 18 U.S. CODE 1001 Perjury \$ 2,000. 18 U.S. CODE 1621 1 **PENALTIES FOR PUBLIC OFFICERS** Subornation of Perjury \$ 2,000. 18 U.S. CODE 1622 Grand Theft each \$ 250,000. 18 U.S. CODE 2112 To determine multiply no. of counts by damage 18 U.S. CODE 3571 Racketeering (Criminal) \$ 25,000. 18 U.S. CODE 1963 Racketeering (Civil) Wages Taken  $\times 3 = 5?$  18 U.S. CODE 1964 (Sustained Damages [total]  $\times 3$ ) Thirty-seven (37) Constitutional violations from Count 1: = \$ 9,250,000. Damages Dealing with

claims of "immunity." Any claim of "immunity" is a fraud because, if valid, it would prevent removal from office for crimes against the people, which removal is authorized and or mandated under U.S. Constitution Article 2, Section IV; as well as 18 U.S. CODE 241, 42 U.S. CODE 1983, 1985, 1986, and other state Constitutions. Precedents of Law established by COURT cases, which are in violation of law, render violations of law legally unassailable. Such a situation violates several specifically stated intents and purposes of the Constitution set forth in the Preamble; to establish justice, insure domestic tranquility, and secure the blessings of liberty. This is for JUDGES, ATTORNEYS, POLICE or anyone affiliated with or in any branch of government. 2

The Kingdom of Hawai'i is actually a reference to the island kingdom of Hawai'i prior to Kamehameha's unification of the pae 'āina, just as the Kingdom of Maui refers to the island kingdom of Maui, Lāna'i Kaho'olawe, Moloka'i, and O'ahu, and the Kingdom of Kaua'i refers to the island kingdom Kaua'i and Ni'ihau. Kamehameha united the three kingdoms/the entire pae 'āina under one country in 1810, which became known as the Hawaiian Kingdom

It marks the 129 years since the illegal US overthrow of the Hawaiian Kingdom government.

Much of modern Hawaiian history, is based on illegality. The bayonet constitution in 1887. The illegal overthrow of the Hawaiian Kingdom government on January 17th 1893. The illegal and so-called "annexation" (which is quotation marks because it WASN'T a treaty of annexation but a joint resolution or an american law passed in congress, which has no jurisdiction outside of america's border) in 1898. All of these illegalities created these false narratives, stories, mo'olelo that Hawai'i is apart of the US, when really it isn't.

Now today, we see things like "the sovereignty movement" which inaccurately maintains that aboriginal Hawaiians have a right to self-determination, which implies that aboriginal Hawaiians were never nationals of a sovereign and Independent State (aka country). Self determination also implies that aboriginal Hawaiians are an ethnic group residing within the united states of america. Hawaiian history cannot support this position. Aboriginal Hawaiians are the majority of the population of Hawaiian subjects who have been subjected to americanization and indoctrination. As an occupied State (aka country) under an illegal and prolonged occupation, the proper framework to understand Hawai'i's unique situation is through international law and the laws of occupation and not through the laws of the united states, and, by extension, the laws of the state of Hawai'i. In this way, not only is Hawai'i's vibrant political and legal history embraced, but it honors and respects all of our kūpuna who established the Hawaiian Kingdom and acknowledges our kūpuna who endured the brutalization of american indoctrination.

Hawai'i was not invaded or colonized by the United States before it gained its sovereignty and became a State under international law in 1843, and therefore its people cannot be considered as indigenous. Instead, international law protects and maintains the continuity of the State despite it being under an illegal and prolonged occupation since the Spanish-American War, which is similar to Germany's occupation of Luxembourg from 1914-1918 during World War I.

To help contextualize what I am talking about, I'll give you an analogy. How do you justify walking into someone's house and declaring unilaterally that said house is now yours when there is a whole family that is living there and has been living there for generations. You then tell them "give me the deed to your house" and they tell you "no." You tell them again "give me the deed to your house" and again they tell you "no." You then go and create a fraudulent deed and then state "This house is mine" and tell all your friends and those living nearby that this house is now yours. That's basically the current situation with Hawai'i.

This isn't some movement that defines Hawaiian identity by blood lineage and seeks to enhance native rights through justice within the existing social and political framework of american state and federal laws. Instead the provisional government of the Hawaiian Kingdom is utilizing the framework of international law to end a foreign occupation that has existed since 1898.

The Hawaiian state that existed in the 19th century had already transformed itself into a nation that had political structure similar to those of European nation states of the time. It was a multi-ethnic constitutional monarchy that had equal treaties with foreign powers, embassies, and international recognition as an independent state.

The provisional government's use of international law to restore a dormant government and revive a disappearing culture should not be confused with indigenous struggles that lack this history of having once been a fully independent state recognized within the global order of the 19th century. Furthermore, Hawai'i is an island nation, so its geographical isolation means there is even less reason for it to negotiate the nation-within-a-nation status that is the norm for aboriginal groups on the North American continent. Pointing out this advantageous legal position, it should not be viewed as an attempt to place ourselves above other groups. We have always expressed solidarity with aboriginal groups that had different experiences with Western contact, but we are in a unique situation that requires a different strategy.

Hawai'i is also different from another category of independence struggle, that of ethnic groups seeking self-determination after a history of colonization. We also appeal to international law and the right to self-determination promised by UN resolutions, but Hawai'i doesn't belong in this category, as Hawai'i was never colonized in the political sense of the word.

Hawai'i's unique situation is an important case for the global community to pay attention to because of the implications for the continued projection of US military power. Hawai'i is the headquarters of the US Pacific Command and thus a highly strategic asset for the placement of conventional military installations and nuclear weapons. The illegal status of the Pacific Command, since the first landing of American troops in 1893 and 1898 should not be forgotten. The United States knowingly occupied a neutral territory, violating international law of the day, in order to conduct operations against another belligerent in the Spanish colonies of Guam and the Philippines.

Not only are we the descendant of the ones who survived every attempt to end us, we literally are NOT even Americans and Hawai'i is NOT America.

He āina Hawai'i

### **Ua Mau ke Ea o ka 'Āina I ka Pono**

The life of the land is perpetuated in righteousness

Mo'okuauhau to be looked upon by truthful and honest eyes and protected by the highest 'I'o  
May no harm come upon manawa,

'O iwi, O ku'u iwi, 'O Koko, 'O ku'u koko  
I am of your bones, I am of your blood

'O Ulumahehei Hoapili Ke Kane 'O Kalilikauoha Ka Wahine noho pu laua hanau ia 'O Kuini Liliha  
He Wahine, 'O Kekuanaoa Ke Kane 'O Kianu Ka Wahine noho pu laua hanau ia 'O Lota Kamehameha V  
He Kane, 'O Kamehameha nui Ke Kane 'O

Kalakauakahehemaile Ka Wahine noho pu laua hanau ia 'O Kina'u He Wahine, 'O Koakanu Ke  
Kane 'O Loeau (W) 'O Kuini Liliha Ka Wahine Namaile Ke Kane, 'O Namaile, Kamaile Ke Kane 'O Kuini  
Liliha Ka Wahine noho pu laua ia 'O Abigail Maheha He Wahine, 'O Keaupuni, Kamehameha V Lota Ke  
Kane noho pu laua hanau ia 'O Kanaloiki Keanolani He Wahine, 'O James Kaliokalani Kali Ke Kane 'O  
Anna Ka'iulani Ka Wahine noho pu laua hanau ia Nuanua Kawanui Kaawanui He Kane, 'O Kanaloiki  
Keanolani Ka Wahine 'O Nuanua Ke Kane noho pu laua hanau ia 'O Kikaha, 'O Waikaka Kanakanui Kauai  
Kauaiiki Kauhi Abrehama Ke Kane 'O Kikaha Ka Wahine noho pu laua hanau ia 'O William Nuiāola  
Waikaka Kualu He Kane, 'O William Nuiāola Waikaka Kanakanui Ke Kane 'O Helen Lahapa Kailiokalani Ka  
Wahine noho pu laua hanau ia 'O Kamakaeha, 'O Llawahine Haupū Ka Wahine 'O Kaliokalani Ke Kane  
noho pu laua hanau ia 'O Helen Lahapa Kailiokalani, 'O Kaumualii Ke Kane 'O Akahi Kawalu Kapuaamohu  
Ka Wahine noho pu laua hanau ia 'O George Humeleme, 'O Humeleme 'O Pakeke noho pu laua  
hanau ia 'O Kawahine Makua, 'O Humeleme 'O Kawahinemakua noho pu laua hanau ia 'O Eke Eke

Oponui , 'O Kailiokalani , 'O Kaapumohu Kaapuwai 'O Kaumualii noho pu laua hanau ia 'O Kealiihonorui ,  
'O Pononui Haupu 'O Julia Kulia Nawahine noho pu laua hanau ia 'O Helen Liawahine Haupu, 'O  
Kailiokalani Ke Kane 'O Liawahine noho pu laua hanau ia 'O Helen Lahapa Kailiokalani , 'O Haupu , 'O  
Kapule Kekiahaakulou 'O Kahekilii II , 'O Kekulapoiwa II , 'O Naluahi Ka Wahine 'O Kealiihonorui noho pu  
laua hanau ia 'O Kaolei , 'O Haupu 'O Kaolei noho pu laua hanau ia 'O Pononui Haupu He Kane, 'O  
Kamakaeha 'O Ipac noho pu laua hanau ia 'O Kawaikini, 'O Aileen Kawaikini Ipac Ka Wahine 'O Robert  
Stanley Rita Ke Kane noho pu laua hanau ia 'O Darlene Rita, 'O Edmund Francis Malama Jr 'O Darlene  
Joyce Rita noho pu laua hanau ia 'O Roslyn Nicole Manawaiakea Malama He Wahine



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**From:** Holly K <hkaiaikapu@gmail.com>  
**Sent:** Monday, February 7, 2022 9:49 AM  
**To:** Planning Department  
**Subject:** Oppose Subdivision Application S-2022-6 and S-2021-1

**CAUTION:** This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

I oppose the subdivision application S-2022-6 and S-2021-1. By continuing to approve multi-million dollar projects like Kukui'ula, the Planning Department is choosing to continue the displacement of our local communities. I cannot stand behind that, and I hope the Planning Department makes the most pono decision for our island's community.

Mahalo,  
Holly Ka'iakapu