



## PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

FRANCIS DEGRACIA, CHAIR  
DONNA APISA, VICE CHAIR  
GERALD AKO, MEMBER  
HELEN COX, MEMBER  
GLENDA NOGAMI STREUFERT, MEMBER  
JERRY ORNELLAS, MEMBER  
LORI OTSUKA, MEMBER

'23 MAY -1 A8:13

OFFICE OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

- The Planning Commission Meeting will be at:
  - Līhu'e Civic Center, Moikeha Building
  - Meeting Room 2A-2B
  - 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i
- Oral testimony will be taken on specific agenda items, at the public meeting location indicated on the meeting agenda.
- 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 on any agenda item 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 at least **24 hours prior** to the meeting will be posted as testimony to the Planning Commission's website prior to the meeting (<https://www.kauai.gov/Government/Boards-and-Commissions/Planning-Commission>). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.

**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.**

**PLANNING COMMISSION MEETING NOTICE AND AGENDA**

**Tuesday, May 9, 2023  
9:00 a.m. or shortly thereafter  
Līhu'e Civic Center, Moikeha Building  
Meeting Room 2A-2B  
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i**

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF AGENDA**

**D. MINUTES of the meeting(s) of the Planning Commission**

1. None for this Meeting.

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

1. None for this Meeting.

**F. HEARINGS AND PUBLIC COMMENT**

1. **Continued Agency Hearing**

- a. None for this Meeting.

2. **New Agency Hearing**

- a. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-10), CLASS IV ZONING PERMIT (Z-IV-2023-10), USE PERMIT (U-2023-7) to allow construction of public shared use path extending from Nāwiliwili Park to Ahukini Landing and associated improvements involving a new comfort station, drainage ways, protective fencing and paved parking area, and SHORELINE SETBACK VARIANCE PERMIT (SSV-2023-1) to deviate from the shoreline setback requirement involving properties along makai side of the Lihue Airport, further identified as Tax Map Keys: 3-5-001:004, 005, 008, 009, 085, 092, 102, 128, 158 & 160; 3-7-002:001 (Por.) and affecting a total area of approx. 9.2 acres = **County of Kaua'i, Department of Public Works.** [Director's Report Received 4/25/2023.]

1. Director's Report Pertaining to this Matter.

3. **Continued Public Hearing**

- a. None for this Meeting.

4. **New Public Hearing**

- a. None for this Meeting.



**G. CONSENT CALENDAR**

**1. Status Reports**

- a. None for this Meeting.

**2. Director's Report for Project(s) Scheduled for Agency Hearing**

- a. None for this Meeting.

**H. GENERAL BUSINESS MATTERS**

- 1. None for this Meeting.

**I. COMMUNICATION**

- 1. None for this Meeting.

**J. COMMITTEE REPORTS**

**1. Subdivision Committee**

- a. Final Subdivision Map Approval

- 1. Subdivision Application No. S-2005-41  
**Visionary LLC. DBA Līhu'e Land Company**  
Ahukini Makai Subdivision  
Proposed 49-lot Subdivision  
TMK: (4) 3-7-002: 001 (por.)  
Hanamā'ulu, Līhu'e, Kaua'i

**K. UNFINISHED BUSINESS (For Action)**

- 1. In the Matter of Planning Director Kaaina S. Hull's Petition to revoke Applicant Bula Tree House LLC Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 (former Mark Daniells art gallery approved in 1990), and Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 (former Diane Daniells pre-school approved in 1978) for failure to comply with conditions of approval by the Planning Commission and Issue an Order to Show Cause and Set Hearing; Memorandum in Support of Petition; Declaration of Kaaina S. Hull; Notice of Meeting; Certificate of Service, TMK (4) 5-5-004: 23, Hanalei, Kaua'i. [Deferred 2/14/2023, Deferred 4/11/2023.]

**L. NEW BUSINESS (For Action)**

- 1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-10), CLASS IV ZONING PERMIT (Z-IV-2023-10), USE PERMIT (U-2023-7) to allow construction of public shared use path extending from Nāwiliwili Park to Ahukini Landing and associated improvements involving a new comfort station, drainage ways, protective fencing and paved parking area, and SHORELINE SETBACK VARIANCE PERMIT (SSV-2023-1) to deviate from the shoreline setback requirement involving properties along makai side of the Lihue Airport, further identified as Tax Map Keys: 3-5-001:004, 005, 008, 009, 085, 092, 102, 128, 158 & 160; 3-7-002:001 (Por.) and affecting a total area of approx. 9.2 acres = **County of Kaua'i, Department of Public Works**. [Director's Report Received 4/25/2023.]

#### **M. EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the following matters:

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-10), CLASS IV ZONING PERMIT (Z-IV-2023-10), USE PERMIT (U-2023-7) to allow construction of public shared use path extending from Nāwiliwili Park to Ahukini Landing and associated improvements involving a new comfort station, drainage ways, protective fencing and paved parking area, and SHORELINE SETBACK VARIANCE PERMIT (SSV-2023-1) to deviate from the shoreline setback requirement involving properties along makai side of the Lihue Airport, further identified as Tax Map Keys: 3-5-001:004, 005, 008, 009, 085, 092, 102, 128, 158 & 160; 3-7-002:001 (Por.) and affecting a total area of approx. 9.2 acres = **County of Kauaʻi, Department of Public Works**. [Director's Report Received 4/25/2023.]
2. Subdivision Application No. S-2005-41  
**Visionary LLC. DBA Līhuʻe Land Company**  
Ahukini Makai Subdivision  
Proposed 49-lot Subdivision  
TMK: (4) 3-7-002: 001 (por.)  
Hanamāʻulu, Līhuʻe, Kauaʻi
3. In the Matter of Planning Director Kaaina S. Hull's Petition to revoke Applicant Bula Tree House LLC Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 (former Mark Daniells art gallery approved in 1990), and Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 (former Diane Daniells pre-school approved in 1978) for failure to comply with conditions of approval by the Planning Commission and Issue an Order to Show Cause and Set Hearing; Memorandum in Support of Petition; Declaration of Kaaina S. Hull; Notice of Meeting; Certificate of Service, TMK (4) 5-5-004: 23, Hanalei, Kauaʻi. [Deferred 2/14/2023, Deferred 4/11/2023.]

#### **N. ANNOUNCEMENTS**

1. Topics for Future Meetings.
2. The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, on June 13, 2023. The Planning Commission anticipates this meeting to be held in-person at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Hawaii 96766. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

#### **O. ADJOURNMENT**

## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

### SPECIAL MANAGEMENT AREA (SMA) MINOR DETERMINATIONS

Date (Action)	SMA Minor Permit number	Location (TMK)	Activity/ structure
Approved (04.05.2023)	SMA(M)-2023-18	Kapa'a (3-9-006:001)	Relocation and Reconstruction/ Portion of multi-use bike pedestrian path.

Pursuant to Section 8-27.8 (6) of the Kaua'i County Code (1987), as amended, the following shoreline setback determinations by the Director are disclosed for purposes of public notification.

May 9, 2023

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2023-39	County of Kaua'i, Department of Public Works	3-5-001:005, 008, 102, 159, 160 & 3-7-002:999	Lihu'e	Construction of a Shared-Use path from Ninini Point to Ahukini landing. / Shoreline certified, required setback is 100 feet from certified shore. Most of the development is a public use concrete path which is allowed less than 40 feet to the certified shoreline. A prefabricated bridge located at drainageway no. 3 is 75 feet away from shoreline to which the applicant applied for a variance (SSV-2023-1).
SSD-2023-40	Pono Kai AOA	4-5-007:002	Kapa'a	Repair roof-Administration Building, Building C, and D/ Work deemed "unsubstantial".
SSD-2023-41	Pono Kai Interval Owners Association	4-5-007:002	Kapa'a	Building "F" interior renovations/ required setback 158 feet. Development at 175 feet.

***Applications for:***  
***Special Management Area (SMA) Permit***  
***Shoreline Setback Variance (SSV) Determination***  
***Zoning Use Permit – Class 4***

---

County of Kauai – Department of Planning

## **Nāwiliwili-Ahukini Bike Path**

Lihue District, County of Kauai

Lihue, Kauai, Hawaii

Tax Map Key (TMK):

**(4) 3-5-001: 005, 008, 009, 092, 109, 102, 128, 158, 160 &**

**(4) 3-7-002: 999**

***Prepared For:***

County of Kauai

Department of Public Works

Division of Roads Maintenance and Construction

4444 Rice Street, Suite 275

Lihue, Hawaii 96766



R. M. TOWILL CORPORATION  
SINCE 1930

2024 North King Street, Suite 200  
Honolulu, Hawaii 96817  
1-20987-00P

September 2022 - Revised January 2023



Applications for:  
*Special Management Area (SMA) Permit*  
*Shoreline Setback Variance (SSV) Determination*  
*Zoning Use Permit – Class 4*

## **Nāwiliwili-Ahukini Bike Path**

Lihue District, County of Kauai

Lihue, Kauai, Hawaii

Tax Map Key (TMK): (4) 3-5-001: 005, 008, 009, 092, 109, 102, 128, 158, 160 & (4) 3-7-002: 999

January 2023

*Prepared for:*

County of Kauai  
Department of Public Works  
Division of Roads Maintenance and Construction  
4444 Rice Street, Suite 275  
Lihue, Hawaii 96766

*Prepared by:*

R.M. Towill Corporation  
2024 North King Street, Suite 200  
Honolulu, Hawaii 96817



## TABLE OF CONTENTS

I.	Application Checklist	
II.	Zoning Permit Application	
III.	Special Management Area (SMA) Permit Assessment Application Form	
IV.	Shoreline Setback Variance (SSV) Determination Form	
V.	Supplemental Information	
PART A		
	Applicant.....	1
	Contact Person .....	1
	Project Information.....	1
	Site Address .....	1
	Tax Map Keys .....	2
	Lot Area.....	2
	State Land Use Districts .....	3
	Kaua'i General Plan Land Use Designations.....	3
	County Zoning Districts .....	3
	Nature of the Development.....	3
	Valuation of Development.....	4
PART B		
	Project Description, Location and Justification.....	5
	Shoreline Certification.....	10
	Plot Plan and Building Plans.....	10
	Other Information .....	11
	HRS Chapter 343 Compliance .....	11
	Zoning Use Permit – Class 4.....	11
	Shoreline Setback Variance .....	12
	Project Assessment.....	13
	Environment .....	13
	Flora and Fauna.....	13
	Topographic Features .....	15
	Coastal Waters.....	15
	Existing Land Uses .....	16
	Effects of the Project on the Immediate and Surrounding Area .....	17
	Evaluation: HRS 205-A and SMA Rules and Regulations, Section 3 .....	24
	Unavoidable Impacts and Proposed Mitigation Measures .....	38
	Evaluation: SMA Rules and Regulations, Section 4 .....	39
	Consistence with General Plan, Development Plan and Ordinances .....	47

VI. Exhibits:

Exhibits Volume I

Exhibit 1 – Project Location Map

Exhibit 2 – State Land Use Districts

Exhibit 3 – County of Kaua'i Zoning Districts

Exhibit 4 – Preferred Alignments Cost Estimate

Exhibit 5 – Site Photos

Exhibit 6 – Special Management Area Map

Exhibit 7 – Certified Shoreline Survey

Exhibit 8 – General Site Plan

Exhibit 9 – New Bridge Drainage Crossing

Exhibit 10 – State Historic Sites Figure and No Adverse Effect Table

Exhibit 11 – Wetland Map

Exhibit 12 – FEMA/FIRM Maps

Exhibit 13 – HRS 343 Finding of No Significant Impact

Exhibit 14 – HRS 6E Historic Preservation Compliance

Exhibit 15 – Archaeological Inventory Survey Documents

- Archaeological Literature Review and Field Inspection, June 2008.
- Archaeological Inventory Survey, September 2009.

Exhibit 16 – Ka Pa'akai Analysis

Exhibit 17 – NHPA 106 and 6E Consultation Timeline and Correspondence

Exhibits Volume II

Exhibit 18 – HRS 343 EA with Appendices



---

# **Section I**

# **Application Checklist**



## **APPLICATION CHECKLIST**

	<b>Content</b>	<b>Notes</b>
a.	Pre-Application Meeting with Department of Planning	Phone call with Department of Planning on September 2, 2021.
b.	Completed Zoning Permit Application	Section II
c.	Completed SMA Assessment Form	Section III
d.	Completed SSV Determination Form	Section IV
e.	Project Description	Section V
f.	Scaled Drawings:	Section VII
	• Site/Plot Plan	Section VII – Exhibit 8
	• Location Map	Section VII – Exhibit 1
	• Building Floor Plans	N/A
	• SMA Boundary Line	Section VII – Exhibit 6
	• Flood Hazard Boundaries (if applicable)	Section VII – Exhibit 12
g.	Fees	N/A – County of Kauaʻi Project
h.	Certified Shoreline Survey (if applicable)	Section VII – Exhibit 7
i.	Photos (labeled and keyed to general site map)	Section VII – Exhibit 5
Add	New Bridge and Culvert Drainage Crossing	Section VII – Exhibit 9
Add	HRS 343 Finding of No Significant Impact	Section VII – Exhibit 13
Add	HRS 6E Compliance	Section VII – Exhibit 14
Add	Archaeological Inventory Survey Documents	Section VII – Exhibit 15
Add	Ka Paʻakai Analysis	Section VII – Exhibit 16
Add	HRS 343 Environmental Assessment and Appendices	Section VII – Exhibit 17





---

## **Section II**

# **Zoning Permit Application**





# **DEPARTMENT OF PLANNING** **STANDARD ZONING PERMIT APPLICATION**

One (1) original; If providing plans, five (5) sets, including original, required.  
 Fees vary based on permits required and range from \$30 to over \$1000.  
 Proof of 100% fee ownership rights or authorized agent must be attached.

**Check  
One:**

☐

Paper  
Plans

☐

Electronic  
Plans

This application shall be filled out by all seeking Zoning, Use, Variance, SMA Use or PDU permits pursuant to the Kauai County Code, Hawai'i Revised Statutes Chapter 205A and all relevant rules and regulations of the Planning Commission and Department. Supplemental information may be attached to form. SMA applications may also require additional SMA assessment forms.

## **DEPARTMENT USE ONLY**

Zoning				Intake By:
Use				
Variance				Intake Date:
SMA				
PDU				Acceptance Date/By:
<b>TOTAL FEE:</b>				
Additional Fees:				
Receipt Number				
Building Permit No.				
Associated Permits (e.g. SSD)				

Permitting fees may be made via cash or check. All checks shall be made out to: **"Director of Finance"**

## **Complete Information Below**

Tax Map Key Number		Condominium Number	
Applicant Name(s)			
Property Address			
Mailing Address			
Parcel Area		Contact Phone	
Zoning Designation		Contact Email (if applicable)	

## **Applicant Declarations (incorrect responses may slow your permit review)**

Please place an "X" under Yes or No under the following:

		YES	NO	Staff Verification
1	Is this property located in the Special Management Area (SMA)?			
2	Is this property part of a Condominium Property Regime (CPR)?			
3	Is this property within 500 feet of the shoreline?			
4	Is this property within the Agriculture Zoning District?			
5	Is there a structure on the property that is 50 years old or older?			
6	Do you have an Additional Dwelling Unit Certificate?			
7	Is this a permit for an after-the-fact construction or activity?			
8	I hold at least a 100% property interest in the property.			
9	Are you an agent for the property owner?			
10	Has a similar application been previously denied?			
11	Is this an application for an agriculture structure under 200 square feet			
12	Are there known burials on the site?			
13	Are you using water not provided by a domestic water system?			
14	Does existing grade under building footprint change by 2' or more in any direction?			
15	The proposed residential unit is a Multi-Family Dwelling Unit?			
16	Is this a conversion of a legally existing single-family dwelling unit into a multi-family two dwelling unit?			
17	Is this structure a guest house?			
18	Does guest house contain a kitchen?			

1. What is the proposed construction and/or intended use of the structure or parcel (may attach additional info)? Paved, temporary and movable multi-use coastal path from Ninini Point to Ahukini Landing with connections to Ahukini Street and Ninini Point Street. See Supplemental Info.
2. If this is not the first dwelling unit on the subject property identified on this application, please state how many dwelling units presently exist: N/A

### Submittal Checklist

Please **INITIAL** under "Yes" or not applicable "N/A" regarding each of the statements:

		YES	NA	Staff Verification
1	All plot plans I have submitted are drawn to scale.	Yes		
2	I have ensured all TMK numbers are visible on all plan sheets.	Yes		
3	Any plans I have submitted clearly show all structures and setback dimensions.	Yes		
4	My plans provide lot coverage calculations	Yes		
5	I have ensured kitchens are marked with the 8' radii required by the Planning Department's Administrative Rules.		N/A	
6	Because this application involves a CPR, the plot plan shows all existing structures.		N/A	
7	Building plate does not exceed 20 feet from the finished grade at entry.		N/A	

**Acknowledgements** - Please **INITIAL** next to each of the statements:

I UNDERSTAND:	Initial Here
Additional fees and/or the submittal of other application forms may be necessary to complete this application for acceptance and processing.	WL
Tender of fees by the County does not imply acceptance of this application.	WL
Errors in self-declaration or missing or incomplete information will delay acceptance and processing of your application.	WL
Any purposeful misrepresentations in this application may result in delay, denial, permit revocation, violations, fines and even criminal prosecution.	WL

The owner and/or authorized representative is hereby made aware that the construction, work, use or activity approved in this permit shall be subject to inspection by Planning Department personnel. The applicant is advised that inspection may occur prior to or during construction and use to ascertain the activity is conducted in compliance with the law. Further, I am a duly authorized agent or have 100% ownership rights.

OWNER/AGENT SIGNATURE: Wade Lord Digitally signed by Wade L. Lord  
Date: 2022.09.30 16:50:17 -10'00' DATE: September 30, 2022

### FOR PLANNING DEPARTMENT USE ONLY (THIS CONSTITUTES PERMIT IF FILLED OUT BY DEPT.):

APPROVED ☐ DENIED ☐ BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**DIRECTOR'S CONDITIONS OF APPROVAL** (staff to **initial** next to applicable conditions):

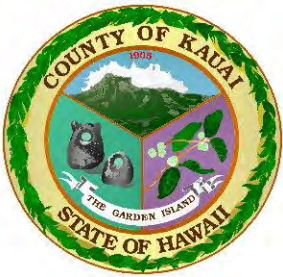
This permit shall expire if no building is issued within one (1) year after the approval date and/or if construction does not start within one (1) year of building permit issuance.	
Director's standard conditions for non-residential agricultural structures (attach)	
Should any archaeological or historic resources be discovered during ground disturbing/construction work, all work in the area of the find 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.	
Additional Conditions (State):	

---

## **Section III**

# **Special Management Area (SMA) Permit Assessment Application Form**





**COUNTY OF KAUAI  
DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)  
PERMIT ASSESSMENT**

**I. Part A**

APPLICANT INFORMATION	
Applicant: _____	
Address: _____ Phone: _____	
Applicant's Status: (Check one)	
<input type="checkbox"/> Owner of the Property	(Holder of at least 75% of the equitable and legal title)
<input type="checkbox"/> Lessee of the Property	Lessee must have an <b>unexpired and recorded</b> lease of five (5) years or more from the date of filing of this application. If not, Owner(s) must provide a Letter of Authorization.
<input type="checkbox"/> Authorized Agent	Attach Letter of Authorization
Contact Person: _____ Address: _____	
Phone: _____	
Email: _____	

PROJECT INFORMATION (attach additional sheets if necessary)	
Site Address: _____	Tax Map Key: _____
State Land Use District: _____	Lot Area: _____
General Plan Designation: _____	County Zoning: _____
Nature of Development: _____	
_____	
_____	
_____	
_____	

\* **NOTE:** An Environmental Assessment in accordance with HRS Chapter 343 is required for actions requiring a Shoreline Setback Variance (SSV). Please contact the Planning Department for further information.

Valuation of Development: \_\_\_\_\_  
(Estimate Attached)

Date of Application: \_\_\_\_\_



**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

**II. Part B**

The petitioner shall be responsible for filing the following required information with the department before an application is considered complete:

1. A **written** description of the proposed project, location and a statement of reasons/justification for project.
2. If property abuts a shoreline, a certified shoreline survey conducted by a registered land surveyor within 6 months of an application shall be submitted, when required by the Planning Agency.
3. A plot plan of the property, drawn to scale, with all proposed and existing structures and other pertinent information. Also, preliminary building sketch plans are to be submitted.
4. Any other plans or information requirements by the Director.

Note: An Environmental Assessment or Environmental Impact Statement that has been declared adequate under the National Environmental Policy Act (NEPA) or under Chapter 343, HRS, may constitute a valid filing under this section.

5. **Project Assessment:**

- a. Description of the area and environment involved including flora and fauna, and other features;
- b. Description of the existing land uses of the project site and surrounding areas;
- c. Description of how the proposed project will affect the area involved and surrounding areas. Specifically the assessment should evaluate if the proposal:

- |  | YES                      | NO                       |
|--|--------------------------|--------------------------|
| i. Involves an irrevocable commitment to loss or destruction of any natural or cultural resources, including but not limited to, historic sites, Special Treatment Districts as established by the County of Kauai Comprehensive Zoning ordinance, view planes or scenic corridors as outlined in the Community Development Plans, and recreation areas and resources; | <input type="checkbox"/> | <input type="checkbox"/> |

Discussion:

**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

- |      |  |                          |  |                          |
|------|--|--------------------------|--|--------------------------|
|      |  | YES                      |  | NO                       |
| ii.  | Curtails the range of beneficial uses of the environment;  | <input type="checkbox"/> |  | <input type="checkbox"/> |
|      | Discussion:  |                          |  |                          |
|      | <div style="border: 1px dotted black; height: 40px;"></div>  |                          |  |                          |
| iii. | Conflicts with the County's or the State's long-term environmental policies or goals;  | <input type="checkbox"/> |  | <input type="checkbox"/> |
|      | Discussion:  |                          |  |                          |
|      | <div style="border: 1px dotted black; height: 40px;"></div>  |                          |  |                          |
| iv.  | Substantially affects the economics or social welfare and activities or the community, County or State;  | <input type="checkbox"/> |  | <input type="checkbox"/> |
|      | Discussion:  |                          |  |                          |
|      | <div style="border: 1px dotted black; height: 40px;"></div>  |                          |  |                          |
| v.   | In itself has no significant adverse effect but cumulatively has considerable effect upon the environment or involves a commitment for larger actions; | <input type="checkbox"/> |  | <input type="checkbox"/> |
|      | Discussion:  |                          |  |                          |
|      | <div style="border: 1px dotted black; height: 40px;"></div>  |                          |  |                          |
| vi.  | Substantially affect a rare threatened, or endangered species of animal or plant, or its habitat;  | <input type="checkbox"/> |  | <input type="checkbox"/> |
|      | Discussion:  |                          |  |                          |
|      | <div style="border: 1px dotted black; height: 40px;"></div>  |                          |  |                          |
| vii. | Detrimentially affects air or water quality or ambient noise levels; or  | <input type="checkbox"/> |  | <input type="checkbox"/> |
|      | Discussion:  |                          |  |                          |
|      | <div style="border: 1px dotted black; height: 40px;"></div>  |                          |  |                          |

**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

- viii. Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water; YES ☐ NO ☐

Discussion:

- ix. May have a major effect on the quality of the environment or affect the economic or social welfare of the area; and YES ☐ NO ☐

Discussion:

- x. Would possibly be contrary to the policies and guidelines of the Rules and Regulations, the County's General Plan, Development Plans, and Zoning and Subdivision Ordinances. YES ☐ NO ☐

Discussion:

- d. Evaluation of the proposed development relative to the objective and policies as contained in Chapter 205A, HRS; and Section 3.0 of the Special Management Area (SMA) Rules and Regulations: (complete following questionnaire)

**RECREATIONAL  
RESOURCES:**

Objective

Provide coastal recreation opportunities accessible to the public.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

1. Will the proposed development adversely affect coastal resources uniquely suited for recreational activities that cannot be provided in other areas? YES ☐ NO ☐

Discussion:

**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

- |  |   |                                 |                                |
|--|---|---------------------------------|--------------------------------|
| 2.   | Will the project require replacement of coastal resources having significant recreational value, including but not limited to surfing sites, sandy beaches and fishing areas, when such resources will be unavoidably damaged by the proposed development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 3.   | Is the project site near a State or County Park?  | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 4.   | Will the proposed development affect an existing public access to or along the shoreline?   | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 5.   | Will the proposed development provide public access to and/or along the shoreline?  | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 6.   | Will the proposed development encourage expanded recreational use of County, State, or federally owned or controlled shoreline lands and waters having recreational value?  | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |

**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

7. Will the development generate point or non-point sources of pollution that will affect recreation value of coastal area? YES ☐ NO ☐

Discussion:

See Supplemental Information.

**HISTORICAL  
RESOURCES:**

**Objective**

Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the Special Management Area that are significant in Hawaiian and American history and culture.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

1. Is the project site within a Federal, State and/or County designated historical/cultural district? YES ☐ NO ☐

Discussion:

2. Is the project site listed on or nominated to the Hawaii or National Register of Historic Places? YES ☐ NO ☐

Discussion:

3. Does the project site include land(s) which have not been previously surveyed by an archaeologist? YES ☐ NO ☐

Discussion:

4. If an archeological survey has been conducted for the project site, has the survey been submitted to the State Historic Preservation Office for review and recommendations? YES ☐ NO ☐

**COUNTY OF KAUAI  
DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)  
PERMIT ASSESSMENT**

Discussion:

5. Has any site survey revealed any information on historic or archaeological resources? (Please provide a copy or reference of survey) YES ☐ NO ☐

Discussion:

6. Is the project site within or near a Hawaiian fishpond? YES ☐ NO ☐

Discussion:

7. Is the project located within or near a historic settlement area? (Cemeteries, burials, heiaus, etc.) YES ☐ NO ☐

Discussion:

**SCENIC & OPEN  
SPACE  
RESOURCES:**

Objective

Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

1. Does the project site abut or affect a valued scenic resources or landmark within the SMA? YES ☐ NO ☐

Discussion:

**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

2. Does the proposed development affect existing shoreline open space and scenic resources? YES ☐ NO ☐

Discussion:

3. Does the proposed development involve alteration to natural landforms and existing public views to and along the shoreline? YES ☐ NO ☐

Discussion:

4. Is the project compatible with the visual environment? YES ☐ NO ☐

Discussion:

5. Does the proposed action involve the construction of structures visible between the nearest coastal roadway and the shoreline? YES ☐ NO ☐

Discussion:

6. Is the project site within the Shoreline Setback Area (20 or 40 feet inland from the shoreline)? YES ☐ NO ☐

Discussion:

**COASTAL  
ECOSYSTEMS:**

**Objective**

Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.



**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

- |   |   |                                 |                                |
|---|---|---------------------------------|--------------------------------|
| 1.  | Is the project site a habitat for endangered species of flora and fauna?  | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px dotted black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 2.  | Will the proposed development adversely affect valuable coastal ecosystems of significant biological or economic importance?  | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px dotted black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 3.  | Will the proposed involve disruption or degradation of coastal water ecosystems through stream diversions, channelization, and similar land and water uses?               | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px dotted black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 4.  | Will the proposed development include the construction of special waste treatment facilities, such as injection wells, discharge pipes, septic tank systems or cesspools? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px dotted black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 5.  | Is there a wetland on the project site?   | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px dotted black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |
| 6.  | Is the project site situated in or abutting a Natural Area Reserve or Wildlife Refuge or Sanctuary?   | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| Discussion:<br><div style="border: 1px dotted black; height: 40px; margin-top: 5px;"></div> |   |                                 |                                |

**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

<b>ECONOMIC USES:</b>	<u>Objective</u> Provide public or private facilities and improvements important to the State's economy in suitable locations.
---------------------------	---

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

- |    |  |                                 |                                |
|----|--|---------------------------------|--------------------------------|
| 1. | Does the project involve a harbor or port?   | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
|    | Discussion:  |                                 |                                |
| 2. | Is the proposed development related to or near to an existing major hotel, multi-family, or condominium project? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
|    | Discussion:  |                                 |                                |
| 3. | Does the project site include agricultural lands designated for such use?  | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
|    | Discussion:  |                                 |                                |
| 4. | Does the proposed development relate to commercial fishing or seafood production?                                | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
|    | Discussion:  |                                 |                                |

<b>COASTAL HAZARDS:</b>	<u>Objective</u> Reduce hazard to life and property from tsunamis, storm waves, stream flooding, erosion, and subsidence.
-----------------------------	--

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

1. Is the project site within a potential tsunami inundated area as depicted on the National Flood Insurance Rate maps (FIRM)? YES ☐ NO ☐

Discussion:

2. Is the project site within a potential flood inundation area according to a FIRM? YES ☐ NO ☐

Discussion:

3. Does the project comply with the requirements of the Federal Flood Insurance Program? YES ☐ NO ☐

Discussion:

4. Has the project site or nearby shoreline areas experienced shoreline erosion? YES ☐ NO ☐

Discussion:

5. Have any seawalls/revetments/etc. been constructed or exist in the immediate vicinity? YES ☐ NO ☐

Discussion:

**COUNTY OF KAUAI**  
**DEPARTMENT OF PLANNING**

**SPECIAL MANAGEMENT AREA (SMA)**  
**PERMIT ASSESSMENT**

**PROJECT  
ASSESSMENT:**

- e. Evaluation of the impacts which cannot be avoided and mitigating measures proposed to minimize that impact:

Discussion:

- f. Evaluation of the proposed development relative to Section 4.0 of the SMA Rules and Regulations in accordance with the following aspects:

- i. Substantial adverse environmental or ecological effects;

Discussion:

- ii. Consistency or compliance of the proposed development relative to the goals and objectives of Chapter 205A, HRS; and Section 3.0 of the SMA Rules and Regulations; and

Discussion:

- iii. Consistency or compliance of the proposed development relative to the County General Plan, Development Plan, and Zoning Ordinances.

Discussion:

\_\_\_\_\_  
[name], [title]

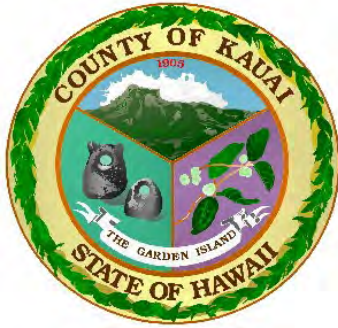
\_\_\_\_\_  
Date

---

## **Section IV**

# **Shoreline Setback Variance (SSV) Determination Form**





## PLANNING DEPARTMENT SHORELINE SETBACK APPLICATION

FOR OFFICIAL USE ONLY:	
SSD 202__ - __	
Acceptance Date:	
Website Posting Date:	
Determination Date:	
Planning Commission Date:	
Expiration Date:	
Planner Assigned:	

**Instructions:** File all information requested under Part A for processing the Determination of Applicability (§8-27.1), including signature page. Fill out Parts A and B if you know that your parcel will require a Certified Shoreline Survey, due to the proximity to the shoreline. If you are proposing a permitted structure or subdivision within the shoreline setback area fill in Part C. For applications involving a variance, complete Part D.

Applicant Information	
Applicant: _____	
Mailing Address: _____	Phone: _____
_____	Email: _____
Applicant's Status: (Check one)	
<input type="checkbox"/> Owner of the Property	(Holder of at least 100% of the equitable and legal title)
<input type="checkbox"/> Authorized Agent	Attach Letter of Authorization
Transmittal Date: _____	

Project Information (attach additional sheets, if necessary)	
County Zoning District: _____	Tax Map Key(s): _____
Building Permit Number: _____	Land Area: _____
(If building plans submitted)	
<b>Nature of Development:</b> (Description of proposed structure or subdivision)	

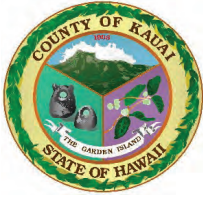
**NO PERMITS WILL BE ISSUED WITHOUT PLANNING COMMISSION ACCEPTANCE,  
EXCEPT AS PROVIDED IN §8-27.8(c)(8)**

### Part A

#### **Shoreline Setback Determination of Applicability (§8-27.1)**

**Check all that apply, fill in applicable information. Any box checked must be accompanied by additional information, photos and/or documentation.**

1. Property is Abutting the Shoreline  
☐ Proposed project's approximate distance from shoreline (based on aerial map): \_\_\_\_\_ ft.
2. Property is Not Abutting the Shoreline  
☐ Proposed project's approximate distance from shoreline (based on aerial map): \_\_\_\_\_ ft.
3. Additional Information:
  - ☐ Shoreline Change (Erosion/Accretion) Rate: \_\_\_\_\_ ft./year  
 (Information available here: [Kauai Shoreline Change \(arccgis.com\)](http://kawaii.shorelinechange.com))
  - ☐ Number and description of parcels (including roads, buildings, structures) between Shoreline and this parcel:



## PLANNING DEPARTMENT SHORELINE SETBACK APPLICATION

- ☒ Topography (undulating, flat, slope, etc.) and ground elevation of subject parcel (Lowest and Highest elevations)  
Gentle slope toward a 10-ft to 30-ft high cliff above a rocky shoreline. Low = 17 ft. High = 96 ft. See Supplemental Info.
- ☐ Shoreline type (e.g. beach, dune, rocky, sandy with rocky outcropping, etc.)  
Rocky, boulders and cobbles
- ☒ Artificially armored Shoreline  
☐ If checked, what type of armoring (e.g. seawall, revetment, bulkhead): \_\_\_\_\_  
☒ Is the armoring permitted/authorized? \_\_\_\_\_  
☐ Date of authorization (attach copy of authorization letter): \_\_\_\_\_
- ☒ Is property in coastal floodplain (if checked, what zone)? VE (22-24)  
☐ Has this property been subject to coastal hazards (i.e. flooding, erosion, tsunami, etc.) in the past?  
No

### PLEASE NOTE:

Any misrepresentation of information in this shoreline setback application will result in revocation of this determination and may result in fines and criminal prosecution.

### Applicant's Signature

Wade L Lord Digitally signed by Wade L Lord  
Date: 2023.01.17 15:07:22 -10'00' September 30, 2022

Signature

Date

### **Applicability (to be completed by Planning Department)**

- ☐ **Setback Determination necessary.** Requirements of Ordinance No. 979 are applicable.
- ☐ **Setback Determination is NOT necessary.** Requirements of Ordinance No. 979 are not applicable.

\_\_\_\_\_  
Planning Director or designee

\_\_\_\_\_  
Date

If **Part A** has been deemed that a Determination will be necessary, the additional information will be required for submission of this application.

### Part B

- ☐ A non-refundable processing fee of **one hundred dollars (\$100.00)** shall accompany a request for determination. (§8-27.8(e))
- ☒ An aerial map/image (ex. Google Maps or Google Earth) with a line drawn from the shoreline/vegetation line (approximate shoreline) to the proposed project and the calculated distance in feet.
- ☐ A detailed Plot Plan **to scale** with all existing and proposed structures including driveways, visible lot coverage, setbacks and measurement details, fences, gates, and walls, etc.
- ☒ Coastal Hazard Disclosure Statement Form





## PLANNING DEPARTMENT SHORELINE SETBACK DETERMINATION

### Exemption Determination

☐ **Exemption 1**

In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

☐ **Exemption 2**

Pursuant to §8-27.7, those structures and uses found exempt in Table 3 (see pg. 7) including repairs and renovations to a lawfully existing structure, including nonconforming structures, provided that:

- (A) The repairs DO NOT enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes;
- (B) The repairs DO NOT constitute a substantial improvement of the structure; and
- (C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law.

- ☐ Letter from the Department of Public Works stating that the proposed project does **NOT** constitute "Substantial Improvement," pursuant to §8-27.2 (If applicable, will require valuation of project).

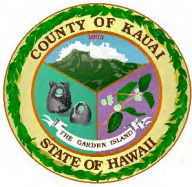
### Exemption Determination (to be completed by Planning Department)

- ☐ Pursuant to §8-27.3 the Kaua'i County Code, 1987 as amended, the Planning Department hereby certifies the proposed structure(s) or subdivision(s) as exempt from those shoreline setback determination requirements established under §8-27.8.
- ☐ Pursuant to §8-27.7 the Kaua'i County Code, 1987 as amended, the proposed structure(s) is permitted within the shoreline setback area. While exempt from those shoreline setback determination requirements established under §8-27.8, the proposed structure(s) is subject to the conditions of §8-27.7(b). (See pg. 8)

\_\_\_\_\_  
Planning Director or designee

\_\_\_\_\_  
Date

- ☐ **Additional comments/conditions:**



## PLANNING DEPARTMENT SHORELINE SETBACK DETERMINATION

### **Part C**

#### **Shoreline Setback Determination (§8-27.8)**

*(This document is the request for a shoreline setback structure or subdivision determination form.)*

Please complete this section if you are proposing a structure or subdivision that is *not* exempt (pursuant to Part B) and requires a certified shoreline. Determination of applicability (**Part A**) from the Planning Director shall first be obtained.

Certified Shoreline	
<b>Select the appropriate option:</b>	
<input type="checkbox"/> Certified Shoreline	
<input type="checkbox"/> Survey Map (showing Certified Shoreline, Shoreline Setback, and Structure(s) OR Subdivision)	
<input type="checkbox"/> Average Lot Depth: _____ ft.	
<input type="checkbox"/> Setback (Table 1 or Table 2): _____ ft.	
<input type="checkbox"/> Affidavit: Statement of inability to certify shoreline, pursuant to §8-27.3(d)	
_____ Planning Director or its designee	_____ Date

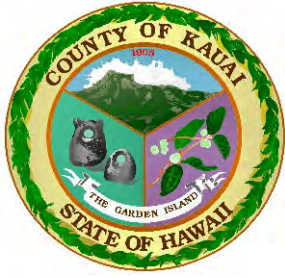
Public Projects less than \$125,000	
<input type="checkbox"/> Public Projects less than \$125,000 Declaration ((§8-27.8(c)(2))	
_____ Planning Director or designee	
Date	
<input type="checkbox"/> Certified Shoreline Required	
<input type="checkbox"/> Certified Shoreline Not Required	

Describe proposed structure(s), including but not limited to the landscaping plan (please attach):

--

Explain how the proposed structure is in compliance with §8-27.8(c)(2) (attach additional information if necessary):

--



## PLANNING DEPARTMENT SHORELINE SETBACK VARIANCE

### **Part D**

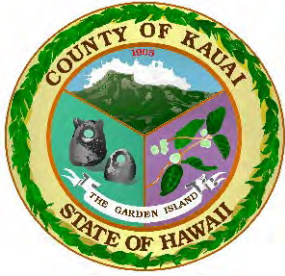
#### **Shoreline Setback Variance (§8-27.9)**

This part is the request for a shoreline setback variance. In addition to the documentation and information requested in Parts A, B, and C, the Applicant applying for a variance is required to submit all required information, per §8-27.9 listed in the checklist below.

- ☐ A non-refundable administrative fee of three hundred dollars **(\$300.00)**.
- ☐ Certification from the owner or lessee of the lot which authorizes the application for variance;
- ☐ An environmental assessment and or EIS, if required, prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai‘i;
- ☐ The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed structure or subdivision and/or landscaping is to be located; or operation is to occur (attach information);
- ☐ A site plan of the shoreline setback area, drawn to scale, showing:
  - ☐ Existing natural and man-made features and conditions within;
  - ☐ Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
  - ☐ The certified shoreline and the shoreline setback line (submitted under **Part B**);
  - ☐ Contours at a minimum interval of two (2) feet unless waived by the Director; and
  - ☐ Proposed development and improvements showing new conditions with a typical section (if a structure).
- ☐ A copy of the certified shoreline survey map of the property (submitted under **Part B**);
- ☐ Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance (attach written statement);
- ☐ Analysis and report of coastal erosion rates and coastal processes; and
- ☐ Any other information required by the Director (listed below).

Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under §8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation and the grantor shall be subject to the penalties set forth in this Article 3.

For any structure approved within the shoreline setback area by variance, the Applicant shall agree in writing that the Applicant, its successors and permitted assigns shall defend, indemnify and hold the County of Kaua‘i harmless from and against any and all loss, liability claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.



## PLANNING DEPARTMENT SHORELINE SETBACK INFORMATION

Table 1. (This table is included for illustrative purposes only.)

Lots Included in the Kaua'i Coastal Erosion Study. The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet.

### **LOTS INCLUDED IN KAUA'I COASTAL EROSION STUDY**

Average Lot Depth	Setback Line
Less than 140 feet (<140 feet)	40 feet plus (70 X annual coastal erosion rate) plus 20 feet
140 feet to 220 feet (140-220 feet)	<p style="text-align: center;"><u>Greater of:</u></p> <p style="text-align: center;">40 feet plus (70 X annual coastal erosion rate) plus 20 feet</p> <p style="text-align: center;"><u>-or-</u></p> <p style="text-align: center;">(Average Lot Depth minus 100 feet) ÷ by 2 plus 40</p>
Greater than 220 feet (>220 feet)	<p style="text-align: center;"><u>Greater of:</u></p> <p style="text-align: center;">40 feet plus (70 X annual coastal erosion rate) plus 20 feet</p> <p style="text-align: center;"><u>-or-</u></p> <p style="text-align: center;">100 feet from the certified shoreline</p>

**View erosion rate maps from the County website at**

Kaua'i Coastal Erosion Study Update 2020

[Kauai Shoreline Change \(arcgis.com\)](http://arcgis.com)

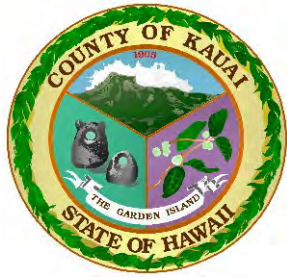
Table 2. (This table is included for illustrative purposes only.)

Lots Not Included in the Kaua'i Coastal Erosion Study.

### **LOTS NOT INCLUDED IN KAUA'I COASTAL EROSION STUDY**

Setback Calculation	
(Average Lot Depth – 100/2+40) Subject to the Following:	
1	For lots with naturally <i>occurring rocky shorelines</i> , the shoreline setback line shall be <b><u>no less than 40 feet.</u></b>
2	For all other lots, the shoreline setback line shall be <b><u>no less than 60 feet.</u></b>
3	For all lots, the <b><u>maximum</u></b> setback that can be required <b><u>shall be 100 feet.</u></b>

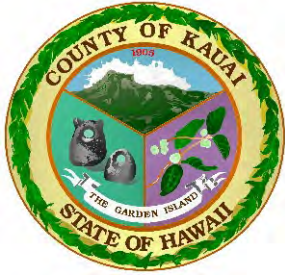
Non-Abutting Lots. If an Applicant is unable to secure permission from the abutting landowner to complete a certified shoreline for a non-abutting lot within approximately five hundred fifty (550) feet of the shoreline, the Planning Director may, pursuant to §8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.



## PLANNING DEPARTMENT SHORELINE SETBACK INFORMATION

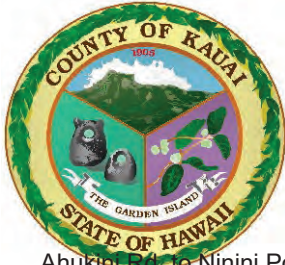
Table 3. This table is presented for **Exemption 3** (§8-27.7).

Permitted Structures within the shoreline setback area	
(a)	The following structures are permitted in the shoreline setback area. All structures and/or landscaping not specifically permitted in this section are prohibited without a variance.
(1)	Existing conforming or legally nonconforming structures.
(2)	Structure that received a shoreline variance or administrative approval prior to February 26, 2008.
(3)	A structure that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
(4)	“Temporary structures” as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.
(5)	A structure that consists of maintenance, repair, reconstruction, and minor additions or alterations that results in no interference with natural beach processes and is ancillary or associated with one of the following sites: (A) A Hawaiian fish pond; (B) A publicly owned and legal boating, maritime, or water sports recreational facility.
(6)	Repairs to a lawfully existing structure, including nonconforming structures, provided that: (A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes; (B) The repairs do not constitute a substantial improvement of the structure; (C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law; and (D) The Planning Director determines that the proposal complies with the definition of “repair” under Sec.8-1.5, Kaua‘i County Code 1987, as amended.
(7)	Beach nourishment or dune restoration projects approved by all applicable governmental agencies.
(8)	A structure approved by the Director as a minor structure.
(9)	Qualified demolition of existing structures.
(10)	Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.
(11)	Scientific studies and surveys, including archaeological surveys.
(12)	Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawai‘i, the Mayor of the County of Kaua‘i or any other public official authorized by the law to declare an emergency.
(13)	Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within thirty (30) days following the completion of the film production.
(14)	Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawai‘i Revised Statutes.



## PLANNING DEPARTMENT SHORELINE SETBACK INFORMATION

(15)	Repair and/or rebuilding of existing public park facilities, excluding shoreline armoring structures or improvements.
(b)	The following conditions shall apply to any new structure or any substantial improvement permitted in the shoreline setback area:
(1)	All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.
(2)	The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.
(3)	The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than forty feet (40') from the shoreline.
(4)	Unless otherwise provided, all new structures and/or landscaping shall not: <ul style="list-style-type: none"> <li>(i) adversely affect beach processes,</li> <li>(ii) artificially fix the shoreline,</li> <li>(iii) interfere with public access or public views to and along the shoreline,</li> <li>(iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, or</li> <li>(v) alter the grade of the shoreline setback area.</li> </ul>
(5)	All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along to the shoreline.
(6)	The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit. (Ord. No. 979, December 5, 2014; Ord. No. 1088, February 4, 2021)



## PLANNING DEPARTMENT SHORELINE SETBACK INFORMATION

### COASTAL HAZARD DISCLOSURE STATEMENT FORM

Ahukini Rd. to Ninini Point St., Lihue, Hawaii, 96766, TMK:(4) 3-5-001: 5, 8, 9, 92, 102, 109, 128, 158, 160 and 3-7-002: 999

Project Address and TMK Number (the "Property"), and Shoreline Setback Permit Number

Construction of a public shared-use path and shared-used road to connect Ahukini Pt., Ninini Pt. and Lihue Airport.

Scope of Construction for the Project or Description of Work

**Disclosure:** THE PROPERTY OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE PROPERTY MAY BE SUBJECT TO COASTAL HAZARDS AS DEFINED UNDER KAUAI COUNTY CODE (KCC) SECTION 8-27.1. THESE COASTAL HAZARDS MAY LIMIT THE ABILITY TO DEVELOP THE PROPERTY AND FUTURE DEVELOPMENT MAY BE SUBJECT TO FURTHER RESTRICTIONS AND LIMITATIONS PURSUANT TO KCC CHAPTER 8, ARTICLE 27, AS AMENDED, AS WELL AS FEDERAL, STATE, AND COUNTY LAWS AND REGULATIONS THAT GOVERN COASTAL PROPERTIES. Additional information can be obtained from the County of Kauai Planning Department (<https://www.kauai.gov/Government/Departments-Agencies/Planning-Department/Shoreline-Setback>) including but not limited to links to the State of Hawaii, Department of Land and Natural Resources, Flood Hazard Assessment Tool and the State of Hawai'i Sea Level Rise Viewer.

**Declaration:** I declare under penalty of perjury and under the laws of the State of Hawai'i (Unsworn Falsification HRS §710-1063) that I am the property owner for the address listed above, I personally filled out the above information, that the foregoing is true and correct, and I certify its accuracy.

*\*\*The property owner signature is required to be notarized when property owner is not present at time of submitting the permit application. In lieu of notarization, the Planning Department will accept forms that are electronically signed using secure software that verifies the identity of the user (e.g., DocuSign or Adobe Sign).*

Wade Lord

Property Owner Name (print)

*Wade Lord*

Property Owner Signature

Digitally signed by Wade L Lord  
Date: 2023.01.17 15:11:36  
-10'00"

January 17, 2023

Date

Property Owner Name (print)

Property Owner Signature

Date

Property Owner Name (print)

Property Owner Signature

Date

Property Owner Name (print)

Property Owner Signature

Date

**\*\* Attach Notary Jurat \*\***





## PLANNING DEPARTMENT SHORELINE SETBACK INFORMATION

### COASTAL HAZARD DISCLOSURE STATEMENT FORM

Ahukini Rd. to Ninini Point St., Lihue, Hawaii, 96766, TMK:(4) 3-5-001: 5, 8, 9, 92, 109, 128, 158, 160 and 3-7-002: 999

Project Address and TMK Number (the "Property"), and Shoreline Setback Permit Number

Construction of a public shared-use path and shared-used road to connect Ahukini Pt., Ninini Pt. and Lihue Airport.

Scope of Construction for the Project or Description of Work

**Disclosure:** THE PROPERTY OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE PROPERTY MAY BE SUBJECT TO COASTAL HAZARDS AS DEFINED UNDER KAUAI COUNTY CODE (KCC) SECTION 8-27.1. THESE COASTAL HAZARDS MAY LIMIT THE ABILITY TO DEVELOP THE PROPERTY AND FUTURE DEVELOPMENT MAY BE SUBJECT TO FURTHER RESTRICTIONS AND LIMITATIONS PURSUANT TO KCC CHAPTER 8, ARTICLE 27, AS AMENDED, AS WELL AS FEDERAL, STATE, AND COUNTY LAWS AND REGULATIONS THAT GOVERN COASTAL PROPERTIES. Additional information can be obtained from the County of Kauai Planning Department (<https://www.kauai.gov/Government/Departments-Agencies/Planning-Department/Shoreline-Setback>) including but not limited to links to the State of Hawaii, Department of Land and Natural Resources, Flood Hazard Assessment Tool and the State of Hawai'i Sea Level Rise Viewer.

**Declaration:** I declare under penalty of perjury and under the laws of the State of Hawai'i (Unsworn Falsification HRS §710-1063) that I am the property owner for the address listed above, I personally filled out the above information, that the foregoing is true and correct, and I certify its accuracy.

*\*\*The property owner signature is required to be notarized when property owner is not present at time of submitting the permit application. In lieu of notarization, the Planning Department will accept forms that are electronically signed using secure software that verifies the identity of the user (e.g., DocuSign or Adobe Sign).*

Kauai District Airports Manager, Craig Davis

Craig H. Davis

Digitally signed by Craig H. Davis  
Date: 2023.01.31 13:18:20 -10'00'

1/31/2023

Property Owner Name (print)

Property Owner Signature

Date

Property Owner Name (print)

Property Owner Signature

Date

Property Owner Name (print)

Property Owner Signature

Date

Property Owner Name (print)

Property Owner Signature

Date

**\*\* Attach Notary Jurat \*\***



---

## **Section V**

# **Supplemental Information**



## **SUPPLEMENTAL INFORMATION**

**Applications for:  
Special Management Area (SMA) Permit Assessment  
Shoreline Setback Variance Determination  
Zoning Use Permit – Class 4**

**County of Kauai  
Department of Planning**

**Nāwiliwili-Ahukini Shared-Use Path Project  
Līhu'e, Kaua'i, Hawai'i  
TMK: (4) 3-5-001: 005, 008, 102, 159, 160 & (4) 3-7-002: 999**

**September 2022**

### **PART A.**

---

**Applicant:**

Applicant / Owner

County of Kaua'i (COK)  
Department of Public Works (DPW)  
Division of Roads Maintenance and  
Construction  
4444 Rice Street, Suite 275  
Līhu'e, Hawai'i 96766

Agent

R. M. Towill Corporation  
2024 North King Street, 200  
Honolulu, HI  
96819

**Contact Person:**

Applicant / Owner

Wade Lord,  
Program Manager  
808-241-4906  
wlord@kauai.gov

Agent

Jim Niermann, AICP  
Planning Project Coordinator  
808-842-1133  
jimn@rmtowill.com

**Project Information:**

**Site Address:**

Within the SMA, the project site consists of the following:

- a continuous 8- to 12-foot wide shared-use path within a 22-foot-wide public access right-of-way alignment along an approximately 17,000-linear foot (lf) segment of the shoreline between Ahukini Point and Ninini Point; and,
- an approximately 1,200-lf segment of Ahukini Road within the SMA incorporated into the path system as a shared-use route.

Additional path segments are located outside of the SMA that connect Ahukini Point to Līhu'e International Airport, connect Ninini Point to Kūhiō Highway and provide public access through the Timbers Kaua'i Resort and Marriott Kaua'i Beach Resort properties.

See **Section VII, Exhibit 1 – Project Location Map.**

**TMKs:**

Segment A: (4) 3-5-001: 004, 005\*, 008\*, 009, 085, 092, 102\*, 128, 158 & 160\*

Segment G: (4) 3-5-001: 008\*, 085, 092, 158, & 160\*; and (4) 3-7-002: 001, & 999\*

(\* in SMA)

**Lot Area:**

Total area of the proposed path alignment within the SMA is approximately 400,400 sf or 9.2 acres:

- Segment A: approximately 374,000 sf or 8.6 acres (17,000 lf x 22-ft right-of-way width). Path segment A requires construction of a new concrete path with drainage crossings.
- Segment G: approximately 26,400 sf or 0.6 acres (1,200 lf x 22-ft right-of-way width). Path Segment G will use the existing, paved Ahukini Road as a signed and striped shared-use route.

Of the total project area within the SMA, an approximately 8,080-lf segment of the path, totaling 177,760 sf or 4.1 acres, is located within the State Land Use (SLU) Conservation District and thus outside of the COK's authority related to shoreline setback requirements <sup>1</sup>.

In addition, the following path segments that are part of the project are located outside of the SMA:

- an approximately 350-lf segment to provide access to a future comfort station at Ninini Point, also within the SLU Conservation District and outside of the SMA;
- an approximately 2,000-lf segment that completes the path connection from Ninini Point to Ninini Point Street; and,
- shared-use road segments on:
  - Ahukini Road to Līhu'e International Airport;

---

<sup>1</sup> The COK has regulatory authority over all areas within the SMA, in accordance with HRS Chapter 205A. SMA areas overlaid by the State Land Use (SLU) Conservation District are also under the authority of the State of Hawai'i, Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Land (OCCL). Within the SLU Conservation District, shoreline setback requirements are established and enforced by the OCCL, not by COK. In addition, a Conservation District Use Permit (CDUP) approved by DLNR is required for planned improvements within the SLU Conservation District areas.

- Kāʻana Street from Kāpule Highway to Līhuʻe International Airport; and
- Ninini Point Street to Kāpule Highway.

**State Land Use Districts:**

Conservation, Urban, Agricultural (See **Section VII, Exhibit 2 – State Land Use Districts**)

**Kauaʻi General Plan Land Use Designation:**

Path segments within the SMA are within the following land use designations:

- Transportation
- Parks and Recreation
- Agriculture

Path segments outside the SMA are within the following land use designations:

- Transportation
- Urban Center
- Golf Course
- Agriculture

**County Zoning Districts:**

Path segments within the SMA are within the following zoning districts:

- Agriculture (AG)
- Conservation I
- Industrial-General/ Special Treatment District (I-G/ST-P)

Path segments outside of the SMA are within the following zoning districts:

- Agriculture (AG)
- Conservation I
- Industrial-General (I-G)
- Industrial-General/ Special Treatment District (I-G/ST-P)
- Open (O)
- Residential – 2 dwellings per acre (R2)

See **Section VII, Exhibit 3 – County of Kauaʻi Zoning**.

**Nature of Development:**

The project involves the construction of a public, shared-use path and shared-used road system for bicycles and pedestrians to connect Ahukini Landing, Ninini Point, Līhuʻe International Airport, Timbers Kauaʻi Resort and Līhuʻe Town to the Ka Ala Hele Makālae Coastal Path System.

All of the proposed improvements will be undertaken outside of the 60-foot shoreline setback.

**Valuation of Development:**

Valuation of development is in 2022 dollars. See **Section VII, Exhibit 4 – Preferred Alignments Cost Estimate.**

<b>Nāwiliwili-Ahukini Shared-Use Path – Phase A Segments</b>	<b>In SMA</b>	<b>Outside SMA</b>	<b>Total</b>
A – Coastal Path – Ahukini Landing to Ninini Point to Ninini Point Street	\$12,622,922	\$1,954,811	\$14,577,734
A1 – Ninini Point Path and Comfort Station	\$0	\$1,908,506	\$1,908,506
B - Coastal Path - Ninini Point to Kalapakī Beach	By Others		\$0
C - Shared-Use Road – Ninini Point Street - Ninini Point to Kāpule Highway	\$0	\$433,136	\$433,136
D – Shared-Use Path - Kāpule Highway to Ho'olaule'a Way (Limo Road)	By Others		\$0
G - Shared-Use Road - Ahukini Landing to Līhu'e Airport	\$83,602	\$390,141	\$473,743
H - Shared-Use Path Bike Depot - Līhu'e Airport to Kāpule Highway	\$0	\$1,441,531	\$1,441,531
	\$12,706,524	\$6,128,124	\$18,834,648

## PART B.

### 1. Project Description, Location, and Justification

The County of Kaua'i (COK), Department of Public Works (DPW) plans to develop a coastal, shared-use path between Nāwiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nāwiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke Ala Hele Makālae*, the 16-mile Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 State of Hawaii Master Plan – Bike Plan Hawaii, and in the 2003 Bike Plan Hawaii update. The project is being undertaken in phases: A, B1, B2, B3 and B4.

The proposed action that is the subject of this application is Phase A of the Nāwiliwili-Ahukini Shared-Use Path Project and consists of the following path segments:

#### Preliminary Coastal Path Alignment

**Segment A** – Ahukini Landing to Ninini Point Lighthouse to Ninini Point Street. The total length of this segment is approximately 19,350 lf, of which approximately 17,000 lf is located within the SMA. This segment will be constructed as a 10- to 12-foot-wide concrete path. **Segment A** details include:

- i. All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kaua'i requirements.
- ii. The concrete path will be pigmented to match the color of the native soil and be compatible with the appearance of the natural setting.
- iii. A 3-foot-wide vegetated shoulder will be created on each side of the path. Use drought tolerant native or indigenous plant species that are common to the local area. If site conditions do not support the establishment and growth of native or indigenous plant species, other non-invasive species may be substituted to ensure soil stability and erosion protection.
- iv. Grading and excavation required for construction of the path and related amenities will be designed to minimize the amount of cut and fill required. The path alignment was selected to take advantage of natural grades to meet ADA accessibility standards for slopes with a minimal amount of ground disturbance and related costs.
- v. Separation between the path and road will be provided as necessary by means of bollards constructed of boulders, timber, or concrete, or other physical barrier to prevent motor vehicle access on the concrete path. Bollards and/or barriers will be designed and installed to be secure against dislodging by vehicle winch and to have minimal visual impact in the landscape. Public motor vehicle access on the existing dirt road will remain as a permitted use. See **Figure 1 – Path Cross Section**.

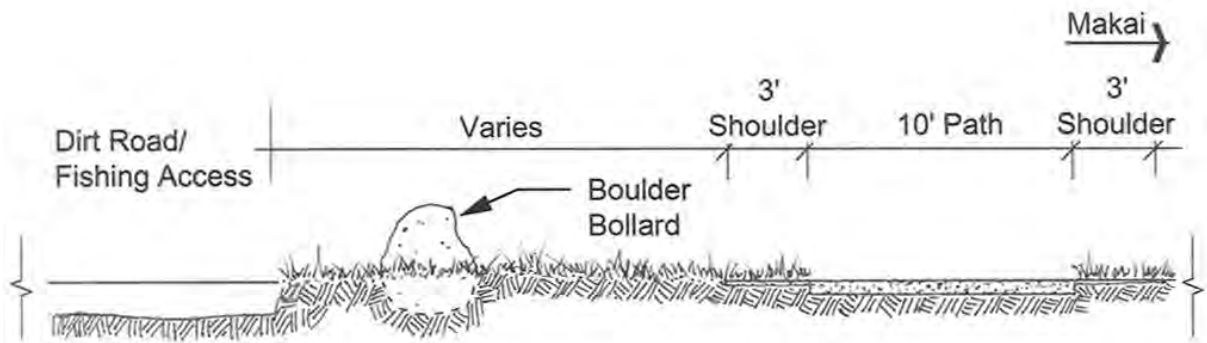


Figure 1 – Path Cross Section

- vi. Access across the concrete path will be provided at select locations to allow motor vehicle access to fishing spots on the shoreline. Bollards will be installed at crossings to prevent motor vehicle access onto the concrete path. Fishing sites that will be accessible to motor vehicles are identified in **Section VII, Exhibit 5 – Site Photos**. All other fishing sites along the coast will remain accessible by foot.
- vii. The path will cross four drainageways, two within the SMA and two outside of the SMA. The drainageways are identified from north to south as Drainageways #1 through #4:
  - a. Drainageway crossings #1 and #2 are located outside of the SMA and make use of the existing graded dirt access road and culverts. At these locations, the existing drainage culverts may be retained as-is or modified and/or widened as necessary to accommodate the path and/or joint use of the existing crossing with the existing dirt road, to be determined during design.
  - b. Drainageway crossing #3 is located within the SMA and more than 120 feet from the shoreline. At this location, a pre-fabricated bridge span, approximately 140 feet in length, will be installed across the unimproved drainage way. The pre-fabricated bridge will require excavation and the construction of concrete abutments to support the placement of the pre-fabricated bridge span. The bridge will provide 8 to 12 feet of clear travel width. Safety railings shall be a minimum of 42 inches in height with vertical rail component spacings a maximum of 6 inches in width. The aesthetic appearance of the bridge will be determined during the design phase and will be similar in appearance to other pre-fabricated bridges used elsewhere by the COK. Excavated and disturbed areas will be stabilized with vegetative ground cover.
  - c. Drainage crossing #4 is located within the SMA and within the SLU Conservation District. At this location, the existing drainage culvert will be widened on the mauka side to accommodate shifting the existing dirt road mauka and constructing an 8- to 12-foot-wide path segment along the makai side of the existing dirt road corridor outside of the 60-foot shoreline setback line. The widening will require grading, fill and construction of either (i) a sloped embankment or (ii) a new retaining wall approximately 100 feet in length and 5 to 8 feet in height along the mauka side of the existing road to widen support the path



- and road corridor widening. In addition, improvements will include installation of a minimum 42-inch-high safety railing, and extension of the existing box culvert inlet to the face of the new embankment or retaining wall. Fill material will be placed to create the embankment or will be placed behind the new retaining wall to create a widened surface to support realignment of the existing dirt road and construction of the proposed shared-use path. Excavated and disturbed areas will be stabilized with ground cover vegetation.
- viii. Protective fencing will be installed along the path segment between Ninini Point and Timbers Resorts Hōkūala Golf Course Hole 13 and/or around Wedge-tail Shearwater nesting areas. Fencing will be designed to prevent dogs from entering protected areas. Fence materials and construction will be selected for durability in the harsh coastal environment. An inspection / maintenance program will be prepared by the COK to ensure that the fence remains intact and in good condition and that necessary repairs are made in a timely fashion. Approximately 1,000 lf of the fence will be within the SMA and an additional 2,000 lf will be outside of the SMA.
  - ix. A comfort station will be constructed at Ninini Point Lighthouse with men's and women's lavatories, drinking fountain, and lighting. The proposed comfort station is located outside of the SMA, however power and water utilities that serve the comfort station will cross through the SMA within the existing airport perimeter road corridor. Comfort station program details include:
    - d. Locate the comfort station at the site of the former lighthouse caretaker's residence to take advantage of a previously disturbed building site.
    - e. Base the building design on native architectural forms or natural land forms.
    - f. Use natural materials and colors for exterior surfaces to minimize visual impacts. Avoid use of bright or reflective colors.
    - g. Keep exterior lighting to a minimum required for safety and security. Lighting will use low-intensity sources that emit long wavelength light (e.g. yellow or amber globes). Light sources will be shielded or angled downward to eliminate glare that would disturb or disorient animals.
    - h. Use an individual wastewater system or composting toilet for wastewater disposal. Electrical power will be supplied by existing overhead utility lines or photovoltaic cells. A water line will be installed with connection to a water service main on Ninini Point Street.
  - x. A paved parking area will be developed at the Ninini Point Lighthouse with space for 10 automobiles. The parking lot will be located outside of the SMA.
  - xi. Interpretive signage will be installed at Ninini Point, outside of the SMA, describing:
    - a. The history of Nāwiliwili Harbor and historic and cultural resources in the vicinity: Hawaiian settlement patterns, Ninini Heiau and Kuhiau Heiau, and development of Līhu'e Airport.
    - b. The natural history of the area, including surrounding landmarks and natural features (e.g. Ha'upu, Nāwiliwili, and Kalapakī), unique flora and fauna and marine animals, and protected bird species known from the area, (e.g. nesting colonies of Wedge-tail Shearwater and Nēnē).
    - c. Identify views and points of interest.

- xii. Within the SMA, signage will be provided as necessary to inform path users about safety, orientation, conservation efforts, user's responsibilities, regulatory restrictions and other relevant information.
- xiii. Gates will be installed at the path entrance at Ahukini Landing and on the airport perimeter road (Ninini Point Street) to facilitate closure of the coastal area in the event of an airport incident or security operation. Signs at the gate will inform the public of access restrictions related to airport operations and security
- xiv. Utility pull-boxes that serve airport facilities and that are located near the shared-use path will be modified so that they can be locked against vandalism and theft.
- xv. No picnic pavilions, picnic tables, or bike racks will be installed along the path corridor between Ahukini Landing and Ninini Point, except for proposed improvements at Ninini Point.

Shared-use Road Segments:

- Segment C – Ninini Point Street from the Segment A Connection to Kāpule Highway. This segment is located outside of the SMA.
- Segment D – Kāpule Highway / Ninini Point Street Intersection to Ho'olaule'a Way. This segment is located partially within the SMA and will be constructed by the landowner as a condition of a separate SMA Permit. <sup>2</sup>
- Segment G – Ahukini Point to Lihue Airport. An approximately 1,200 lf portion of this segment is within the SMA.
- Segment H – Lihue Airport to Kāpule Highway. This segment is located outside of the SMA. Improvements include striping, stenciling, signage and installation of bike storage lockers.

For the shared-use road segments, improvements will consist of striping and/or stenciling the existing paved roadways and the installation of "shared-use" road signage.

Summary of Phase A path segments in the SMA

Phase A segments located within the SMA and included in this permit include:

- Segment A – approximately 17,000-lf portion along the shoreline, including 8,080 lf located within and 8,920 lf located outside of the SLU Conservation District.
- Segment G – approximately 1,200-lf portion on Ahukini Road

Summary of Phase A path segments outside of the SMA

- Segment A – approximately 2,000-lf portion connecting to Ninini Point Road and an additional 350-lf path segment that connects the path to the proposed comfort station near the Ninini Point Lighthouse.
- Segment C – approximately 10,200-lf portion of Ninini Point Road between Kāpule Highway and Segment A
- Segment G – approximately 5,000-lf portion on Ahukini Road to the airport

---

<sup>2</sup> COK Bill 2831 (2021) approved amendments to zoning conditions in COK Ordinance No. PM-2006-383, as amended by Ordinance No. PM-2009-394 for Tower Kaua'i Lagoons Sub 1, LLC, 2014 Kaua'i Lagoons Golf, LLC, Tower Kaua'i Lagoons Land, LLC, and Tower Kaua'i Lagoons Sub 7, LLC (Applicant). Bill 2831 Condition 21 requires the Applicant to report on conditions of approval under Special Management Area Use Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 for the development of public access improvements, including public beach access, for pedestrian and non-motorized traffic.

- Segment H – approximately 2,000-lf of combined segments at the airport

Phase A segments located within the SMA that are not included in this permit include:

- Segment B – An approximately 5,600-lf segment that is being constructed entirely by Timbers Resort in accordance with Condition No. 9 of Amendment to Special Management Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning permit Z-IV-2005-30 and Special Permit SP-2008-4; and Condition No. 7 of Zoning Ordinance No. PM-2006-383.
- Segment D – An approximately 2,000-lf portion is within the SMA. The entire segment will be constructed by Timbers Resort under a separate SMA permit.

See **Section VII, Exhibit 6 – Special Management Area Map**

Future project phases not included in this application

The DPW plans to undertake additional phases of the Nāwiliwili-Ahukini Shared-Use Path system in the future as circumstances allow. The future phases include the following:

Phase B1 – Ninini Point Road / Kāpule Highway Intersection to Nāwiliwili Railroad Bridge, consisting of the following path segments:

- Segment E – Kaua'i Marriott to Nāwiliwili Railroad Bridge and Beach Park.

Phase B2 – Nāwiliwili Railroad Bridge and Nāwiliwili Beach Park Improvements;

- Segment F – Nāwiliwili Beach Park Improvements

Phase B3 – Nāwiliwili Beach Park to Nāwiliwili Small Boat Harbor and Niumalu Park;

- Segment O – Nāwiliwili Beach Park to Niumalu Beach Park (Rice Street to Wilcox Road / Kānoa Street / Wa'apā Road / Niumalu Road)
- Segment P – Niumalu Road to Nāwiliwili Small Boat Harbor

Phase B4 – Secondary Segments through Lihue Town.

- Segment I – Ahukini Road – Kāpule Highway to 'Umi Street
- Segment J – Kāpule Highway – Ahukini Road to Rice Street
- Segment K – Molokoa Public Facility Center and Vidinha Stadium Complex
- Segment L – Līhu'e Civic Center Connections
- Segment M – Rice Street

Project Rationale

The project will benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport.

The existing road system that connects Nāwiliwili Bay, Līhu'e, and the towns along the windward coast of Kaua'i provides scant accommodation for non-motorized modes of transportation. Until the development of *Ke Ala Hele Makālae* was initiated, there had been no dedicated system of paths or lanes for pedestrians and bicyclists to travel between employment centers, parks, and the towns and major civic facilities in the region. Within the subject project corridor, existing pedestrian sidewalks, bike lanes, and paths remain disconnected and ancillary to the motorized vehicle roadways. As a result,

there is little to encourage residents and visitors to use non-motorized vehicles as a viable means of transportation. Only the most intrepid bicyclists travel the narrow shoulders along Kāpule and Kūhiō Highway. The project corridor along the coast is currently open for enjoyment by the public. The segment between Ahukini Landing and Ninini Point in particular provides a wild, open-space coastal experience, relatively untouched by development, located minutes from downtown Līhu'e. However, the existing dirt access road and informal trails to the shoreline are unimproved and difficult to navigate without an off-road vehicle. Access to this resource is prohibitively difficult to many members of the public.

The purpose of the project is to support transportation alternatives to the automobile, to provide non-motorized path facilities for pedestrians and cyclists for recreation and fitness, and to preserve coastal areas and access. In addition, the project is being developed to enhance the quality of life for Kaua'i's residents by providing a safe and enjoyable place for families, friends, and individuals to play, socialize, and experience the beauty of the coastal open spaces. The project seeks to address access availability to a variety of users of different ages, physical condition, and age levels. Finally, implementation of the Nāwiliwili – Ahukini Shared-Use Path Project will help fulfill the State Department of Transportations' Bike Plan Hawai'i, which identifies the need for transportation improvements that support non-motorized modes of travel.

## **2. Shoreline Certification**

A shoreline survey was certified by the Department of Land and Natural Resources on September 9, 2022. Copies of the certified shoreline survey map and photographs are attached in **Section VII**, as **Exhibit 7 – Shoreline Survey**.

## **3. Plot Plan and Building Plans**

The proposed Segment A shoreline path alignment is shown in **Section VII, Exhibit 8 – General Site Plan**.

Plot plans and building plans have not been prepared for this project: No buildings are proposed within the SMA.

Preliminary schematic plan and elevation drawings for the proposed pre-fabricated bridge at drainage crossing #3 are provided in **Exhibit 9**. Details of the proposed pre-fabricated bridge will be determined during design.

The proposed comfort station at Ninini Point is located outside of the SMA. The comfort station will be designed in conformance with the design recommendations in the Final Environmental Assessment:

1. Locate the comfort station at the site of the former lighthouse caretaker's residence to take advantage of a previously disturbed building site.
2. Base the building design on native architectural forms or natural land forms.
3. Use natural materials and colors for exterior surfaces to minimize visual impacts. Avoid use of bright or reflective colors.
4. Keep exterior lighting to a minimum required for safety and security. Lighting will use low-intensity sources that emit long wavelength light (e.g. yellow or amber globes).

Light sources will be shielded or angled downward to eliminate glare that would disturb or disorient animals.

5. Use an individual wastewater system for wastewater disposal. Electrical power will be supplied by existing overhead utility lines or photovoltaic cells. A water line will be installed with connection to a water service main on Ninini Point Street.
6. Develop a paved parking area at the Ninini Point Lighthouse with space for 10 automobiles.
7. Provide interpretive signage at Ninini Point describing:
  - The history of Nāwiliwili Harbor and historic and cultural resources in the vicinity: Hawaiian settlement patterns, Ninini Heiau and Kuhiau Heiau, and development of Līhu'e Airport.
  - The natural history of the area, including surrounding landmarks and natural features (e.g. Ha'upu, Nāwiliwili, and Kalapakī), unique flora and fauna and marine animals, and protected bird species known from the area, (e.g. nesting colonies of Wedge-tail Shearwater and Nēnē).
  - Identify views and points of interest.

Design of the comfort station will also be subject to design review in accordance with the National Historic Preservation Act, Section 106 mitigation commitments:

1. The COK DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house (SIHP Site 50-30-11-208) to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The COK DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan prepared for the project as part of the National Historic Preservation Act (NHPA) Section 106 mitigation commitments.

#### **4. Other Information required by the Director**

##### **HRS 343**

In compliance with HRS, Chapter 343, COK prepared an Environmental Assessment for the project and issued a Finding of No Significant Impact (FONSI) dated January 12, 2018.  
**Section VII, Exhibit 13 – Finding of No Significant Impact.**

##### **County Zoning**

The pathway alignment will pass through the following most COK land use zoning districts.  
**See Section VII, Exhibit 3 – County of Kaua'i Zoning Districts.**

Agriculture (AG)  
Conservation (C)  
Industrial-General (I-G)  
Industrial-General/ Special Treatment District (I-G/ST-P)  
Open (O)  
Residential – 2 dwellings per acre (R2)

The bike path acts as both a public transportation facility and an open space recreational resource. In one capacity or the other, the proposed pathway is a permitted use in all COK land use zones :

#### Special Treatment District- Public

The Līhu'e Airport parcel is zoned Industrial General with a Special Treatment District-Public overlay (IG/ST-P). A Zoning Use Permit – Class 4 is required where the path falls within this district.

The project is consistent with the ST-P zoning as it is a pathway network that will provide multimodal transportation for public use and preserve public access to coastal areas. Where the path falls within ST-P district, the path alignment will primarily follow existing roadways, with the exception of portions of Segment A located along the coastline. Improvements in the ST-P will not substantially change the form or appearance of structures or land.

Path segments within the Līhu'e Airport IG/ST-P area will be subjected to additional conditions to protect people and property. The COK consulted with the DOT-A, Federal Aviation Administration (FAA), Transportation Security Administration (TSA), and Air Traffic Control regarding the planned project improvements. A list of recommendations and mitigation measures developed through consultation are incorporated into the shared-use path plan. See **Item 5.C.10** below for a description of proposed mitigation measures related to airport operations.

#### Tsunami District

Recreational facilities are a permitted use within the tsunami district. All structures and developments will be subject to additional construction and development standards, if required, as provided in Section 15-1, Flood Plain Management, Kaua'i County Code.

#### Shore District

#### Shore District

Recreational facilities are a permitted use within the shore district. All proposed development will be subject to development standards and permitting requirements as provided in Section 8-13 of the Kaua'i County Code, and Chapter 205 Hawai'i Revised Statutes.

#### **Shoreline Setback Variance Determination**

Proposed project improvements are subject to review pursuant to KCC Section 8-27 (Ordinance 1088), Shoreline Setbacks and Coastal Protection. All permanent path structures and features will be located mauka of the 60-foot shoreline setback line, but the majority of the improvements will be located within the 100-foot shoreline setback. Project development might require limited work activities within the shoreline setback, including access by construction personnel and equipment, temporary placement of construction stormwater controls (best management practices), grading to accommodate the path alignment, and permanent vegetative ground cover to stabilize soils along the path. These activities within the shoreline setback will be determined during the design phase and are expected to be minimal in scope. Project activities and ground stabilization improvements located within the shoreline setback will be designed to meet criteria for temporary and minor improvements permitted within the shoreline setback, pursuant to KCC Section 8-27.7 (a)(4) and (8).

## 5. Project Assessment

### a. Description of the area and environment involved including flora and fauna and other features;

#### Fauna

##### Birds

Field surveys have identified four listed species of endangered or protected birds in the project area. The four listed species were the Hawaiian Goose, or Nēnē (*Branta sandvicensis*), Hawaiian Duck, or Koloa (*Anas wyvilliana*), the Hawaiian endemic sub-species of the Common Moorhen, or 'Alae 'ula (*Gallinula chloropus sandvicensis*), and the Hawaiian Coot, or 'Alae ke'oke'o (*Fulica alai*). All four species were seen in and around the Timbers Resorts (formerly Kaua'i Resorts) property, located immediately to the west of the Līhu'e Airport main runway.

A population of Nēnē (*Branta sandvicensis*) geese has been identified to the west of Līhu'e Airport, on property belonging to the Department of Transportation. Nēnē are known to inhabit scrubland, grassland, golf courses, and open lowland country. Their breeding season is from November to April. Nēnē conceal their nests under bushes and prefer to nest in the same area. Nēnē goslings are flightless for about 11 to 14 weeks after hatching. These characteristics render them vulnerable to dogs and feral cats. Family groups remain in the breeding ground about a month after goslings can fly, at which time they roam surrounding areas searching for food. The U.S. Fish & Wildlife Service (USFWS) and the State of Hawaii Department of Land and Natural Resource (DLNR), Division of Forestry and Wildlife (DOFAW) monitor, and when necessary, translocate portions of this Nēnē flock due to concerns over the potential Bird Air Strike Hazards posed by the geese to aircraft using the Līhu'e Airport.

A number of other resident native avian species including both resident and migratory species were recorded. These native and indigenous species include the Hawaiian endemic sub-species of the Short-eared Owl, or Pueo (*Asio flammeus sandwichensis*), and the resident, Black-crowned Night-Heron, 'Auku'u (*Nycticorax hoactli*), as well as the migratory Pacific Golden-Plover, or Kōlea (*Pluvialis fulva*), and Ruddy Turnstone, or 'Akekeke (*Arenaria interpres*).

A significant nesting colony of Wedge-tailed Shearwater, or 'Ua'u kani, (*Puffinus pacificus*) is present adjacent to a portion of the path, between Ninini Point Lighthouse, and Ninini Beach. The colony extends from just above the high-water mark, inland, onto the flats above the cliff face. Wedge tailed Shearwaters are not protected under either federal or State of Hawai'i endangered species statutes, they are protected under the federal Migratory Bird Treaty Act. Additionally, both the endangered Hawaiian Petrel, or 'Ua'u (*Pterodroma sandwichensis*), and the threatened Newell's Shearwater, or 'A'o (*Puffinus auricularis newelli*) overfly the project area on an annual basis on their way back and forth to their colonies located inland.

##### Mammals

An endangered Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) was found foraging in the project area near the Timbers Resorts Ocean Course golf course. This species though endangered is generally considered to be fairly common on Kaua'i. It occupies a variety of habitats, including native forest, agricultural lands, residential and lowland areas, so its occurrence in the project area is not unexpected.

The USFWS and National Marine Fisheries Service (NMFS) note that the federally protected Hawaiian Monk Seal (*Monachus schauinisi*) has used the coastal regions of the project as a birthing and pup-rearing site. In addition, near shore waters are frequented by various dolphin and whale species.

Other mammals recorded in the project area include non-native species of cats, dogs, pig, European house mice and at least one species of rat.

#### Reptiles

Green sea turtles (*Chelonia mydas*) and hawksbill turtles (*Eretmochelys imbricata*) frequent the near-shore waters along the project corridor to forage, and are known to haul-out at the sandy beaches along the coastline.

#### Critical Habitat

There is no designated critical habitat in the project area.

#### Impacts and Mitigation

Based on consultation with the USFWS, NMFS, DOFAW and Division of Aquatic Resources (DAR), the COK and Federal Highway Administration (FHWA) determined that the project may affect, but is not likely to adversely affect Endangered Species Act (ESA) listed and protected species. Moreover, there is no critical habitat in the project area, and none will be affected by the project.

The proposed project will have mitigations measures which includes:

- Avoiding vegetated areas along coastal bluff and will follow the south segment of the airport perimeter road.
- Installing protective fencing along the path segment between Ninini Point and Timbers Resorts' "Shops at Hōkūala" and/or around Wedge-tail Shearwater nesting areas.
- No lighting will be installed along the pathway between Ahukini Landing and Ninini Point. The proposed comfort station at Ninini Point will include full-cut off nighttime lighting. The COK will provide the USFWS with an opportunity to review the comfort station lighting design prior to final design and construction.
- Installing signs at appropriate intervals and locations along the path.
- Conducting surveys for nesting birds by a qualified biologist during construction.
- Following Best Management Practices (BMPs) for Construction activities to minimize impacts on protected resources.

#### Flora

There is no significant flora in the project area. Vegetation along the proposed bike/pedestrian corridor is dominated by non-native and invasive species.

#### Impacts and Mitigation

Construction of the proposed path is not anticipated to result in adverse impacts to any protected plant species and no negative impact to plant habitats or specific plant communities along the corridor is expected. Landscaping will be implemented along the developed path segments to improve soil retention and promote filtration of any storm water runoff from the path. No irrigation is proposed along the path segment between Ahukini Landing and Ninini Point.



### **Topographic Features**

The majority of the project is located on a plateau area makai of the Līhu'e International Airport within the ahupua'a of Kalapakī and Hanamaulu. The plateau area slopes gently downward west to east towards the ocean at an average 8 percent slope. The coastline from Ahukini to Ninini consists of cliffs that drop 20 to 30 feet to a cobble shoreline in most areas. The proposed path alignment undulates across the sloping plateau.

### **Impacts and Mitigation:**

No significant impacts to soils or topography are expected to result from this project. Grading and excavations required for construction of the path and related amenities will be designed to minimize the amount of cut and fill required. The path alignment was selected to take advantage of natural grades in order to meet ADA accessibility standards for slopes with a minimal amount of ground disturbance and related costs. Erosion control measures will be employed during construction. Following project completion, permanent soil stabilization will be achieved through landscaping with various plant materials and ground covers.

### **Coastal Waters**

The marine waters adjacent to the Ahukini to Nāwiliwili portion of the path are classified as Class A waters by the DOH, HAR, Chapter 54, Water Quality Standards. Class A waters are protected for recreational purposes and aesthetic enjoyment.

### **Impacts and Mitigation:**

No significant impacts to surface waters are expected to result from the project. Construction activities will be conducted in compliance with Hawai'i Administrative Rules (HAR) 11-54 Water Quality Standards; HAR 11-55, Water Pollution Control; COK grading and erosion control standards; and other standards as prescribed by law. A National Pollutant Discharge Elimination Systems (NPDES) permit will be obtained for the project and best management practices (BMPs) will be employed to prevent soil loss and sediment and pollutant discharges from work sites. BMPs will include structural (e.g., silt fences, berms, barriers, filter fabric), vegetative (e.g., grass, mulch, ground cover, soil stabilization), and management measures (e.g., project scheduling and phasing, material storage and equipment maintenance procedures, BMP monitoring), as necessary.

The path project will include drainage control measures to minimize impacts to nearshore waters from runoff discharges. Proposed design features include:

The path will be designed to follow natural contours as much as possible and will not exceed maximum slope standards established by AASHTO for shared-use paths, which allows maximum running slopes of 5%.

Path surfaces will have a cross-slope to encourage sheet-flow of runoff water and prevent concentrating flows down the center. Shoulders adjacent to the path will be vegetated to further slow runoff, capture sediments and promote drainage infiltration.

Drought tolerant native or indigenous plant species that are common to the local area will be specified for landscaping used in erosion control measures. If site conditions do not support the establishment and growth of native or indigenous plant species, other non-invasive species may be substituted to ensure soil stability and erosion protection.

Three existing culverts and one new bridge span will be used to cross the flow lines of four existing drainage ways. Small drain pipes will be installed as needed to convey flows from smaller existing drainage channels across the pathway. There will be no modification to existing drainage patterns.

**b. Description of the existing land uses of the project site and surrounding area.**

The Segment A path corridor goes through undeveloped, former agricultural land located along the coast makai of Līhu'e International Airport and passes through portions of the airport property owned by the State of Hawai'i. Existing land uses along the Segment A path alignment include undeveloped open space, fallow agricultural land, shoreline fishing, and recreational off-road vehicle activity. Portions of the proposed alignment follow an existing dirt road to take advantage of existing drainage culvert crossings at three locations. Near Ninini Point, the proposed path alignment follows a segment of the Līhu'e Airport perimeter security road around the south-west end of Runway 17-35 before connecting with the existing Ninini Point Street.

Several airport navigational aids and related utilities are located outside of the airport perimeter fence near the Segment A corridor. These facilities include an Airport Surveillance Radar (ASR) Site located at the approximate mid-point of Runway 17-35 and setback approximately 400 feet from the shoreline, and the airport Middle Marker (MM) Navigational Aid located at Ninini Point.

Ninini Point was the site of a lighthouse operated by the United States Coast Guard. The lighthouse structure still exists, however other original structures have been removed. The site is accessible from Ninini Point Street.

Segment G follows Ahukini Road from the Ahukini Landing comfort station to Līhu'e Airport. Adjacent land uses include open space, airport operations, helicopter operations, air cargo, vehicle storage, County Refuse Transfer Station, vacant sugar cane fields, former University of Hawai'i tropical fruit disinfection facility, recreational boat landing, and shore fishing. The Ahukini Road corridor transitions from undeveloped agricultural lands to airport industrial development with urban street improvements. Segment G ends at the north end of the airport terminal.

Segment C follows Ninini Point Street between Ninini Point and Kāpule Highway. serves as a perimeter road around the south boundary of Līhu'e Airport, and separates the airport from Timbers Resort property. Land uses adjacent to Segment C include open space, airport operations, general industrial, and resort residential and recreational uses including the resort golf course and horse stables.

Segments B and D will be developed by Timbers Resort under a separate entitlement process. These segments are located within the resort property.

**c. Description of how the proposed project will affect the area involved and surrounding areas. Specifically the assessment should evaluate if the proposal:**

	<b><u>Yes</u></b>	<b><u>No</u></b>
<b>1</b> <i>Involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including, but not limited to historic sites, Special Treatment Districts as established by the County of Kauai Comprehensive Zoning Ordinance, view planes or scenic corridors as outlined in the Development Plans, and recreation areas and resources;</i>		<b>X</b>

Discussion:

The project is not foreseen to cause any loss or destruction of natural or cultural resources. Improvements in the Special Treatment District will not substantially change the form or appearance of structures or land and will not obstruct any view planes or scenic corridors.

The natural and cultural resources along the path corridor have historically been used for subsistence gathering, fishing social gatherings and recreation. In addition, the coastal areas have been used in the past for illegal dumping and other illicit activities that have had an adverse effect on the natural environment. The path improvements will occupy some segments of existing social trails, dirt road and limited vegetated areas along the coastline, but will provide the same access function as those trails and road while making enjoyment of the resources along the shoreline available to a wider range of people, including those with more limited physical abilities, such as the very young and the aged. The path will be aligned to avoid sensitive natural resources, erosion-prone conditions, and historic and cultural features. View corridors toward and from the ocean will not be impacted by construction of the path, which will be installed at grade.

No adverse effects to archaeological or historical sites will result from planned shared-use path improvements. Mitigation measures, including preservation in place, avoidance, data recover, adaptive re-use, and on-site and on-call monitoring are proposed to ensure that identified resources are not adversely affected. Should any archaeologically or historically significant artifacts, or other indicators of previous on-site activity be uncovered during the construction phase, their treatment will be conducted in strict compliance with the requirements of the State DLNR.

<b>2</b> <i>Curtails the range of beneficial uses of the environment</i>	<b>X</b>
--	----------

Discussion:

The proposed shared-use path system will result in irretrievable use of the physical environment occupied by the improvements; however, the use of the path will improve public access along the

shoreline thereby enhancing the range of beneficial uses of the coastal environment. Benefits include preservation of coastal access and open space in perpetuity, preservation of access to fishing sites, provision of a new public resource for recreation, fitness activities, and socializing, and opportunities for public education through exposure to the natural, historic and scenic resources along the path and related interpretive and informational signage. The path and related amenities occupy a very small amount of space within the larger landscape, leaving extensive tracts of coastal land open for open space or other uses.

**3 Conflicts with the County's or the State's long-term environmental policies or goals; X**

Discussion:

There are currently no foreseen conflicts with the COK's or state's long-term environmental policies or goals. The proposed bike-pedestrian shared-use path project is consistent with the Environmental Policies established in Chapter 344, Hawai'i Revised Statutes (HRS).

**4 Substantially affects the economic and social welfare and activities or the community, or State; X**

Discussion:

The proposed project will provide a significant and positive impact on the Kaua'i community in the short term with employment opportunities, and in the long term with enhanced and improved recreational opportunities that promote health and wellness, preservation of public coastal access, and shared-use path infrastructure to support alternatives to motor vehicle transportation.

**5 In itself has no significant adverse effect but cumulatively has considerable effect upon the environment or involves a commitment for larger actions; X**

Discussion:

The project has no considerable effect on the environment, nor does it create/involve a commitment for larger actions. The proposed project is part of a larger vision to build a continuous coastal path for the benefit of the residents and visitors to the island of Kaua'i. The overall plan for the *Ke Ala Hele Makālae* coastal path system between Nāwiliwili and Anahola is being phased. Each phase is studied and evaluated in relation to the whole and as a self-contained project. Implementation of the Nāwiliwili-Ahukini segment of the shared-use path will not commit resources for or compel the construction of any other phase. The proposed shared-use path improvements constructed under this project function as a stand-alone facility to provide logical connectivity and access between Nāwiliwili, Ahukini, the airport, Vidinha Stadium, and

Līhu'e town. Connecting this segment of the path to the larger coastal trail system will have a positive cumulative impact by increasing the range of opportunities for using alternatives to motor vehicle transportation to link additional residential, recreational, transit and employment centers.

- 6      *Substantially affects a rare, threatened or endangered species of animal or plant, or its habitat;*      X**

Discussion:

No endangered plant or animal species will be affected by the project (See also Part B, 5.a. of this application). Mitigation measures developed by specialists in biology, zoology and botany, in consultation with the state federal regulatory authorities will be implemented to prevent adverse impacts to protected birds and mammals known to inhabit the project area.

- 7      *Detrimentially affects air or water quality or ambient noise levels; or*      X**

Discussion:

There are no air quality or noise issues surrounding this project. Mitigation measures will be taken during construction to prevent runoff from entering the ocean or streams. The project path will include drainage control measures to minimize impacts to nearshore waters from runoff discharges. Proposed design features include designing the path to follow natural contours as much as possible, constructing surfaces with a cross-slope to encourage sheet-flow of runoff water and prevent concentrating flows down the center. Shoulders adjacent to the path will be vegetated to further slow runoff, capture sediments and promote drainage infiltration.

- 8      *Affects an environmentally sensitive area, such as a flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;*      X**

Discussion:

The path is not likely to suffer damage by its location within an environmentally sensitive area. No construction will occur within FEMA/FIRM flood zones, with the exception of an approximately 1,000 lf segment of the at-grade path and associated bollards and signage located within the VE zone at Ahukini Point. Design and construction of proposed path improvements will be performed in compliance with Kaua'i County Code, Section 8-12: Flood Districts.

Potential effects related to erosion, including earth-work near the coastline will be mitigated by the implementation of construction BMPs in compliance with the Hawai'i Administrative Rules (HAR) 11-54 Water Quality Standards; HAR 11-55 Water Pollution Control, and COK grading and erosion control standards. Long-

term impacts related to coastal erosion will be mitigated by the path design and drainage features.

- 9      *May have a major effect on the quality of the environment or affect the economic or social welfare of the area; and*      X**

Discussion:

Impacts to air and water quality, noise levels, natural resources, and land use associated with construction will be minimal and short-term. Mitigation measures will be employed as practicable to further minimize potentially detrimental effects to the environment resulting from project activities. The project does not involve substantial degradation of environmental quality. Factors affecting public health, including air quality, water quality, and noise levels, are expected to remain largely as-is following development of the path system; impacts will be limited to the construction period and intermittent and short-term in nature. See also **Item 4** above.

- 10      *Would possibly be contrary to the policies and guidelines of the Rules and Regulations, the County's General Plan, Development Plans, and Zoning and Subdivision Ordinances.*      X**

Discussion:

The proposed action is in conformance with the guidelines of the Rules and Regulations, The County General Plan, Līhu'e Development Plan, and Zoning and Subdivision Ordinances.

According to the County's General Plan's Līhu'e Land Use Map, the project area lies within the Urban Center, Resort, Golf Course Agriculture, and Transportation Districts. The project is consistent with County goals, policies, and standards and permitted uses within each of these Land Use Designations.

The project is aligned with the Kaua'i General Plan Vision and Goals for a *Sustainable Island, a Healthy and Resilient People, a Unique and Beautiful Place, and an Equitable Place with Opportunity for All*. The proposed project supports the following General Plan policies:

- *Policy #4: Design Healthy and Complete Neighborhoods*
- *Policy #5: Make Strategic Infrastructure Investments*
- *Policy #6: Reduce the Cost of Living*
- *Policy #7: Build a Balanced Multimodal Transportation System*
- *Policy #8: Protect Kaua'i's Scenic Beauty*
- *Policy #14: Prepare for Climate Change*
- *Policy #15: Respect Native Hawaiian Rights and Wahi Pana*
- *Policy #16: Protect Access to Kaua'i's Treasured Places*

See Section F.3 below for detailed discussion of the project's consistency with the Kaua'i General Plan and Līhu'e Community Plan.

### Special Treatment Districts

Portions of path segments A, C, G and H are located within the Līhu'e Airport area, in lands zoned Industrial General with a Special Treatment – Public (ST-P) overlay.

The Kaua'i County Code, Section 8-11.1, established the purpose for the Special Treatment Districts as:

*The Special Treatment District specifies the additional performance required when critical or valuable social or aesthetic characteristics of the environment or community exist in the same area as a parcel where particular functions or uses may be developed.*

1. *To designate and guide development of County areas which because of unique or critical cultural, physical or locational characteristics have particular significance or value to the general public.*
2. *To ensure that development within those areas recognize, preserve, maintain and contribute to the enhancement of those characteristics which are of particular significance or value to the general public.*
3. *To ensure that development within those applicable areas is constructed in a manner that safely mitigates impacts from coastal hazards, including but not limited to sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms.*
4. *Any of these districts may overlap any Use Districts, creating accumulated regulations that more nearly relate to the conditions of the specific location where the development or use may occur. (Ord. No. 935, November 14, 2012; Ord. No. 1085, December 3, 2020)*

The ST-P is defined in Kaua'i County Code, Section 8-11.2 as:

*All public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public, or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses.*

The project is consistent with the ST-P zoning as it is a pathway network that will provide multimodal transportation for public use and preserve public access to coastal areas. Path segments will be constructed in a manner that will minimize adverse impacts to the environment and would be designed to follow the American Association of State Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities (2012); 36 Code of Federal Regulations (CFR) Part 1190, Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way, (July 26, 2011), and Shared Use Paths Supplemental Notice, (February 13, 2013), Architectural and Transportation Barriers Compliance Board; 36 CFR Part 1191, Architectural Barriers Act (ABA) Accessibility Guidelines for Outdoor Developed Areas (effective November 25, 2013); and Americans with Disabilities Act Accessibility Guidelines (ADAAG) (2002 as Amended). Where the path falls within ST-P district, the path alignment will primarily follow existing roadways, with the exception of portions of Segment A located along the coastline. Improvements in the ST-P will not substantially change the form or appearance of structures or land.

Path segments along and within the Līhu'e Airport area will be subjected to additional conditions to protect people and property. The COK consulted with the DOT-A, Federal Aviation Administration (FAA), Transportation Security Administration (TSA), and Air Traffic Control regarding the planned project improvements. A list of recommendations and mitigation measures developed through consultation and incorporated into the shared-use path plan. Mitigation measures include:

1. As a matter of airport security, the shared-use path alignment will be aligned as far away from the airport perimeter and as close to the shoreline as possible. Airport authorities note that use of the shared-use path by the public will enhance security by adding eyes and cell phones to what is an otherwise an un-supervised area.
2. In the limited segments where the shared-use path alignment follows existing public access on the airport perimeter road, the path will be constructed as a separated, 10- to 12-foot-wide concrete path on the makai side of the motor-vehicle travel way. An intervening barrier, such as boulder bollards or guardrail, will be installed for safety purposes to prevent motor vehicles from accessing the pathway. Bollards or barriers will be designed to withstand dislodging by vehicle winch.
3. Public access to the shoreline will be subject to closure by County, State or Federal agencies in the event of an airport incident or security concern. Event response protocols will be developed between Airport authorities, the County government, Civil Defense, and other emergency response services.



4. Gates will be located at the path entrance at Ahukini Landing and on Ninini Point Street near the driveway to Timbers Resorts' Shops at Hōkūala to facilitate closure of the coastal area in the event of an airport incident or security operation. Signs at the gate will inform the public of access restrictions related to airport operations and security.
5. The Airport Surveillance Radar (ASR) site is located more than 100 feet mauka of the preferred path alignment and separated by intervening topography and vegetation. Path construction activities are not expected to adversely impact the site. No utility pull-boxes are expected to be affected by the preferred path alignment. Pull-boxes located near the shared-use path will be modified so that they can be locked against vandalism and theft. Use of the path may result in increased awareness of the site, but does not facilitate access to the site that does not already exist via the public access dirt road. Signage positioned at the perimeter of the ASR site will be maintained to alert the public of the penalties of interfering with ASR facilities.
6. The proposed comfort station and shared-use path at Ninini Point will be sited and designed in consultation with the FAA Hawai'i District Office and in compliance with design requirements for the Middle Marker navigational aid. No improvements will be developed that will adversely impact the function of the Middle Marker. Signage positioned at the perimeter of the Middle Marker location will be maintained to alert the public of the penalties of interfering with ASR facilities.
7. Path facilities will be maintained by the COK DPW. Department of Parks and Recreation (DPR) Rangers will be responsible for patrolling the path and enforcing COK ordinances. The COK Police Department will respond to calls for service on the path system from COK Rangers and the public.
8. Ahukini Road (Path Segment G) between Ahukini Landing and the airport terminal is designated as a signed, shared-use bicycle route. No special improvements for this segment are proposed as part of the shared-use path system. Pedestrian and bicycle access will use street improvements (sidewalks, signed bike lanes) as planned and developed by DOT-A, airport tenants, and adjacent landowners.
9. Ahukini Road between the terminal and Kāpule Highway (Path Segment H-2) is designated as a signed, shared-use bicycle route in the preferred alternative.
10. No shared-use path alignments will be routed through the airport terminal or parking area. A path connection will be provided from Kā'ana Street to a "bike depot" located away from the terminal building in the open space area near the U. S. Post Office. From the bike depot, a pedestrian path will connect to the airport terminal building.

11. The airport bike depot design will include a covered pavilion with bicycle racks to provide secure, sheltered space for storing bicycles. Transparent bicycle storage lockers (e.g., plexiglass or wire mesh) will not be included unless reviewed and approved by the DOT-A and TSA. The bike depot will be an airport facility operated and maintained by DOT-A.
12. Continuing consultation with the FAA will include filing an online request for an aeronautical review of planned improvements via the FAA website.

The COK will continue to consult with Airport authorities, including DOT-A, FAA, TSA, and Air Traffic Control during the design stage of the project. Project construction plans affecting airport facilities will be submitted to airport authorities for review and comment. No other mitigation measures are recommended or required.

**d. Evaluation of the proposed development relative to the objectives and policies as contained in Chapter 205-A, HRS, and Section 3.0 of the Special Management Area (SMA) Rules and Regulations:**

**RECREATIONAL RESOURCES**

**Objective:** Provide coastal recreational opportunities accessible to the public.

	<b><u>Yes</u></b>	<b><u>No</u></b>
<b>1 Will the proposed development adversely affect coastal resources uniquely suited for recreational activities that cannot be provided in other areas?</b>		<b>X</b>

**Discussion:**

The proposed project will not adversely affect any coastal resources. The impacts that do occur will be of short duration and limited to the construction phase of the project. Public access to the shoreline is available through multiple separate roads/paths. Upon the project's completion the access to these coastal resources will be greatly improved, and allow the public a wider variety of recreational activities as well as locations. The project will provide new pedestrian and bicycle access to the coastline between Ahukini and Ninini Point. Currently, the Ahukini to Ninini Point coastline is used as a popular fishing area. Public access is provided by an unimproved dirt road that follows an existing twenty-foot-wide easement. Coastal access will be maintained for fishermen and other recreational users via this easement.

Interpretive signage will be placed along the project corridor educating users on the important natural and recreational resources throughout the coastal area and ways to aid in the

- |          |   | <u>Yes</u> | <u>No</u> |
|----------|---|------------|-----------|
|          | conservation and protection of those resources. Water quality will be protected during construction through the application of BMPs in accordance with National Pollutant Discharge Elimination System (NPDES) permit regulations. Proposed improvements will not alter existing drainage patterns.   |            |           |
| <b>2</b> | <b><i>Will the project require replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches and fishing areas when such resources will be unavoidably damaged by the proposed development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable?</i></b> |            | <b>X</b>  |

Discussion:

The project does not require replacement of any coastal resources having significant recreational value. No surfing sites, sandy beaches or fishing areas will be damaged by the development. The project will not create new access paths to existing fishing areas along the shoreline. The proposed action will involve the development of certain recreational resources along the shoreline that will improve lateral public access for health, wellbeing and enjoyment. This will increase the recreational value for areas affected along the project corridor. The project will not require compensation to the State for additional resources.

- |          |  |  |          |
|----------|--|--|----------|
| <b>3</b> | <b><i>Is the project site near a State or County Park?</i></b> |  | <b>X</b> |
|----------|--|--|----------|

Discussion:

The overall shared-use paths are located near Līhu'e County Park, Vidinha Stadium, Nāwiliwili Beach Park, and Niumalu Park. Segment A and G are located near Ahukini Recreational Pier State Park.

There are no anticipated adverse impacts to these recreational resources.

- |          |   |  |          |
|----------|---|--|----------|
| <b>4</b> | <b><i>Will the proposed development affect an existing public access to or along the shoreline?</i></b> |  | <b>X</b> |
|----------|---|--|----------|

Discussion:

Due to the nature of the project parts of the roads may be closed and or detoured for short periods of time, creating a slight inconvenience to the public. This inconvenience will be mitigated through effective notifications (i.e., road signs and public service announcements). Existing access for fishing will also be preserved, however motor vehicle access to fishing spots will be limited to five designated locations where vehicles

- |          |  | <u>Yes</u> | <u>No</u> |
|----------|--|------------|-----------|
|          | can cross the path. The entire coastline will remain unimpeded for non-motorized vehicle and pedestrian access.  |            |           |
| <b>5</b> | <b><i>Will the proposed development provide public access to and/or along the shoreline?</i></b>   | <b>X</b>   |           |
|          | <u>Discussion:</u><br>After completion of the proposed project, public access to and along the shoreline will be significantly enhanced. The project is being developed to preserve public access to coastal and shoreline areas. The project includes facilities for recreational use (covered picnic/fishing areas, foot paths, comfort stations) that will benefit residents and visitors alike. The new path will facilitate easier access for pedestrians and bicyclists to the Ahukini to Ninini Point shoreline. Path improvements will conform with Americans with Disabilities Act (ADA) accessibility standards to ensure that individuals with disabilities are also able to enjoy these coastal areas. |            |           |
| <b>6</b> | <b><i>Will the proposed development encourage expanded recreational use of County, State, or federally owned or controlled shoreline lands and waters having recreational value?</i></b>   | <b>X</b>   |           |
|          | <u>Discussion:</u><br>After project completion access to areas of County, State, and Federally owned or controlled shoreline lands and waters having recreational value will be greatly improved. It is expected that the public will be better enabled to enjoy/utilize these areas.  |            |           |
| <b>7</b> | <b><i>Will the development generate point or non-point sources of pollution that will affect recreation value of coastal area?</i></b>   |            | <b>X</b>  |
|          | <u>Discussion:</u><br>BMPs will be employed during the construction activities to prevent the generation of point and non-point pollutant sources. As part of the BMPs the affected roads will be kept clean on a daily basis as to mitigate any type of storm-water runoff. During construction, project activities will be conducted in compliance with HAR 11-54 Water Quality Standards: HAR 11-55 Water Pollution Control, and COK grading and erosion control standards.   |            |           |

## HISTORICAL RESOURCES

Objective: Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

- |  | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
| <b>1    <i>Is the project site within a Federal, State, and/or County designated historic/cultural district?</i></b> |            | <b>X</b>  |

Discussion:

The project site is not located within a Federal, State, and/or County Designated historic/cultural district.

- |  |  |          |
|--|--|----------|
| <b>2    <i>Is the project site listed on or nominated to the Hawaii or National Register of Historic Places?</i></b> |  | <b>X</b> |
|--|--|----------|

Discussion:

Four studies were prepared to help identify historic properties, assess potential effects, and develop recommended mitigation measures for the entire project area. The four studies include:

1. *Archaeological Literature Review and Field Inspection Report for the Nāwiliwili – Ahukini Bike/Pedestrian Path Project, Nāwiliwili, Kalapakī, Hanamā'ulu, Ahupua'a, Līhu'e District (Puna Moku), Island of Kaua'i, Chris Monahan and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawai'i, June 2008.*
2. *Cultural Impact Evaluation for Nāwiliwili – Ahukini Bike/Pedestrian Path Project, Nāwiliwili, Kalapakī, Hanamā'ulu Ahupua'a, Līhu'e District (Puna Moku), Island of Kaua'i, Mishalla Spearing, Chris Monahan and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawai'i, June 2008.*
3. *Archaeological Inventory Survey Report for the Nāwiliwili – Ahukini Bike Path Project, Nāwiliwili, Kalapakī, Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island, Kendy Altizer and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawai'i, September 2009, revised March 2010, revised April 2010, revised November 2013.*
4. *Architectural Inventory Survey and National Register Eligibility Evaluation for Nāwiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kaua'i, Mason Architects, Inc., for R. M. Towill Corporation, Honolulu, Hawai'i, July 2009.*

The archaeological inventory survey investigation documented 15 historic sites within path Segment A, between Ahukini Landing and Ninini Point, including sites previously identified during the field reconnaissance and literature review. The sites

are identified in **Section VII, Exhibit 10 – State Historic Sites Figure and No Adverse Effect Table**. Of the 15 historic sites identified, the following nine are considered to be significant historic properties according to the criteria established for the Hawai'i Register of Historic Places.

1. Site 50-30-11-2086 (CSH 3) consists of the remnants of two terraces interpreted as associated with pre-contact habitation. Site 50-30-11-2086 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history) and Criterion E (value to the native Hawaiian people due to associations with cultural practices).
2. Site 50-30-11-2087 (CSH 5) is a series of features interpreted as being associated with Nāwiliwili Harbor Light. Site 50-30-11-2087 is assessed as significant under Criterion C (embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, or possesses high artistic value) and Criterion D (have yielded, or may be likely to yield information important in prehistory or history).
3. Site 50-30-11-2088 (CSH 6) is the foundation of a historic communications tower present on the 1910 U.S. Geological Survey map. Site 50-30-11-2088 is interpreted as associated with historic communications practices and is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history).
4. Site 50-30-11-2089 (CSH 7) is a possible burial mound and is interpreted as associated with historical burial practices. Site 50-30-11-2089 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history) and Criterion E (value to the native Hawaiian people due to associations with cultural practices).
5. Site 50-30-11-2090 (CSH 8) is an artillery gun emplacement and is interpreted as associated with historic military operations. Site 50-30-11-2090 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history).

**Yes**   **No**

6. Site 50-30-11-2092 (CSH 10) is an outhouse and cesspool interpreted as associated with historical residential housing. Site 50-30-11-2092 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history).
7. Site 50-30-11-2094 (CSH 12) is the remnants of a terrace interpreted as associated with pre-contact habitation. Site 50-30-11-2094 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history) and Criterion E (value to the native Hawaiian people due to associations with cultural practices).
8. Site 50-30-11-2095 (CSH 13) is a scatter of shell midden with a subsurface cultural layer. CSH 13 is interpreted as a pre-contact activity area and is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history) and Criterion E (value to the native Hawaiian people due to associations with cultural practices).
9. Site 50-30-11-2103 (CSH 16) is the remnants of five foundations associated with a historic industrial complex present near Ahukini Landing. It is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history).

Nine sites are deemed eligible to the Hawai'i Register of Historic Places, five are recommended for preservation, and no further work is recommended for the remaining four sites. Site 50-30-2089 will be addressed by a Data Recovery Program, in compliance with HAR 13-13-278, prior to commencement of construction activities. This program will consist of a Data Recovery Plan, appropriate fieldwork, and a Data Recovery Report. Should human remains be identified, they will be considered previously identified and SHPD and the Kaua'i Island Burial Council will be consulted for the appropriate treatment, per HRS 13-300-31. A Preservation Plan, prepared in compliance with HAR 13-13-277, is recommended to address the remaining four sites (50-30-11-2086, -2090, -2094 and -2103) that are recommended for preservation. An archaeological monitoring program, prepared in compliance with HAR 13-13-279, is also recommended with a combination

- |          |   | <u>Yes</u> | <u>No</u> |
|----------|---|------------|-----------|
|          | of on-site and on-call monitoring during all ground disturbing activities related to this project.  |            |           |
| <b>3</b> | <b><i>Does the project site include land(s) which have not been previously surveyed by an archaeologist?</i></b>  |            | <b>X</b>  |
|          | <u>Discussion:</u><br>No, the project site does not include land that has not been previously surveyed by an archeologist.  |            |           |
| <b>4</b> | <b><i>If an archaeological survey has been conducted for the project site, has the survey been submitted to the State Historic Preservation Office for review and recommendations?</i></b>  | <b>X</b>   |           |
|          | <u>Discussion:</u><br>Yes, the Archaeological Inventory Survey conducted by Cultural Surveys Hawai'i (CSH) was accepted by SHPD on January 21, 2014, as final and approving the agreed-upon mitigation measures. <b>See Section VII – Exhibit 14.</b>   |            |           |
| <b>5</b> | <b><i>Has any site survey revealed any information on historic or archaeological resources? (Please provide a copy of reference of survey)</i></b>  | <b>X</b>   |           |
|          | <u>Discussion:</u><br>Yes, the following surveys conducted for the entire project area are provided in <b>Section VII – Exhibit 15:</b>   |            |           |
|          | 10. <i>Archaeological Literature Review and Field Inspection Report for the Nāwiliwili – Ahukini Bike/Pedestrian Path Project, Nāwiliwili , Kalapakī, Hanamā'ulu, Ahupua'a, Līhu'e District (Puna Moku), Island of Kaua'i, Chris Monahan and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawai'i, June 2008.</i>                    |            |           |
|          | 11. <i>Archaeological Inventory Survey Report for the Nāwiliwili – Ahukini Bike Path Project, Nāwiliwili , Kalapakī, Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island, Kendy Altizer and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawai'i, September 2009, revised March 2010, revised April 2010, revised November 2013.</i> |            |           |
| <b>6</b> | <b><i>Is the project site within or near a Hawaiian fishpond?</i></b>   |            | <b>X</b>  |
|          | <u>Discussion:</u><br>There is no Hawaiian fishpond near or within the project area.  |            |           |



Yes   No

- 7    Is the project located within or near a historic settlement area? (Cemeteries, burials, heiaus, etc.)**    **X**

Discussion:

The above-mentioned studies conducted for the entire project area, in the Historical Resources section of this application, resulted in 27 identified historic properties. Of those 27 identified historic properties, 18 are within the SMA near segment A and G. **See Section VII, Exhibit 10 – State Historic Sites Figure and No Adverse Effect Table and Exhibit 16 – Ka Pa‘akai Analysis.**

According to the 2008 archaeological literature review and field inspection report prepared by Cultural Surveys Hawai'i for the entire project area, there are two heiaus located near Segment A. The two heiaus are the Ninini Heiau (SIHP No. 50-30-11-100) and Ahukini Heiau (SIHP No. 50-30-11-101). Ninini point is a scenic lookout that is home to a historic structure as well as a heiau, which is not located in the SMA. Ninini Heiau was previously destroyed in the early 1900's. Ahukini Heiau is located at Ahukini Point midway from Ninini to Ahukini Landing and was destroyed by erosion and Hurricane Iniki in 1993.

There is one historic mound / possible burial (SIHP No. 0-30-11-2089) identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point near Segment A.

As an outcome of the NHPA Section 106 consultation process, the FHWA has determined that there will be “no adverse effect” to historic properties identified within the Area of Potential Effect (APE). The APE is established for the NHPA and is determined to be all the proposed primary and secondary pathway corridors. The APE consists of both alignment-option corridors linking Ahukini Landing, Nāwiliwili Harbor Light, Līhu'e Airport, Kaua'i Lagoons and Marriott Resort, Nāwiliwili Park and Harbor, and Niumalu Park and all lands in the vicinity of these alignment options from the western shoulder of the mauka (inland) corridor east to the ocean.

The “no adverse effect” determination is rendered based on the recommendations summarized in **Section VII, Exhibit 10 – State Historic Sites Figure and No Adverse Effect Table** and because the path will be aligned to avoid these historic properties.

## SCENIC & OPEN SPACE RESOURCES

Objective: Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.

- 1 Does the project site abut or affect a valued scenic resources or landmark within the SMA? Yes**

Discussion:

The path alignment follows the undeveloped shoreline between Ahukini Landing and Ninini Point. The shoreline is valued by the public as open, undeveloped coastal space close to and accessible from Līhu'e Town. This stretch of coastline offers sweeping views of the east shore of Kaua'i, from Carter Point and Kawai Point to the south to Ahukini Point to the north. The historic Ninini Point lighthouse is a landmark within this coastal landscape, outside of the SMA.

The proposed path will not adversely affect the valued scenic resources or landmarks within the SMA. The path and related signage and bollards will be apparent within the visual setting, but will be designed to minimize their visual presence. The path concrete will be dyed or stained to match the color of the native soil. No lighting will be used along the coastal alignment within the SMA. Signage will be kept to the minimum required for public information and education.

- 2 Does the proposed development affect existing shoreline open space and scenic resources? Yes**

Discussion:

The proposed path improvements will be apparent within the open space setting of the coastline, but will not be obtrusive and will not detract from the open space setting and scenic resources. The path improvements will be designed to visually blend with the natural landscape. The path geometry will curve and undulate with the topography. The path materials will be colored to match existing terrain. Signage will be kept to the minimum required for public safety, information and education. The path is expected to provide more convenient access to the coastal open space and scenic resources for a wider variety of people of all ages and abilities. Educational signage will help to enhance appreciation of the scenic resources along the coast.

- 3 Does the proposed development involve alteration to natural landforms and existing public views to and along the shoreline? Yes**

Discussion:

Path construction will require grading and excavation to establish design grades and cross-slopes that meet ADA accessibility standards. The path alignment will be designed as much as possible in harmony with the existing topography to minimize the amount of earth movement. The project does not involve significant alteration of natural land forms that would change the character and feel of the terrain or alter existing public views to and along the shoreline.

- 4     *Is the project compatible with the visual environment?*     Yes**

Discussion:

The proposed path will be compatible with the visual environment. The path will be an at-grade feature designed to curve and undulate within the existing topography. Path materials will be colored to match the existing land hues in the natural landscape. Ground cover plants will also be selected for suitability within the existing landscape.

- 5     *Does the proposed action involve the construction of structures visible between the nearest coastal roadway and the shoreline?*     Yes**

Discussion:

The path project includes construction of a 10- to 12-foot wide, at-grade concrete path and installation of signage, bollards and fencing (for protection of nesting sea birds and Nēnē). In addition, a pre-fabricated bridge will be installed across a natural dry-gulch drainageway approximately 75 feet from the shoreline. These features will be visible from Ahukini Road and Ninini Point Street.

- 6     *Is the project site within the Shoreline Setback Area (20 or 40 feet inland from the shoreline)?*     No**

Discussion:

The path alignment between Ahukini Point and Ninini Point varies between 60 feet and 300 feet in distance from the certified shoreline. No project improvements will occur within 40 feet from the shoreline. The County of Kaua'i requires that all portions of new concrete paths/walkways located within 40 feet of the shoreline setback area shall be saw-cut at 3-foot intervals. All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kaua'i requirements.

## COASTAL ECOSYSTEMS

Objective: Protect valuable coastal ecosystems from disruption & minimize adverse impacts on all coastal ecosystems.

- 1    *Is the project site a habitat for endangered species of flora and fauna?*    Yes**

Discussion:

Although there is no designated critical habitat in the project area, the following protected species are recorded in the area: the Hawaiian Monk Seal (*Monachus schauinslandi*), Hawaiian hoary bat (*Lasiurus cinereus semotus*), green sea turtles (*Chelonia mydas*) hawksbill turtles (*Eretmochelys imbricata*) Hawaiian Goose, or Nēnē (*Branta sandvicensis*), Hawaiian Duck, or Koloa (*Anas wyvilliana*), the Hawaiian endemic sub-species of the Common Moorhen, or 'Alae 'ula (*Gallinula chloropus sandvicensis*), and the Hawaiian Coot, or 'Alae ke'oke'o (*Fulica alai*). See Part B, 5.a. of this application.

- 2    *Will the proposed development adversely affect valuable coastal ecosystems of significant biological or economic importance?*    No**

Discussion:

During construction, BMPs will be employed in compliance with NPDES permit requirements to prevent pollutant discharge in storm water runoff. Discharge pollution prevention measures will be installed for each project action as required by project activities. Measures to prevent sediment discharge in storm water runoff during construction will be in place and functional before project activities begin and will be maintained throughout the construction period. Runoff and discharge pollution prevention measures will be incorporated into site-specific BMP plan by the project contractor.

- 3    *Will the proposed involve disruption or degradation of coastal water ecosystems through stream diversions, channelization, and similar land and water uses?*    No**

Discussion:

Project activities do not involve alterations to stream channels or other water bodies or water sources. The project involves construction activities near coastal bodies of water. During construction, BMPs will be employed in compliance with NPDES permit requirements to prevent pollutant discharge in storm water runoff. Discharge pollution prevention measures will be installed for each project action as required by project activities. The permit requires implementation of BMPs, including site management measures and physical controls (e.g. diversion

berms, silt fences, detention ponds) to reduce pollutants in construction storm water runoff and ensure that the project complies with State water quality standards.

- 4 Will the proposed action include the construction of special waste treatment facilities, such as injection wells, discharge pipes, septic tank systems or cesspools? Yes**

Discussion:

Waste treatment facilities are not proposed within the SMA as part of the project phase (Phase A) that is the subject of this SMA permit application. However, a comfort station is proposed outside of the SMA at Ninini Point as part of path segment A. The comfort station at Ninini Point will require construction of an individual wastewater aerobic or septic system, or a compost system for wastewater treatment and disposal until such time as a COK collection system connection is available. These waste treatment system will be carefully monitored/maintained to ensure proper waste disposal and prevent pollutant discharges.

In a future phase of the overall Nāwiliwili-Ahukini Shared Use Path project, Phase B2, which is not part of this SMA application, a new comfort station is proposed at Nāwiliwili Beach Park where COK sewer collection system connection is available.

- 5 Is there a wetland on the project site? Yes**

Discussion:

According to the USFWS, segment A and G are located adjacent to Estuarine and Marine Wetland habitat, classified as a M2RSN, and Riverine habitat, classified as a R4SBCx. Segment A is also located near Kauai Lagoons which is a lake habitat, classified as a L1UBHh and Mokihana Freshwater Pond which is classified as a PUBHx. See **Section VII, Exhibit 11 – Wetland Map.**

The FHWA completed informal consultation with the USFWS, NMFS, State DLNR Division of Forestry in compliance with ESA Section 7(a)(2) and 50 CFR Part 402, Subpart B. Based on the consultation, the FHWA determined that the project may affect, but is not likely to adversely affect ESA-listed and protected species. The USFWS concurred with the FHWA determination by letter dated January 21, 2009. The NMFS concurred with the FHWA determination by letter dated January 16, 2009. **See Exhibits Volume II, Exhibit 18, HRS 343 FEA, Appendix B, Federal Consultation Correspondence.**

The shared-use path does not encroach on any of the wetland areas, the ACOE indicated that a Jurisdictional Determination is not required. The bike path will be routed around wetland resources and will stay in the existing rights-of-way.

Construction activities will be conducted in compliance with HAR 11-54 Water Quality Standards; HAR 11-55, Water Pollution Control; COK grading and erosion control standards; and other standards as prescribed by law. A NPDES permit will be obtained for the project and BMPs will be employed to prevent soil loss and sediment and pollutant discharges from work sites. With implementation of the BMPs, there are no significant impacts to wetlands expected to result from the project.

- |   |   |           |
|---|---|-----------|
| 6 | <b><i>Is the project site situated in or abutting a Natural Area Reserve or Wildlife Refuge or Sanctuary?</i></b> | <b>No</b> |
|---|---|-----------|

Discussion:

The project site is not situated in or abutting a Natural Area Reserve or Wildlife Refuge or Sanctuary.

## ECONOMIC USES

**Objective:** Provide public or private facilities and improvements important to the State's economy in suitable locations.

- 1 Does the project involve a harbor or port? No**

Discussion:

Phase A of the project, that is the subject of this application, does not involve a harbor or port. A future phase of the overall Nāwiliwili – Ahukini Shared-Use Path Project, Phase B3, that is not part of this SMA permit application, will provide shared-use path connectivity to Nāwiliwili Harbor and Small Boat Harbor.

- 2 Is the proposed development related to or near to an existing major hotel, multi-family, or condominium project?** Yes

Discussion:

The project site is located near the Kaua'i Marriott Resort, The Royal Sonesta, and Timbers Resorts. Construction activities will be of a short duration and will not create appreciable inconveniences to the existing facilities or associated activities. Visitors of the hotel will benefit from the completion of development, through convenient accessibility to the surrounding coastline, scenic locations, and picnic/fishing areas.

- 3 Does the project site include agricultural lands designated for such use? Yes

Discussion:

The project site includes areas designated as agricultural lands. The pathway does not pass through actively cultivated agricultural lands. Where it passes through land zoned for

agricultural, it will follow existing access corridors or align adjacent to the coastal bluff and will not reduce the amount of land used for agricultural purposes.

- 4 Does the proposed development relate to commercial fishing or seafood production? No**

Discussion:

The project does not relate to commercial fishing or seafood production.

**COASTAL HAZARDS**

Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.

- 1 Is the project site within a potential tsunami inundation area as depicted on the National Flood Insurance Rate maps (FIRM)? Yes**

Discussion:

The project site is within a potential tsunami inundation area. The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) (FEMA/FIRM panels 1500020 - 326F, -327F, -328F and -329F effective date November 26, 2010) indicates that the project corridor passes through a special flood hazard area inundated by 100-year flood: Between Ahukini Landing and Ninini Point, flood elevations are designated as VE (in which flood elevations of 13-24 feet msl have been determined). The project corridor also passes through Zone X which has been determined to be outside the .2% annual chance floodplain. See **Section VII, Exhibit 12 – FEMA/FIRM Maps.**

- 2 Is the project site within a potential flood inundation area according to a FIRM? Yes**

Discussion:

The FEMA/FIRM panels 1500020 -326F, -327F, -328F and -329F effective date November 26, 2010, indicates that the project corridor passes through a special flood hazard areas inundated by 100-year flood: Between Ahukini Landing and Ninini Point, flood elevations are designated as VE (in which flood elevations of 13-24 feet msl have been determined). The project corridor also passes through Zone X which has been determined to be outside the .2% annual chance floodplain. See **Section VII, Exhibit 12 – FEMA/FIRM Maps.**

- 3 Does the project comply with the requirements of the Federal Flood Insurance Program? Yes**

Discussion:

The project complies with the requirements of the Federal Flood Insurance Rate Program. The comfort station at Ninini Point will be located outside of the FEMA VE Zone, which has a range identified on the FIRM of 14 feet. Path improvements within the VE zone at Ahukini Landing will be limited to at-grade path segments, bollards and signage; no vertical structures are proposed within the VE. The proposed comfort station will be based on the latest Uniform Building Code building standards. The path and amenities will be designed to withstand flood occurrences as estimated by FEMA and in compliance with County Code requirements.

- |          |   |           |
|----------|---|-----------|
| <b>4</b> | <b><i>Has the project site or nearby shoreline areas experienced shoreline erosion?</i></b> | <b>No</b> |
|----------|---|-----------|

Discussion:

Due to the rocky character of the coastal bluff, the Ahukini Landing to Ninini Point segment is generally stable. The State Department of Transportation, Airports Division recently completed site restoration and slope stabilization work on a closed landfill located along approximately 600 lf of the coastline a mile south of Ahukini Point that had been gradually sloughing off debris into the ocean. A portion of path segment A crosses the restored area within the SMA. According to the Atlas of Natural Hazards in the Hawaiian Coastal Zone, published by the United States Geological Survey, the erosion hazard assessment is moderately low in the project corridor extending from Ahukini Landing to Nāwiliwili Harbor. A Kaua'i Shoreline Change Map has not been prepared for this segment of the shoreline.

- 5 Have any seawalls/revetments/etc. been constructed or exist in the immediate vicinity?** Yes

Discussion:

There are no seawalls/revetments/etc. within the immediate vicinity of segments A and G.



**e. Evaluation of impacts which cannot be avoided and mitigating measures proposed to minimize that impact.**

**Discussion:**

**Visual Impacts:** The proposed shared-use path will not have an adverse impact on scenic resources or view planes and will not obstruct sight lines from surrounding areas to visual landmarks. The path will create new opportunities for the public to access and enjoy the open space of the coastline. many new scenic points to the surrounding area after development. Building materials and colors, lighting design, and landscape screening will be selected and designed to blend into the natural surroundings. Similarly, path surfaces will be colored to match the surrounding native soil, either through applied coloring or through natural staining from existing soils.

**Light Pollution:** Permanent lighting will be added at the comfort station. Exterior lighting can disorient nocturnally flying seabirds, especially fledglings on their way to sea in the summer and fall. Mitigation to prevent impacts to seabirds include no lighting will be installed along the pathway between Ahukini Landing and Ninini Point. The proposed comfort station at Ninini Point will include full-cut off nighttime lighting. The COK will provide the USFWS with an opportunity to review the comfort station lighting design prior to final design and construction. Designed lighting will be kept to the minimum required for safety and security. Lighting will use low-intensity sources that emit long wavelength light (e.g. yellow or amber globes). Permanent light sources will be shielded and angled downward to eliminate glare that could disturb or disorient animals. Downward facing, shielded lights will be used for night work throughout the construction period. Nighttime work will cease during the seabird fledging season from October 1 through December 15.

**f. Evaluation of the proposed development relative to Section 4.0 of the SMA Rules and Regulations in accordance with the following aspects:**

**1. Substantial adverse environmental or ecological effects.**

**Discussion:**

The proposed project is not anticipated to involve a substantial degradation of environmental quality. Planning and design for the project includes mitigation measures to prevent or minimize potential impacts. Potential environmental effects will be limited primarily during the construction phase. Once construction is complete, any environmental impact is nominal. The new development is not expected to result in any significant changes over pre-existing environmental conditions. Construction will be conducted in accordance with COK and State environmental rules and regulations concerning air, water, noise, and coastal, cultural, floral and faunal resources. No substantial adverse environmental or ecological effects will result from the project.

**2. Consistency or compliance of the proposed development relative to the goals and objectives of Chapter 205A, HRS and Section 3.0 of the SMA Rules and Regulations; and**

**Discussion:**

The project follows the objectives and policies set forth in Chapter 205A-2, HRS, and Special Management Area guidelines contained in HRS Section 205A-26.

The following is an assessment of the project with respect to the objectives and policies as set forth in Chapter 205(A)-2, HRS:

*1. Recreational resources.*

- (A) Improve coordination and funding of coastal recreational planning and management; and*
- (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:*
  - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;*
  - (ii) Requiring replacement of coastal resources having significant recreational value including, but not limited to, surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;*
  - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;*
  - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;*
  - (v) Ensuring public recreational uses of COK, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;*
  - (vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;*
  - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and*
  - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting such dedication against the requirements of section 46-6.*

**Discussion:**

The project is federally funded and coordinated through County of Kaua'i Department of Public Works for the purpose of improving recreational coastal access. The Nāwiliwili-Ahukini Shared-Use Path is part of the larger *Ke Ala Hele Makālae* pathway system that will link coastal recreational resources between Anahola and Nāwiliwili.

The project will provide new pedestrian and bicycle access to the coastline between Ahukini and Ninini Point. Currently the Ahukini to Ninini Point coastline is used as a popular fishing area. Public access is provided by an unimproved dirt road that follows an existing twenty-foot-wide easement. Coastal access will be maintained for fishermen and other recreational users via this easement.

The improvements along this segment will include a twelve-foot-wide concrete bike path with directional and interpretive signage. A comfort station is planned at Ninini Point, outside of the SMA.

Interpretive signage will be placed along the project corridor educating users on the important natural and recreational resources throughout the coastal area and ways to aid in the cultural conservation and protection of those resources.

Water quality will be protected during construction through the application of Best Management Practices in accordance with National Pollutant Discharge Elimination System (NPDES) permit regulations. Proposed improvements will not alter existing drainage patterns.

*2. Historic resources:*

- (A) Identify and analyze significant archaeological resources;*
- (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and*
- (C) Support state goals for protection, restoration, interpretation, and display of historic resources.*

**Discussion:**

An archaeological field inspection, archaeological inventory survey, architectural inventory survey, and cultural impact evaluation prepared for the project identify known historic properties, as well as areas along the path routes where the potential for encountering previously unknown cultural or historic properties is higher. The preferred path alignment is routed to avoid known archaeological and historic sites. The final alignment will be established during the design phase when ground topography will be used to precisely locate known historic properties and ensure they are avoided by the path. Proposed mitigation measures include avoidance, preservation in place, data recovery, and on-site and on-call archaeological monitoring during construction activities. Path improvements include installation of signs to communicate interpretive and regulatory information to path users concerning the history of the area, the presence of cultural and historic resources, and ongoing efforts to preserve and learn from the physical remains of our predecessors.

*3. Scenic and open space resources:*

- (A) Identify valued scenic resources in the coastal zone management area;*
- (B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;*
- (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and*
- (D) Encourage those developments that are not coastal dependent to locate in inland areas.*

Discussion:

The project conforms to the Coastal Zone Management Program Objective 3, Scenic and Open Space, which encourages the protection, preservation and where desirable, restoration or improvement of the quality of coastal scenic and open space resources. The Līhu'e Community Plan designates the coastline between Ahukini and Ninini Point as a major scenic geographical feature. The Kaua'i County General Plan has designated this area as open space/conservation.

The project corridor will be designed to maintain visual quality and open space. The project path will be constructed at grade and will not obstruct the view of or from the coastline. No structures will be built along the coastline between Ahukini and Ninini Lighthouse in order to maintain open space and the visual resources of the area. The proposed comfort station at Ninini Point will be sited and designed to blend into the surrounding landscape.

4. *Coastal ecosystems;*

- (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;*
- (B) Improve the technical basis for natural resource management;*
- (C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;*
- (D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs;*
- (E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.*

Discussion:

The project is not part of a coastal ecological management program but will include interpretive signage to educate the public about significant habitats, threatened and endangered species, and preservation efforts. Project activities do not involve alterations to stream channels or other water bodies or water sources.

During construction, best management practices will be employed in compliance with NPDES permit requirements to prevent pollutant discharge in storm water runoff. Discharge pollution prevention measures will be installed for each project action as required by project activities. Measures to prevent sediment discharge in storm water runoff during construction will be in place and functional before project activities begin and will be maintained throughout the construction period. Runoff and discharge pollution prevention measures will be incorporated into site-specific Best Management Practices (BMP) plan by the project contractor.

5. *Economic uses;*

- (A) Concentrate coastal dependent development in appropriate areas;*

- (B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and*
- (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:*
  - (i) Use of presently designated locations is not feasible;*
  - (ii) Adverse environmental effects are minimized; and*
  - (iii) The development is important to the State's economy.*

**Discussion:**

There are no Hawai'i Visitors Bureau (HVB) designated tourist destinations located in the coastal areas of the project. However, additional areas within the coastal zone that are promoted by the HVB as tourist destinations include: Ahukini Landing, Kalapakī Beach and the Kaua'i Marriott Resort and Timbers Resorts' Hōkūala Golf Course.

The project would provide bicycle access linking visitors at the Kaua'i Marriott and Timbers Resort and visitors arriving at Līhu'e International Airport to Līhu'e town center and Ahukini Landing. The project will also provide connection to the *Ke Ala Hele Makālae* shared-use path system with access to the coastal towns of Kapa'a, Wailua, Waipouli, Keālia, and Anahola. Bike paths also have the potential to provide economic stimulus where they provide linkage between commercial districts, as part of a recreational and multimodal commuter system. In addition bike paths may attract a growing number of eco-tourists looking for more activity and nature-oriented vacations.

The project has been assessed for social, visual, and environmental impacts in accordance with Chapter 343, Hawai'i Revised Statutes. With the implementation of mitigation measures outlined in the Environmental Assessment, no adverse impacts are expected to result from this project.

- 6. Coastal hazards;*
  - (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;*
  - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;*
  - (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and*
  - (D) Prevent coastal flooding from inland projects.*

Discussion:

Long-term impacts due to coastal erosion will be minimized by the initial design of the path. Grading and excavations required for construction of the path and related amenities will be designed to minimize the amount of cut and fill required. The path alignment was selected to take advantage of natural grades in order to meet ADA accessibility standards for slopes with a minimal amount of ground disturbance and related costs. Erosion control measures will be employed during construction. Following project completion, permanent soil stabilization will be achieved through landscaping with various plant materials and ground covers. In addition, the path will be constructed of concrete or other durable all-weather surface to minimize potential for erosion.

Natural hazards endemic to all of Hawai'i, including Kaua'i, involves tsunami action. There have been four episodes since 1946. These occurrences happened in 1946, 1957, 1960 and 1964 respectively. The run-up heights vary from 1 foot to 14 feet. Strong trade wind events are responsible for the majority of large wave action along the eastern coast of Kaua'i. Passing hurricanes have generated the highest wave heights along the east facing shores and may coincide with a high tide and typically generate a strong storm surge. The wave action generated by hurricanes 'Iwa (1982) and 'Iniki (1992) varied from 10-20 feet.

The Hawaiian Islands are seasonally affected by Pacific hurricanes from the late summer to early winter months. The island of Kaua'i has been affected twice since 1982 by devastating hurricanes, 'Iwa in 1982 and 'Iniki in 1992. It is difficult to predict these natural occurrences, but it is reasonable to assume that future events will occur. The project site is, however, no more or less vulnerable than the rest of the island to the destructive winds and torrential rains associated with hurricanes.

The project is not expected to exacerbate flooding or effect flood zone areas, as identified by Federal Emergency Management Agency Flood Insurance Rate Maps. The path will be designed outside of the flood zone when possible. The path and amenities will be designed to withstand flood occurrences as estimated by FEMA and in compliance with County Code requirements.

*7. Managing Development;*

- (A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;*
- (B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and*
- (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.*

Discussion:

The project corridor lies within the State Land Use category of Urban, Agricultural, and Conservation. Land uses within the Urban and Agricultural designations are subject to regulation by the COK. Land uses within the Conservation district are subject to regulation by the Department of Land and Natural Resources (DLNR). A Conservation District Use Application will be submitted to DLNR for path facilities within the Conservation District.

All work activities will be conducted in compliance with Federal, State, and COK rules and regulations.

*8. Public participation;*

*(A) Promote public involvement in coastal zone management processes;*

*(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and*

*(C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.*

Discussion:

The project has been developed through a public outreach process that includes three public informational meetings to develop the preferred path alignment and amenities. Two of the three meetings have been conducted and were broadcast on the Kaua'i public access television station, Ho'o'ike. The third meeting will be held during the permitting process. A public hearing before the Planning Commission will be conducted as part of the SMA permit approval process. Additionally, public notice of the proposed action is provided through publication of the draft and final environmental assessment, Shoreline Certification Application, and SMA permit application in the Office of Environmental Quality Control (OEQC) Bulletin. As part of the environmental review process, the public had an opportunity to review and comment on the project during the 30-day public review period for the Draft Environmental Assessment. In addition, two public outreach meetings were conducted as part of the NHPA Section 106 consultation process to identify historic and cultural resources and practices.

*9. Beach protection;*

*(A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;*

*(B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and*

*(C) Minimize the construction of public erosion-protection structures seaward of the shoreline.*

Discussion:

Within the SMA, all project improvements will be constructed mauka of the 60-foot shoreline setback line and aligned to take advantage of existing topographic conditions that will minimize grading, as well as scenic views of the coastal area. All segments of the proposed path will be constructed of concrete and colored to match the native soil and blend into the natural setting. The concrete path will be constructed with saw-cuts spaced every 3 feet so that individual panels can be relocated in the future if necessary. Vegetative groundcover will be planted along each side of the path to stabilize soils, reduce stormwater runoff velocity and capture sediment. The path alignment will be designed to minimize the amount of grading and cut and fill required. The path surface will be designed with cross-slopes to direct runoff as sheet flow to the sides of the path rather than concentrating flows down the middle. No segment of the path will encroach into areas where it will interrupt shoreline processes. A description of the proposed path improvements is provided above in **Part B.1**. The path alignment in relation to the shoreline setback is shown in **Exhibit 8**.

At drainage crossing #3, which is located within the SMA, a new pre-fabricated bridge structure is proposed at drainage crossing #3 (see **Exhibit 8**). The bridge improvements will require construction of concrete bridge abutments to support the pre-fabricated span. Ground surface disturbed by excavation and project activities will be stabilized with vegetative ground cover. All work on the pre-fabricated bridge will be located mauka of the shoreline setback.

At drainage crossing #4, which is located within the SMA and SLU Conservation District, proposed modifications to widen the existing culvert crossing will be conducted on the mauka side of the existing dirt road. Required work activities include grading and construction of either (i) a sloped embankment or (ii) a new retaining wall approximately 100 feet in length and 5 to 8 feet in height along the mauka side of the existing road to widen support the path and road corridor widening, extension of the existing box culvert inlet to the face of the new embankment or retaining wall, and placement of fill material to create a flat surface to support the realignment of the existing road in the mauka direction and construction of an 8- to 12-foot wide concrete shared-use path along the makai side of the realigned dirt road. No improvements will be undertaken makai of the existing dirt road alignment. Ground surface disturbed by excavation and project activities will be stabilized with vegetative ground cover. These culvert modifications will not interfere with existing recreational and waterline activities, but will enhance public access to shoreline areas for recreation and enjoyment.

In addition, one new comfort station is proposed at Ninini Point outside of the SMA and shoreline setback. The comfort station building will be sited away from the shoreline and situated to conserve open space.

Project improvements along the coastline will be limited to the path and drainage crossing structures described above, as well as limited signage for public safety, information and education. All features will be designed to avoid interference with natural processes and to withstand natural hazards, including erosional forces. Planned improvements will have a minimal impact on the environment.



*10. Marine resources;*

- (A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;*
- (B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;*
- (C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;*
- (D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and*
- (E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources*

**Discussion:**

All work activities will be conducted in compliance with Federal, State, and COK environmental rules and regulations. The project will not otherwise impact marine resources and does not involve research, or technological development related to the coastal and marine environments. Mitigation measures proposed for the protection of coastal fauna, particularly sea birds, sea turtles, and the protected Hawaiian monk seal, have been developed in consultation with the USFWS, NMFS, and DOWAW. See **Exhibits Volume II, Exhibit 18, HRS 343 FEA, Appendix B, Federal Consultation Correspondence.**

**3. Consistency or compliance of the proposed development relative to the County General Plan, Development Plan, and Zoning Ordinances.**

The proposed project will be developed in conformance with the Kaua'i General Plan's Vision and Goals (Section 1.3), Policies (Section 1.4), and Land Transportation Policies and Actions (Section 3).

**Kaua'i General Plan, Section 1.3, Vision and Goals**

The project is aligned with the Kaua'i General Plan, Section 1.3 Vision and Goals:

*A Sustainable Island – Growing responsibly to meet the needs of current and future generations without depleting resources.*

- Kaua'i is a sustainable island, rooted in principles of aloha and mālama 'āina, and remarkable in its thriving ecosystems.*
- Kaua'i is a place where conservation and restoration of land and water resources provide the foundation of sustainable policies for land use, energy, infrastructure, society, and economy.*

**Discussion:**

The coastal shared-use path meets the needs of current and future generations by supporting a multimodal transportation system that accommodates alternatives to

internal combustion automobiles that rely on non-renewable energy resources. The path system will engender greater understanding and appreciation of Kaua'i's remarkable ecosystems by connecting path users directly with the windward side's coastal environments and conditions. The path will include interpretive and educational signage to educate the public about the coastal ecosystems and about natural and cultural resource conservation and preservation efforts that perpetuate the spirit of aloha and mālama 'āina.

*A Healthy and Resilient People – Increasing health, vitality, and resilience of communities through improving the natural, built, and social environment and responding to impacts from climate change.*

- *Kaua'i is a place with healthy people and vibrant community life, safe facilities for walking and biking, places to gather and socialize, and venues for arts and culture.*
- *Kaua'i is a resilient community that shares kuleana in planning for the future, proactively responding to and preparing for changes, and providing for the needs of people from keiki to kūpuna.*
- *Kaua'i is a place that supports agriculture and a diversity of farming practices and produces food and other products that contribute to Kaua'i's self-sufficiency.*

Development of the shared-use path directly supports the vision of increasing the health, vitality and resiliency of Kaua'i's communities by improving the built and social environment. The shared-use path will create a safe and pleasant pedestrian and bicycle facility that will connect people to the island's coastline and residential, commercial and employment centers, and will support and encourage more physically active lifestyles by making these destinations accessible by foot and bicycle. The shared-use path system, where it is already in use, has become a common location for island residents to gather, socialize and connect with each other. Physically active lifestyles and social connection are key pillars of a healthy community.

The shared-use path will contribute to Kaua'i's resiliency by supporting a multimodal transportation system that reduces the islands' reliance on non-renewable energy now and into the future. In addition to improving quality of life by providing additional and healthier transportation options for residents to choose from, multimodal transportation systems create diverse and redundant transportation alternatives that can minimize disruptions in the event of non-renewable energy shortages or in the wake of natural or human-made disasters, all of which contribute to greater island resiliency. In addition, the shared-use path will be designed to be resilient against the projected effects of climate change, including increased intensity of storm events and related erosional forces from stormwater runoff and wave energy. Path facilities will be constructed outside of a 60-foot setback from the shoreline and topographically elevated. The Path alignment and design will preserve existing drainage patterns as much as possible and will be profiled to prevent concentration of runoff flows that could contribute to erosion. Path shoulders will be stabilized with vegetative groundcover to hold the soil and slow stormwater runoff velocity.

The proposed path will not directly support agricultural resources or farming practices. Much of the coastal path alignment passes through lands zoned for agriculture, but that are currently unused. The path improvements will occupy a small portion of these lands, but will not prevent the use of these lands for agriculture. Interpretive programming along the path corridor could be used to educate the public about agriculture and farming practices and their importance to island resiliency, self-sufficiency and food security.

*A Unique and Beautiful Place – Stewardship and protection of the natural, cultural, social, and built environment assets that are of value to the community.*

- *Kauaʻi is a place of distinctive natural beauty that honors its Native Hawaiian heritage, values historic places, and is shaped by diverse languages and cultural traditions.*
- *Kauaʻi is an island of unique communities that are united in a common vision and in care for their neighbors and ʻohana*
- *Kauaʻi is a place where rural character and natural landscapes are preserved through compact, walkable communities separated by scenic and functional open spaces.*
- *Kauaʻi is a place that welcomes visitors, providing adequate facilities and a variety of cultural and recreational opportunities while maintaining the principles of aloha and mālama ʻāina.*

*Discussion:*

The shared-use path was conceived, in part, as a means of preserving public access to coastal areas ahead of development pressures following the cessation of large-scale sugar operations on coastal agricultural lands on Kauaʻi. This was in recognition of the importance to Kauaʻi's residents of natural coastal areas and the myriad resources and activities that occur there. Planning and development of the *Ke Ala Hele Makālae* coastal path system, including the subject project, has been guided by an ethic of stewardship and protection of the natural, cultural, social and built environment. The path alignment, design and development conditions were created through consultation with the public and the Kānaka Maoli community. The resulting mitigation commitments by the County of Kauaʻi and its federal and state funding partners, include: avoidance of sensitive cultural and historic sites located along the path corridor; public education about Native Hawaiʻi culture and heritage, Kauaʻi island's history, and natural resources through interpretive programs and signage; and context sensitive design of path features to blend in and minimize visual impacts in the open, natural landscape along the coast.

The proposed project will complete a key connection in the overall *Ke Ala Hele Makālae* shared-use path system by linking the Lydgate to Ahukini path segment with Līhuʻe Town and the Līhuʻe International Airport. In doing so, it will unite the windward communities with the commercial services, employment centers, and interisland and international transportation hubs in Kauaʻi's urban center, and likewise connect Līhuʻe's residents to the windward communities through a functional, enjoyable and healthy alternative transportation and recreation facility. With similar benefit, the proposed shared-use path will create new opportunities for visitors to Kauaʻi to experience the island's culture, history and natural beauty

while doing so with a reduced carbon footprint that is consistent with the principles of aloha and mālama 'āina.

*An Equitable Place with Opportunity for All – Fostering diverse and equitable communities with vibrant economies, access to jobs and housing, and a high quality of life.*

- *Kaua'i is an island of economic opportunity where businesses, cottage industries, and entrepreneurs thrive, and where youth have broad access to education, enrichment, and economic opportunity.*
- *Kaua'i is a place where housing for all ages and income levels is integrated into the fabric of each community, and where people can live close to work and services.*

*Discussion:*

The proposed path segment, as an integral part of the overall *Ke Ala Hele Makālae* shared-use path system, will create new economic opportunities by incentivizing Kaua'i's businesses, cottage industries and entrepreneurs to identify new ways to provide goods and services to path users. The path will also open new opportunities to service visitors to Kaua'i through bicycle rentals and walking and bicycle tours using the path system.

Although the path segment that is the subject of this SMA permit application does not pass through urbanized or commercial areas, the overall path system within which it is a key connecting segment will create additional local and regional economic opportunities by generating patronage and commerce at businesses located along other segments of the path and at destinations made accessible by the Nāwiliwili to Ahukini segment.

In a small, but significant way, the shared-use path system, including the subject project, fosters equitable communities by supporting multimodal transportation and reduced dependence on automobiles for access to jobs and housing; in particular, it does so by making less costly modes of transportation, namely walking, bicycling and the use of other non-internal-combustion mobility devices, a safe and viable option for people across a greater range of ages, physical abilities and economic levels.

**General Plan, Section 1.4, Policies the Guide Growth**

The proposed project is aligned with the following specific General Plan policies

*Policy #4: Design Healthy and Complete Neighborhoods "Ensure new and existing neighborhoods have safe roads and functional parks, as well as access to jobs, commerce, transit, and public services."*

*Discussion:*

The proposed project will complete a key connection between other path segments along windward Kaua'i and the Līhu'e town core and Līhu'e International Airport. The shared-used path system will provide connectivity and safe routes to walk or bike between residential areas, job centers, public services, transportation, transit facilities and recreational areas. By accommodating alternative modes of

transportation that rely on physical activity, the path will also promote public health and wellbeing.

*Policy #5: Make Strategic Infrastructure Investments “New government investment should support growth areas and include priority projects as identified in Community Plans. Funding at all levels of government (Local, State, and Federal) is becoming increasingly limited. Just like a family on a budget, government must live within its means. With this in mind, difficult decisions must be made as to how limited funds are spent. Infrastructure needs include parks, water, wastewater, solid waste, and transportation. Recognizing reduced funding, we must direct infrastructure investment as a means to direct growth to the areas most suitable for development. With economics as a key aspect of sustainability, establishing infrastructure investment priorities in alignment with our vision is essential.”*

#### Discussion

The proposed path project represents a strategic, value-based investment in an infrastructure project that aligns with and supports the following aspects of the Kaua'i General Plan and the Līhu'e Community Plan vision:

- Create a balanced, multi-modal transportation system that improves local and regional connectivity;
- Create economic opportunities and equitable communities;
- Improve island resiliency;
- Preserve coastal environments and historic and cultural resources; and
- Encourage active lifestyles and improve public health.

Moreover, the project is part of the Ke Ala Hele Makālae coastal path system, which is identified and recommended for completion in the Kaua'i General Plan.

Due to the comprehensive and integrated array of benefits across multiple scales (individual, local and regional) and jurisdictions, the overall Ke Ala Hele Makālae project has consistently merited state and federal funding to leverage and augment the County's infrastructure investments.

*Policy #6: Reduce the Cost of Living “Reduce the combined costs of housing and transportation, which consume more than 60 percent of Kaua'i's average household income. Do this by connecting housing to jobs and by providing a diversity of housing types and affordable transportation options.”*

#### Discussion

The proposed shared-use path will help reduce the cost of living for Kaua'i's windward communities by providing an alternative and more affordable mode of transportation that connects these communities to urban and suburban centers of employment, commerce, education, essential services and major transportation hubs, as well as to families and friends. The option to walk, bicycle or use other non-motorized devices (e.g., skateboards), offers a much more affordable mode of transportation compared to the cost of owning and operating an automobile and can help reduce transportation costs to Kaua'i's households.

*Policy #7: Build a Balanced Multimodal Transportation System “Reduce congestion conditions through strategic infrastructure improvements and increase multimodal transportation options.”*

Discussion:

Improving traffic circulation and reducing congestion are identified as goals in the General Plan. This project directly addresses these General Plan policy and goals by creating infrastructure that supports alternatives to the automobile within a multimodal transportation system. The project will provide safe, non-motorized vehicle facilities for pedestrians and cyclists to access residential areas, employment and service centers, recreation areas, and natural coastal areas. The path facility will help relieve congestion on public roadways by supporting peoples' choice to use alternative vehicle modes instead of internal combustion automobiles for commuting, socializing and recreating at a local and regional level. This project directly addresses the General Plan recommendation for transportation system improvements along the *Ke Ala Hele Makālae* path to Līhu'e.

*Policy #8: Protect Kaua'i's Scenic Beauty*

*"Protect the island's natural beauty by preserving the open space and views between towns."*

Discussion:

The coastline between Ahukini Landing and Ninini Point is designated as a conservation area in the General Plan. The proposed project will be designed to maintain visual quality and open space. The project path will be constructed at-grade and will not obstruct the view of or from the coastline. No structures will be built along the coastline between Ahukini and Ninini Point in order to maintain the open space character of the area and avoid affecting views and visual resources. The proposed comfort station at Ninini Point will be sited and designed to blend into the surrounding landscape to minimize its visual presence in the landscape.

*Policy #14: Prepare for Climate Change*

*"Prepare for impacts to the island economy, food systems, and infrastructure that will be caused by climate change."*

Discussion:

The path alignment is designed to follow existing, natural land contours as much as possible in order to minimize grading and avoid disrupting existing drainage patterns and impounding or concentrating stormwater runoff flows. The proposed project will use vegetative ground cover to permanently stabilize soils, reduce stormwater runoff velocities and minimize the potential for erosion. In addition, the path will be constructed of concrete and/or other durable all-weather surface for resiliency to withstand the effects of major storm events, which are projected to decrease in frequency, but increase in intensity with climate change. All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kaua'i requirements.

The subject path segment will connect communities along windward Kaua'i with Kaua'i's urban center in Līhu'e and with Līhu'e International Airport. In doing so, it will contribute to the creation of a multimodal transportation system that will strengthen transportation infrastructure redundancy and resiliency to better

withstand potential impacts from climate change, including flood and wind damage from stronger storm events, and more volatile markets and shortages in non-renewable energy.

*Policy #15: Respect Native Hawaiian Rights and Wahi Pana*

*"Perpetuate traditional Native Hawaiian rights and protect public trust resources and cultural sites in all land use development and activities."*

*Discussion:*

The project applicant has conducted consultations as part of the NHPA, Section 106 process with kūpuna from the project area who have knowledge of traditional cultural practices and resources, and has conducted background studies, including an archaeological inventory survey, cultural impact assessment, and Ka Pa'akai Analysis, to identify public trust resources and cultural sites and uses, and to develop appropriate mitigation measures as necessary. All known cultural and historical resources within the proposed path vicinity will be avoided and left undisturbed by routing the path alignment away from them and, in some cases, establishing protective buffers. In addition, the proposed project will develop educational programming and install interpretive signage along the project corridor to educate users about cultural resources and practices, and history within the project area, as well as ways to aid in the conservation, protection and perpetuation of those resources. See **Exhibits 14 through 17** for additional information and project documentation on this subject.

*Policy #16: Protect Access to Kaua'i's Treasured Places*

*"Protect access to and customary use of shoreline areas, trails, and places for religious and cultural observances, fishing, gathering, hunting, and recreational activities, such as hiking and surfing."*

*Discussion:*

The *Ke Ala Hele Makālae* coastal path system was conceived as a means of preserving public access to shoreline areas following the closure of large-scale sugar cultivation in agricultural lands along Kaua'i's coastline. Community and government leaders recognized the potential transformation of these lands by private development and have diligently worked to protect access to and customary use of shoreline areas by the public by developing the coastal, shared-use path system. The subject project is a key segment of this system. In addition to connecting East Kaua'i communities to Līhu'e Town, the path will preserve access to the undeveloped coastal areas between Ahukini Landing and Ninini Point. These areas are customarily used for fishing, gathering and recreational activities. The proposed path improvements will ensure that existing access to favored fishing sites along this stretch of coastline is not hindered. Planned improvements include five crossings for motor vehicles, protected by bollards, to allow vehicular access to preferred fishing sites that were identified by the fishing community during the project planning and Environmental Assessment phase. In addition, the path is designed so as not to obstruct or prevent pedestrian or bicycle access to other fishing or recreational sites along the shoreline, nor will it direct attention to those sites. The project will include interpretative and informational signage with content regarding conservation efforts, regulatory restrictions, safety, and wayfinding where appropriate.

### **General Plan Section 3, Sector III, Land Transportation**

The proposed project supports the General Plan recommendation for the development of a “balanced” multimodal transportation system that links roadway networks, bicycle facilities, pedestrian facilities and transit with land use decisions. The shared-use path is a key part of the envisioned multimodal system and directly addresses the General Plan goals for a transportation system that accommodates a broader range of roadway users (by age, economic level and physical ability) while reducing congestion and supporting sustainability goals of reducing single occupancy vehicle (SOV) trips and increasing walking and bicycling as viable transportation modes.

The proposed project is recommended as one of the actions under General Plan, *Land Transportation, Action 5, Bicycle Program, Project 2: “Complete the Ke Ala Hele Makālae path from Anahola to Līhu‘e”*.

### **Līhu‘e Community Plan**

The proposed project supports the Līhu‘e Community Plan (LCP) vision, policy objectives and goals for *Connectivity (Section 2.4.3)* by improving transportation connections within and between communities for a broad range of users, and *Multimodal Transportation (Section 2.4.6)* by developing transportation infrastructure that encourages and supports the choice to walk or bike as a viable alternative mode of transportation to SOV automobiles.

The project is consistent with the following LCP Policies and Guidelines:

#### **Section 5.3 – Heritage Resources**

Heritage resources include important landforms that have ecological, recreational, cultural and scenic value. LCP policies call for preservation of these resources:

- *Encourage development around the natural constraints of topography (e.g., gulches, steep slopes).*
- *Preserve viewsheds and scenic qualities of features including views of Hā‘upu Ridge, Kālepa Ridge, and Kilohana Crater.*
- *Preserve important archaeological sites and historic sites within the Līhu‘e District as identified in Chapter 3 and on the Heritage Resources Map in the General Plan.*

#### **Discussion:**

The proposed path is aligned and will be designed to follow the existing topography as much as possible in order to minimize ground disturbance, preserve existing land forms and drainage patterns, and minimize visual presence within the coastal landscape. The project does not include vertical structures or features within the SMA, with the exception of limited signage used for public information, education and interpretation of coastal ecology, history and cultural sites and practices. The project will preserve archaeological and historic sites through avoidance and through interpretive signage developed in



consultation with the Kauaʻi Historic Preservation Review Commission and Kānaka Maoli community.

#### **Section 5.4 – Transportation**

The LCP references the Kauaʻi Multimodal Land Transportation Plan (MLTP) as the basis for land transportation goals and policies and project recommendations. Goals include:

- *Provide connectivity between settlement areas through a multimodal approach*
- *Increase vehicle miles traveled (VMT) by other than the automobile;*
- *Retain VMT by automobiles at 2010 levels;*

#### Discussion:

The proposed project is a key link in the Ke Ala Hele Makālae system that will connect East Kauaʻi settlement areas and Līhuʻe Town through a multi-modal shared-used path network. The path will encourage and support the increased use of bicycles and walking as safe and viable alternatives to the automobile for local and regional trips. In this way, the project will help increase VMT by other than automobiles and help reduce overall VMT by automobiles.

The LCP identifies the following programs for bicycle and pedestrian facilities.

#### *Town Connector Trails*

- *Connect Puhi-Līhuʻe-Hanamāʻulu*
- *Use separated paths where feasible*

#### *Town and Village Bicycle Lanes*

- *Give priority to bicycle facilities within “Safe Routes to School” and transit corridors*
- *Connect local destinations*
- *Provide access to separated paths*
- *Give low priority to low-speed, low volume local streets*

#### *Coastal Trails and Other Multiuse Trails*

- *Connect recreational and outdoor destinations to housing and lodging areas*
- *Support longer distance commuting*
- *Give visitors an alternative to driving*

#### Discussion:

The proposed project includes development of a separated shared-use path system where feasible, specifically in the undeveloped lands between Ahukini Landing and Ninini Point. Where a separated path is not feasible, the project proposes uses striping and signage to designate existing roads as shared-use roadways.

The proposed path segments that are part of the subject project will complete a key connection of the Ke Ala Hele Makālae path system that will connect Līhuʻe to other settlements along East Kauai, including Hanamāʻulu, via the coastal path system. The system will improve bicycle and pedestrian access to recreational

and outdoor destinations, as well as to housing areas, employment and commercial centers and other essential civic service centers. The subject project will offer visitors access to coastal areas between Ahukini and Ninini Point without the need to use an automobile, and, as part of the Ke Ala Hele Makālae system, will make the windward settlements of Kaua'i, from Līhu'e to Anahola, accessible to visitors by bicycle and foot.

The proposed project is identified in LCP Figure 5-7 as part of the coastal trail system within the proposed bicycle facilities network that is envisioned to provide regional connectivity to East Kaua'i for bicycle commuters, recreational cyclists, and cyclists of all ages.

### **Section 5.9 – Climate Change**

The LCP guidance related to Climate Change is based on the Sea Grant College Center for Island Climate Change Adaptation Policy (ICAP), which recommends planning for a one-foot rise in sea level by 2050 and a three-foot rise by 2100. The LCP recommends that structures and facilities in the Nāwiliwili area be eventually moved in a more mauka direction and that there either be no new facilities or that any built be designed for up to six feet rise in sea level. Specific LCP Climate Change Policies that are relevant to the subject project include the following:

- *Reduce the sensitivity to climate change and alter exposures and increase resilience to cope with change*
- *Avoid or minimize coastal resource impacts when addressing risks to new or existing development.*
- *Require development proposals to include analysis of coastal hazard impacts and include mitigation measures where applicable.*
- *Consider multiple scenarios of sea level rise and associated flooding, wave inundation, and erosion impacts when developing and approving Capital Improvement Projects.*
- *Take into consideration the impacts of climate change (higher temperatures, sea level rise, extremes in rainfall as floods or drought, and potential increases in tropical storm frequency or severity) in land use, development, and planning*

#### Discussion:

The proposed project is consistent with LCP policies for climate change adaptation. The shared-use path system will increase Kaua'i's resilience to climate change by contributing to the development of a multimodal transportation system. Multimodal transportation networks provide system redundancy and accommodate alternative transportation modes that support adaptation strategies in the event that roadway infrastructure, gas imports or the energy market generally are impacted by climate-related events and trends.

The proposed path alignment and improvements are designed to minimize coastal resource impacts and impacts to the path infrastructure. The proposed path alignment is located entirely outside of the 60-foot shoreline setback. The proposed path ranges in elevation from approximately 17 feet to 50 feet above mean sea level (msl). The proposed path improvements are located atop a rocky coastal bluff above a shoreline that is almost exclusively bedrock and/or rocky

intertidal shore and therefore is at low risk for shoreline erosion. Two of the proposed drainage crossings (drainage crossings #1 and #2) will use existing culvert crossings located more than 300 feet from the shoreline at an elevation greater than 45 feet above msl. The proposed new pre-fabricated bridge structure across drainage crossing #3 will be located approximately 150 feet from the shoreline at an elevation of approximately 60 feet above msl. Drainage crossing #4 will involve extending an existing culvert crossing on the mauka side away from the shoreline. Drainage crossing #4 is located approximately 60 feet from the shoreline at an elevation of approximately 28 feet above msl. The path will be constructed of concrete with saw-cuts every 3 feet, consistent with County practices. The alignment will be designed as much as possible to follow existing topography in order to minimize changes to existing drainage patterns and land forms, and to reduce impacts to coastal resources generally. Path improvements along the coast will be limited to the at-grade concrete path and signage, with the exception of a comfort station proposed outside of the SMA at Ninini Point and protective fencing between the path and shearwater sea bird nesting areas inland from Ninini Point. These planning and design considerations and mitigation measures were identified based on an assessment of coastal hazard impacts in the project corridor, including shoreline change analysis conducted by Jim O'Connell, University of Hawai'i (UH) Sea Grant, which included consultation with Dr. Chip Fletcher, head of the UH Coastal Geology Group.

#### **Kaua'i Multimodal Land Transportation Plan (MLTP)**

The project directly supports the objectives of the MLTP, which provides the framework for land transportation system recommendations in both the Kaua'i General Plan and the Līhu'e Community Plan. The MLTP outlines steps the County of Kaua'i will take to achieve a balanced multimodal transportation system through the planning horizon year of 2035. The MLTP proposes programs for bicycle and pedestrian facilities as part of a multimodal system, including completion of the shared-use coastal path system of which the subject project is a part. MLTP policies relevant to the subject project include:

1. A balanced, multimodal transportation system that provides choice, flexibility and resiliency in personal access and circulation for all.
2. A transportation system that supports economic vitality and provides affordable access to jobs and economic opportunity.
3. A transportation system that supports and enhances public health.
4. A transportation system planned and designed to protect and enhance the island's natural landscapes and environmental quality.
5. A transportation system that makes efficient use of energy and is less dependent on imported petroleum.
6. A transportation system that will be maintained in a state of good repair.
7. A transportation system that protects and enhances the cultural values of Kaua'i, the rural character of the island and a high quality of life.

#### **Discussion:**

The proposed project supports the MLTP policies and objectives for development of a balanced, multimodal transportation system. See the detailed discussion

above regarding consistency with Kauaʻi General Plan and Līhuʻe Community Plan visions, goals and policies that are based on the MLTP.

**County of Kauaʻi Zoning Ordinances**

The project will also be developed in conformance with the COK Zoning Ordinances. The proposed pathway is a permitted use in all COK land use zones including the Tsunami District, Shore District, Special Treatment District-Public, and Special Treatment District Flood.

As described above in Part B, Project Description, all structures, while limited in scope and impact will be subject to additional construction and development standards in the Kauaʻi County Code, as required.

## **Section VI**

---

# **Volume I Exhibits:**

**Exhibit 1**

Project Location Map

**Exhibit 2**

State Land Use Districts

**Exhibit 3**

County of Kaua'i Zoning

**Exhibit 4**

Preferred Alignments Cost Estimate

**Exhibit 5**

Site Photos

**Exhibit 6**

Special Management Area Map

**Exhibit 7**

Shoreline Survey

**Exhibit 8**

General Site Plan

**Exhibit 9**

New Bridge and Culvert Drainage Crossing

**Exhibit 10**

State Historic Sites Figure and No Adverse Effect Table

**Exhibit 11**

Wetland Map

**Exhibit 12**

FEMA/FIRM Map

**Exhibit 13**

HRS 343 Finding of No Significant Impact

**Exhibit 14**

HRS 6E Historic Preservation Compliance

**Exhibit 15**

Archaeological Inventory Survey Documents

**Exhibit 16**

Ka Pa'akai Analysis

**Exhibit 17**

NHPA 106 and 6E Consultation and Correspondence



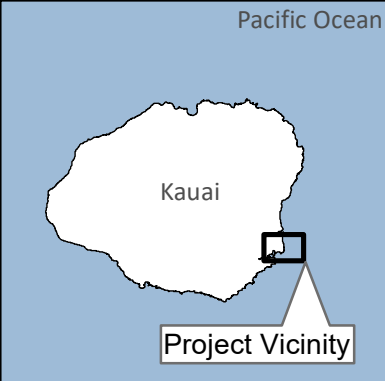
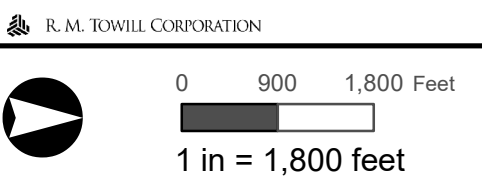
**Exhibit 1**  
Project Location Map







**Project Location Map**  
 Nāwiliwili - Ahukini Shared-Use Path  
 Phase A  
 County of Kaua'i  
 Līhu'e, Kaua'i, Hawai'i



**Legend**

- Segments B and D By Others
- Segments A, C, G, and H By County of Kaua'i
- Comfort Station
- Bike Depot
- Tax Map Key

*GIS Tax Map Key Layer Source:  
 Hawaii Statewide GIS Program. County of Kauai, 2014.*





**Exhibit 2**  
State Land Use Districts





**State Land Use Districts**  
 Nāwiliwili - Ahukini Shared-Use Path  
 Phase A  
 County of Kaua'i  
 Līhu'e, Kaua'i, Hawai'i

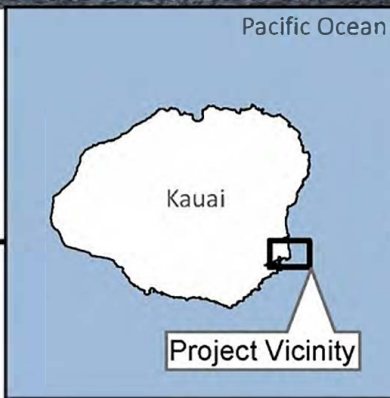
R. M. TOWILL CORPORATION



0 900 1,800 Feet



1 in = 1,800 feet



### Legend

Segments B and D By Others

Segments A, C, G, and H By County of Kaua'i

Comfort Station

Bike Depot

### State Land Use Districts

A

C

U

GIS State Land Use Districts Layer Source:  
 Hawaii Statewide GIS Program. County of Kauai, August, 2018.



**Exhibit 3**  
County of Kaua'i Zoning Districts

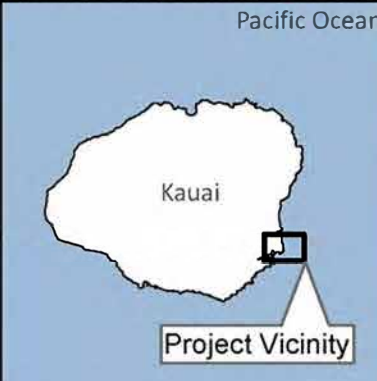
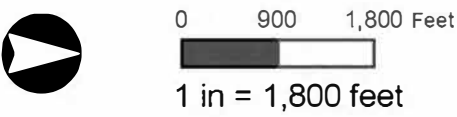






**County of Kaua'i Zoning**  
 Nāwiliwili - Ahukini Shared-Use Path  
 Phase A  
 County of Kaua'i  
 Līhu'e, Kaua'i, Hawai'i

R. M. TOWILL CORPORATION



Legend		
<span style="color: pink;">—</span>	Segments B and D By Others	
<span style="color: yellow;">—</span>	Segments A, C, G, and H By County of Kaua'i	
	Comfort Station	
	Bike Depot	
ZONING		
<span style="color: blue;">■</span>	A	<span style="color: orange;">■</span> O/ST-P
<span style="color: lightblue;">■</span>	C-G	<span style="color: red;">■</span> R-1/ST-P
<span style="color: teal;">■</span>	C-G/ST-P	<span style="color: orange;">■</span> R-10
<span style="color: brown;">■</span>	C-N	<span style="color: orange;">■</span> R-2
<span style="color: yellow;">■</span>	CON	<span style="color: yellow;">■</span> R-20
<span style="color: red;">■</span>	I-G	<span style="color: orange;">■</span> R-4
<span style="color: lightblue;">■</span>	I-G/ST-P	<span style="color: blue;">■</span> R-4/ST-P
<span style="color: lightgreen;">■</span>	I-L	<span style="color: orange;">■</span> R-6
<span style="color: orange;">■</span>	NO ZONING	<span style="color: yellow;">■</span> R-8
<span style="color: green;">■</span>	O	<span style="color: orange;">■</span> RR-10
<span style="color: red;">■</span>	O/ST-C	<span style="color: lightgreen;">■</span> RR-20

GIS County of Kaua'i Zoning Layer Source:  
 Hawaii Statewide GIS Program. County of Kauai, August 2018.



**Exhibit 4**  
Preferred Alignments Cost Estimate



**Nāwiliwili - Ahukini Shared Use Path Project**  
**Phase A - Ahukini Landing to Ninini Point with Connections to Kapule Highway**  
**Development Valuation Summary**

Nāwiliwili-Ahukini Shared-Use Path - Phase A Segments	Development Costs <sup>1</sup>		
	In SMA	Outside SMA	Total
Segment A - Coastal Path from Ahukini Landing to Ninini Point to Ninini Point Street	\$6,025,406	\$8,552,327	\$14,577,734
Segment A1 - Ninini Point Path and Comfort Station	\$0	\$1,908,506	\$1,908,506
Segment B - Coastal Path - Ninini Point to Kalapakī Beach	By Others		\$0
Segment C - Shared-Use Road - Nini Point Street from Ninini Point to Kapule Highway	\$0	\$433,136	\$433,136
Segment D - Kapule Highway / Ninini Point Street Intersection to Kaua'i Marriott (Limo Road)	By Others		\$0
Segment G - Shared-Use Road - Ahukini Landing to Līhu'e Airport	\$83,602	\$390,141	\$473,743
Segment H - Shared-Use Path Bike Depot - Līhu'e Airport to Kapule Highway	\$0	\$1,441,531	\$1,441,531
	\$6,109,008	\$12,725,640	\$18,834,648

**S**  
**AHUKINI -- CIVIL CENTER -- NAWILIWILI HARBOR**  
**ALTERNATE PRELIMINARY COST ESTIMATE**

April 17, 2008    February 18, 2022  
Escalation Rate: <sup>1</sup>    2.354

	Quantity	Unit	Description	Unit Price	Total	Escalated Total
<b>CORRIDOR I - AHUKINI LANDING TO NAWILIWILI BEACH PARK</b>						
<b>SEGMENT A - AHUKINI LANDING TO NININI POINT</b>						
	<b>Base - Comfort Station at Ninini Point Lighthouse</b>					
	2,300	SF	Asphalt concrete parking lot. 4" thick A.C. pavement and 6" thick base course layer	\$15	\$34,500	\$81,213
	4,200	SF	12' Wide concrete shared use path (350 LF) out of SMA	\$15	\$63,000	\$148,302
	LS	LS	Temporary erosion control	L.S.	\$5,000	\$11,770
	LS	LS	2-1/2" Meter and box	L.S.	\$102,500	\$241,285
	LS	LS	Comfort Station. (Including drinking fountain, sink, hose bibb, and compost outhouse)	L.S.	\$500,000	\$1,177,000
			Subtotal		\$705,000	\$1,659,570
			Contingency (15%)		\$105,750	\$248,936
			TOTAL		\$810,750	\$1,908,506
	<b>Alternate A1 - Closest to Shore Line</b>					
	LS	LS	Clearing and grubbing	L.S.	\$300,000	\$706,200
	24,000	SF	12' Wide concrete shared use path (2,000 LF) out of SMA	\$15	\$360,000	\$847,440
	96,960	SF	12' Wide concrete shared use path (8,080 LF) in CD	\$15	\$1,454,400	\$3,423,658
	107,040	SF	12' Wide concrete shared use path (8,920 LF) in SMA	\$15	\$1,605,600	\$3,779,582
	LS	LS	Drainage Crossing - 1 Culvert crossing improvements (3-24")	L.S.	\$140,000	\$329,560
	LS	LS	Drainage Crossing - 2 Culvert crossing improvements (54")	L.S.	\$130,000	\$306,020
	LS	LS	Drainage Crossing - 3 Prefab aluminum bridge, 60' span. Including abutments.	L.S.	\$200,000	\$470,800
	LS	LS	Drainage Crossing - 4 (southernmost) Retrofit existing 10'x6' concrete box culvert	L.S.	\$600,000	\$1,412,400
	LS	LS	Fishermen access points	L.S.	\$20,000	\$47,080
	LS	LS	Temporary erosion control	L.S.	\$575,000	\$1,353,550
			SUBTOTAL		\$5,385,000	\$12,676,290
			Contingency (15%)		\$807,750	\$1,901,444
			TOTAL		\$6,192,750	\$14,577,734

Source:

<sup>1</sup> Construction Analytics - Building Cost Index - Construction Inflation 2005 - 2022. <https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/>

**KAUAI BIKE PATH  
AHUKINI -- CIVIL CENTER -- NAWILIWILI HARBOR  
ALTERNATE PRELIMINARY COST ESTIMATE**

April 17, 2008    February 18, 2022  
Escalation Rate: <sup>1</sup>    2.354

	Quantity	Unit	Description	Unit Price	Total	Escalated Total
<b>CORRIDOR I - AHUKINI LANDING TO NAWILIWILI BEACH PARK</b>						
<b>SEGMENT C - NININI POINT TO KAPULE HIGHWAY</b>						
			<b>Alternate 1 - Striping and Signage for Shared-Use Road</b>	\$810,750		
				\$6,192,750		
	6,200	LF	Signage and striping for shared-use road	\$25	\$155,000	\$364,870
- 2022. <a href="https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/">https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/</a>		LS	Temporary erosion control	L.S.	\$5,000	\$11,770
			Subtotal		\$160,000	\$376,640
			Contingency (15%)		\$24,000	\$56,496
			<b>TOTAL</b>		<b>\$184,000</b>	<b>\$433,136</b>

Source:

<sup>1</sup> Construction Analytics - Building Cost Index - Construction Inflation 2005 - 2022. <https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/>

**KAUAI BIKE PATH  
AHUKINI -- CIVIL CENTER -- NAWILIWILI HARBOR  
ALTERNATE PRELIMINARY COST ESTIMATE**

April 17, 2008    February 18, 2022  
Escalation Rate: <sup>1</sup>    2.354

	Quantity	Unit	Description	Unit Price	Total	Escalated Total
	CORRIDOR II - AHUKINI LANDING TO LIHUE CIVIC CENTER					
	SEGMENT G - LIHUE AIRPORT TO KAPULE HIGHWAY					
	Alternate G1 - Ahukini Road shared-use - Ahukini Landing to Airport					
- 2022. ht	1,200	LF	Striping and signage for shared use road - In SMA	\$25	\$30,000	\$70,620
	5,600	LF	Striping and signage for shared use road.	\$25	\$140,000	\$329,560
	LS	LS	Temporary erosion control	L.S.	\$5,000	\$11,770
	Subtotal				\$175,000	\$411,950
	Contingency (15%)				\$26,250	\$61,793
			G1 TOTAL		\$201,250	\$473,743

Source:

<sup>1</sup> Construction Analytics - Building Cost Index - Construction Inflation 2005 - 2022. <https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/>



**KAUAI BIKE PATH  
AHUKINI -- CIVIL CENTER -- NAWILIWILI HARBOR  
ALTERNATE PRELIMINARY COST ESTIMATE**

April 17, 2008      February 18, 2022  
Escalation Rate: <sup>1</sup>      2.354

	Quantity	Unit	Description	Unit Price	Total	Escalated Total
<b>CORRIDOR II - AHUKINI LANDING TO LIHUE CIVIC CENTER</b>						
<b>SEGMENT H - LIHUE AIRPORT TO KAPULE HIGHWAY</b>						
<b>Alternate H1 - North End of Lihue Airport to Kapule Highway</b>						
	17,000	SF	10' Wide concrete shared use path (1,200 + 500 LF)	\$15	\$255,000	\$600,270
		LS	Temporary erosion control	LS	\$5,000	\$11,770
	LS	LS	Culvert crossing	L.S.	\$260,000	\$612,040
	LS	LS	Bike depot	L.S.	\$50,000	\$117,700
	LS	LS	Temporary erosion control	L.S.	\$5,000	
			Subtotal		\$320,000	\$753,280
			Contingency (15%)		\$48,000	\$112,992
			<b>H1 TOTAL</b>		<b>\$368,000</b>	<b>\$866,272</b>
<b>Alternate H2 - South End of Lihue Airport to Kapule/Ka'ana St. Intersection</b>						
	10,500	SF	10' Wide concrete shared use path (1,050 LF)	\$15	\$157,500	\$370,755
	LS	LS	Bike Depot	L.S.	\$50,000	\$117,700
	LS	LS	Temporary erosion control	L.S.	\$5,000	\$11,770
			Subtotal		\$212,500	\$500,225
			Contingency (15%)		\$31,875	\$75,034
			<b>H2 TOTAL</b>		<b>\$244,375</b>	<b>\$575,259</b>

**Total H1 and H2      \$1,441,531**

Source:

<sup>1</sup> Construction Analytics - Building Cost Index - Construction Inflation 2005 - 2022. <https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/>



**Exhibit 5**  
Site Photos







**Photo Map Key**

Google Earth



1 mi





Photo 1: Ahukini Road, start of Path A, facing south.



Photo 2: Ahukini Road, intersection of Path A and G, facing west.

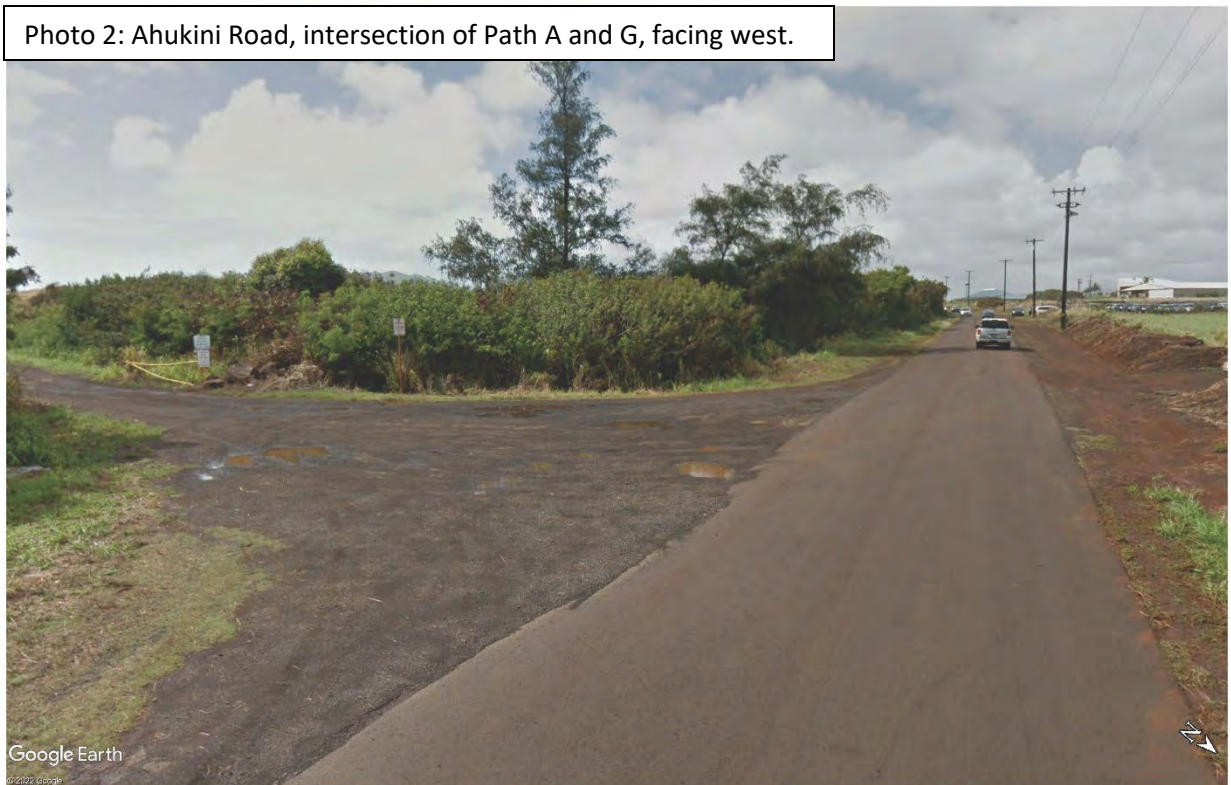




Photo 3: Ahukini Road, intersection of Path A and G, facing south.



Photo 4: Path A, facing east.





Photo 5: Path A, facing south.



Photo 6: Path A, facing south.





Photo 7: Path A, Bridge crossing, facing south.



Photo 8: Path A, facing east.





Photo 9: Path A, facing north.



Photo 10: Path A, facing south.





Photo 11: Path A, facing south.



Photo 12: Path A, bridge crossing, facing west.





Photo 13: Path A, facing north.



Photo 14: Path A, public access, facing northeast.





Photo 15: Path A, encampment, facing south.



Photo 16: Path A, fishing access 1, aerial.





Photo 17: Path A, bridge crossing, facing east.



Photo 18: Path A, facing south.





Photo 19: Path A, fishing access 2, aerial.



Photo 20: Path A, facing north.





Photo 21: Path A, fishing access 3, aerial.



Photo 22: Path A, fishing access 4, aerial.





Photo 23: Path A, fishing access 5, aerial.



Photo 24: Path A, facing southwest.



Photo 25: Path A, facing southwest.





Photo 26: Path A, facing south.





Photo 27: Path A, facing south.





Photo 28: Path A, facing northwest.





Photo 29: Path A, facing south.





Photo 30: Path A, Ninini Point Street, facing northwest.





Photo 31: Path A, Ninini Point Street, facing northwest.





Photo 32: Path A, facing east.





Photo 33: Path A, facing east.





Photo 34: Path A, Ninini Point Street, facing northwest.





Photo 35: Path A, Ninini Point Street, facing northwest.





Photo 36: Path A, Ninini Point Street, facing northwest.





Photo 37: Path A, Ninini Point Street, facing northwest.





Photo 38: Path A, Ninini Point Street, facing northwest.





Photo 39: Path A, Ninini Point Street, facing north.





Photo 40: Path A, Ninini Point Street, facing northwest.





Photo 41: Path A, Ninini Point Street, facing west.





Photo 42: Path A, Ninini Point Street, facing west.

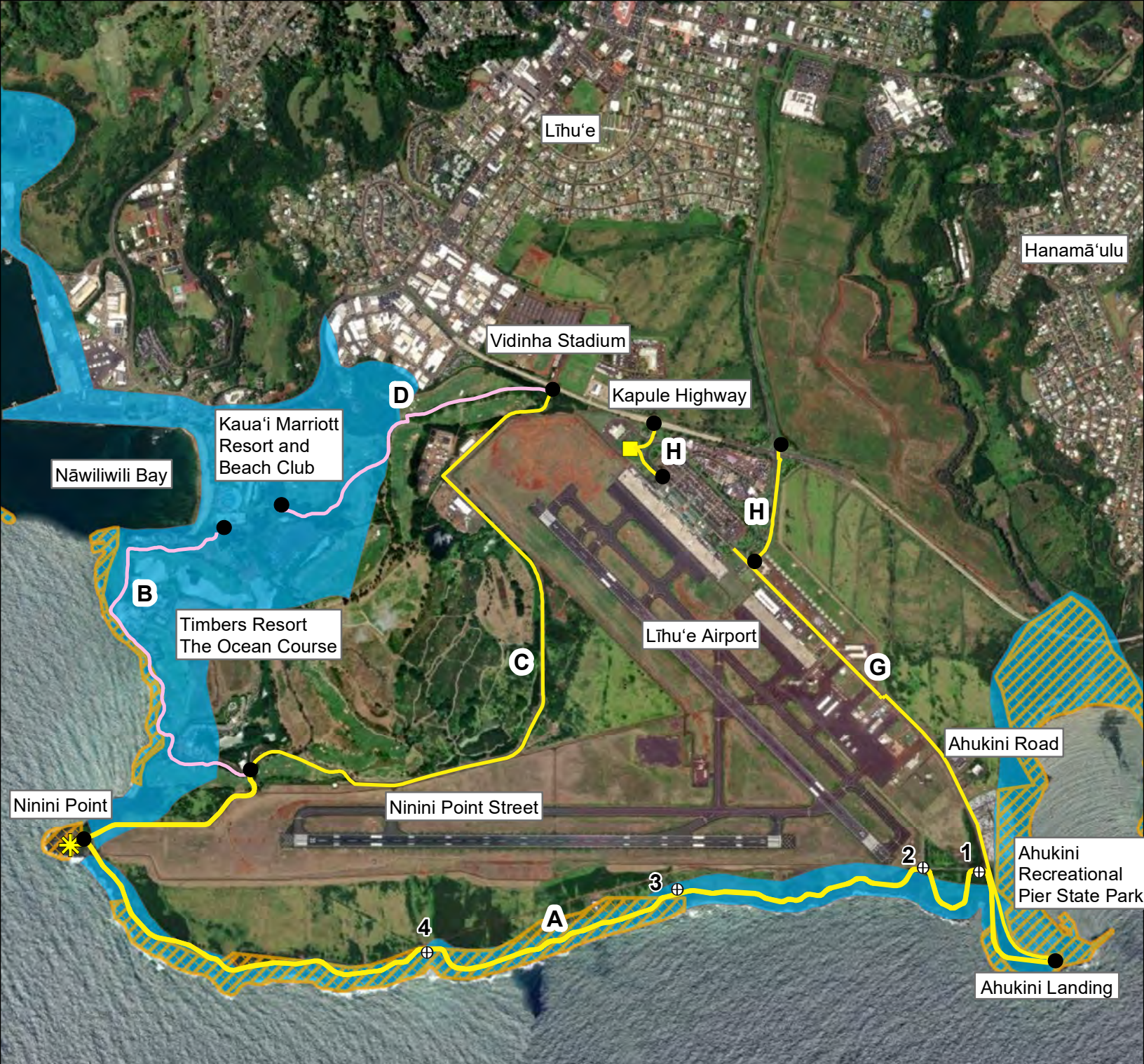


**Exhibit 6**  
Special Management Area Map









NOTE: The County of Kaua'i requires that all portions of new concrete paths/walkways located within 40 feet of the shoreline setback area shall be saw-cut at a minimum of three (3) foot intervals.

All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kaua'i requirements.

## Special Management Area

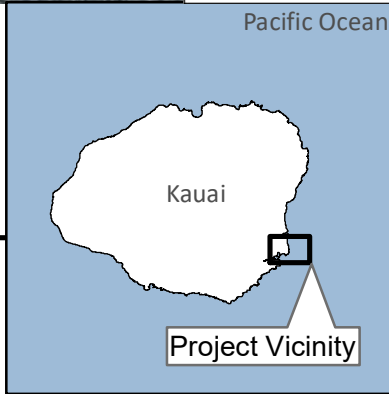
Nāwiliwili - Ahukini Shared-Use Path  
Phase A  
County of Kaua'i  
Līhu'e, Kaua'i, Hawai'i

R. M. TOWILL CORPORATION



0 900 1,800 Feet

1 in = 1,800 feet



## Legend

- Segments B and D By Others
- Segments A, C, G, and H By County of Kaua'i
- ⊕ Drainage Crossings
- ★ Comfort Station
- Bike Depot
- Special Management Area
- ▨ Conservation District

GIS County of Kaua'i Zoning Layer Source:  
Hawaii Statewide GIS Program. County of Kauai, August 2018.

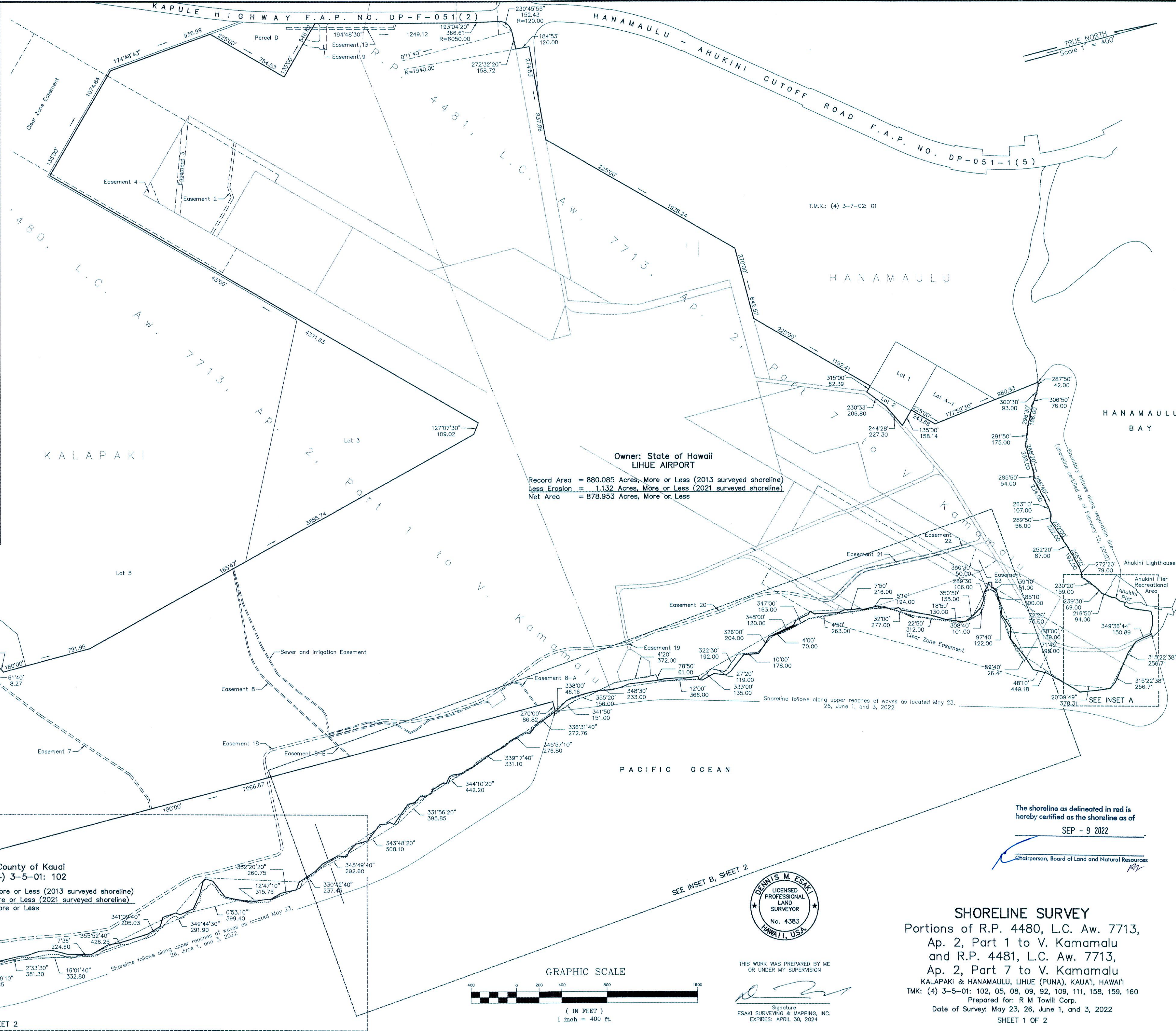
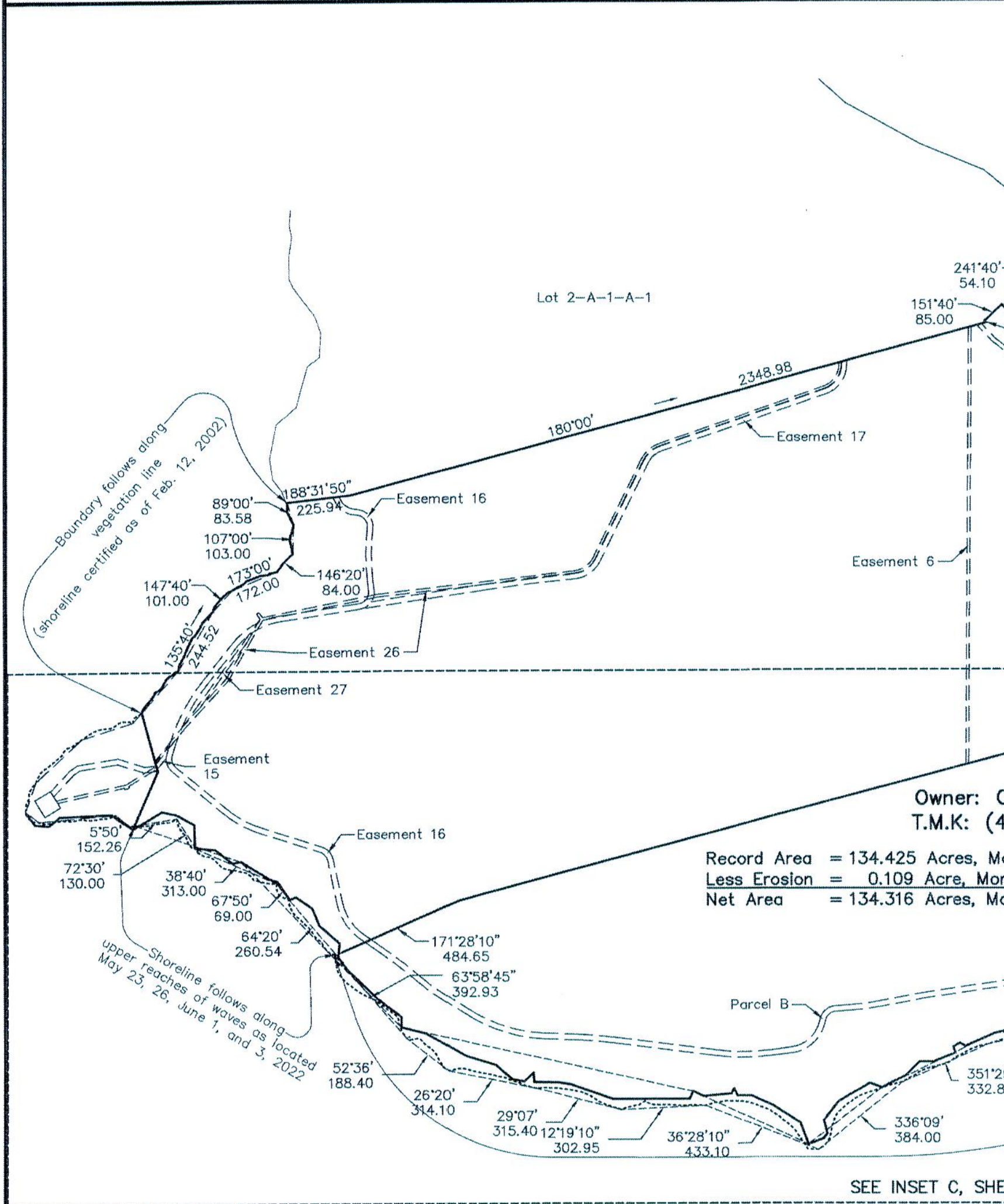
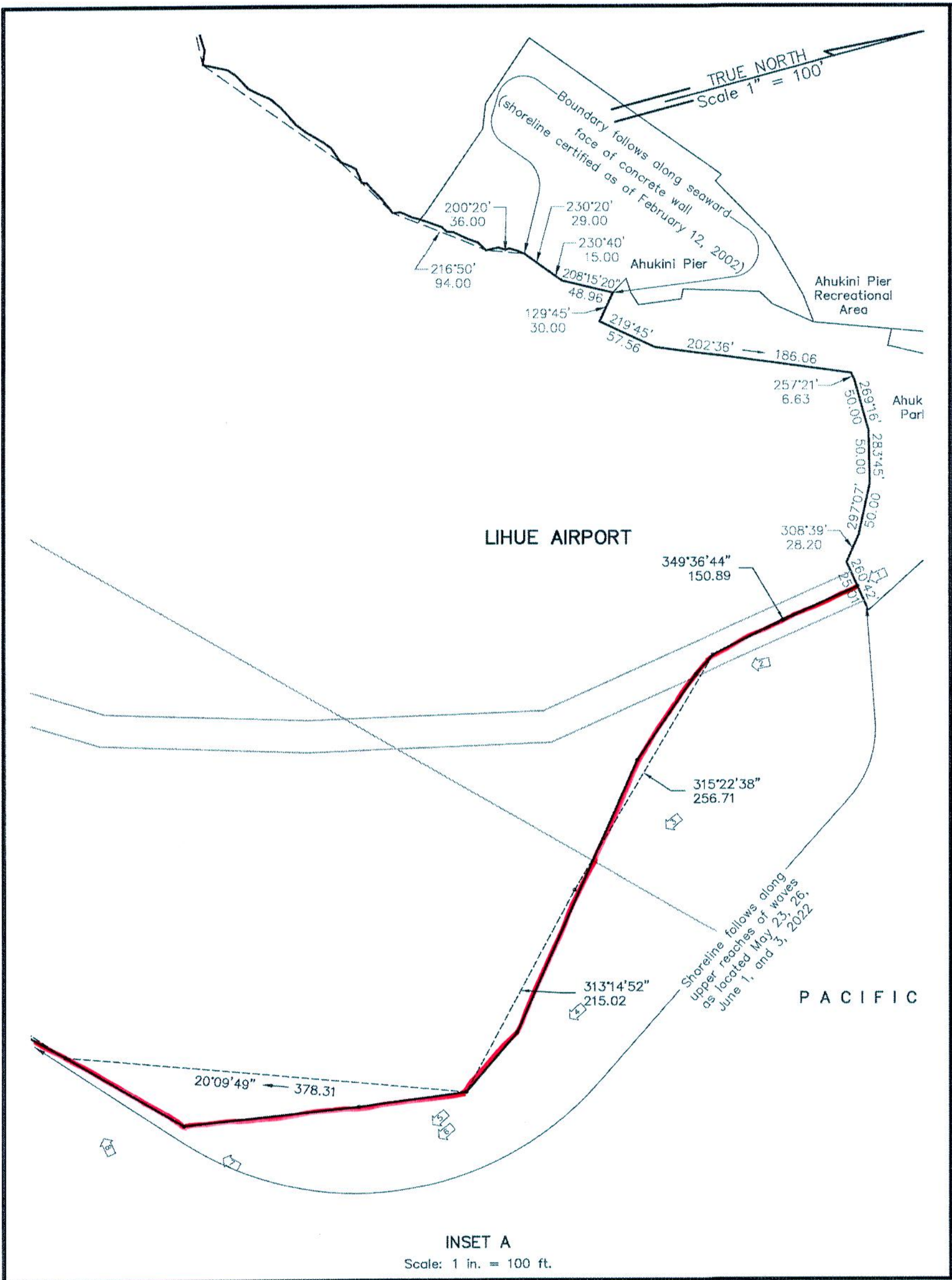




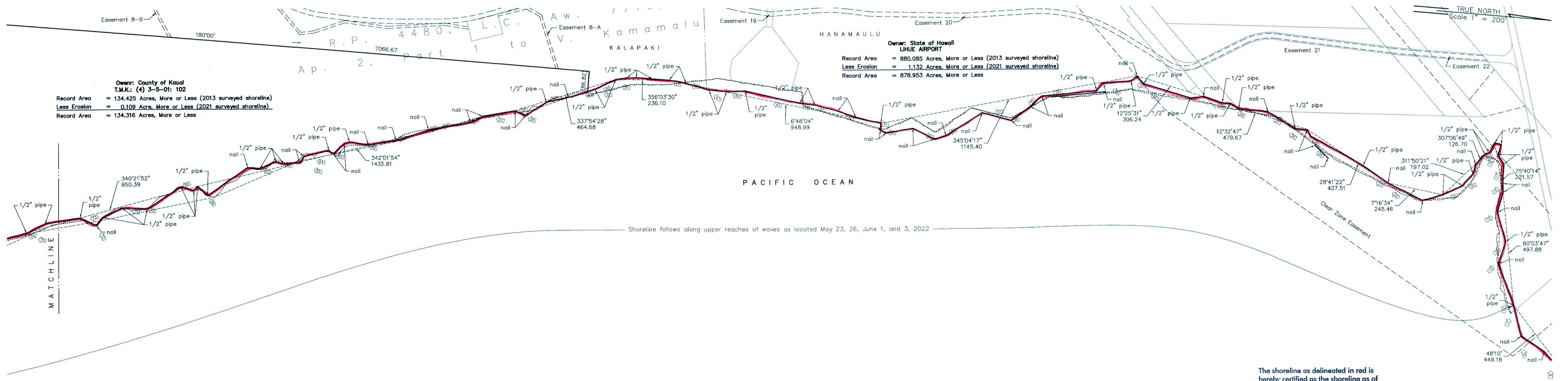
**Exhibit 7**  
Shoreline Survey





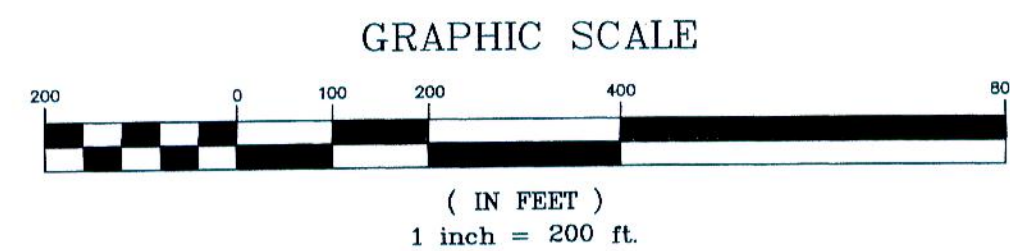




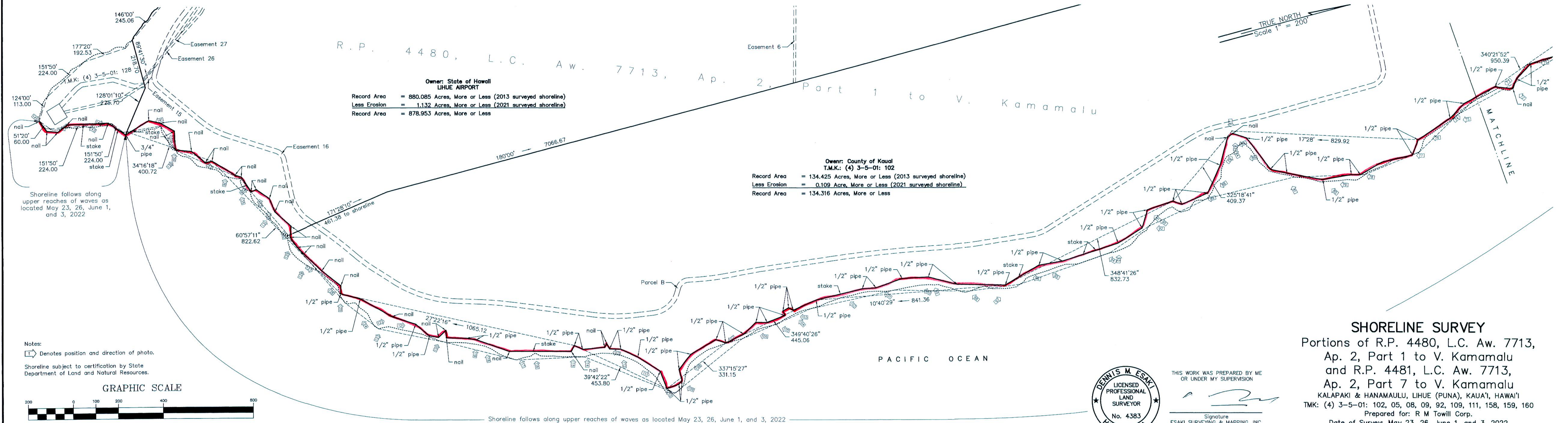


The shoreline as delineated in red is hereby certified as the shoreline as of  
 SEP - 9 2022  
 \_\_\_\_\_  
 Chairperson, Board of Land and Natural Resources

Notes:  
 [ ] Denotes position and direction of photo.  
 Shoreline subject to certification by State  
 Department of Land and Natural Resources.



INSET B  
 Scale: 1 in. = 200 ft.

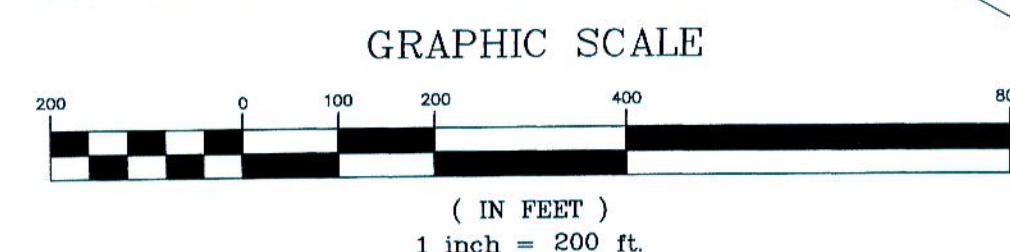


**SHORELINE SURVEY**  
 Portions of R.P. 4480, L.C. Aw. 7713,  
 Ap. 2, Part 1 to V. Kamamalu  
 and R.P. 4481, L.C. Aw. 7713,  
 Ap. 2, Part 7 to V. Kamamalu  
 KALAPAKI & HANAMAULU, LIHUE (PUNA), KAUAI, HAWAII  
 TMK: (4) 3-5-01: 102, 05, 08, 09, 92, 109, 111, 158, 159, 160  
 Prepared for: R M Towill Corp.  
 Date of Survey: May 23, 26, June 1, and 3, 2022  
 SHEET 2 OF 2



THIS WORK WAS PREPARED BY ME  
 OR UNDER MY SUPERVISION  
 \_\_\_\_\_  
 Signature  
 ESAKI SURVEYING & MAPPING, INC.  
 EXPIRES: APRIL 30, 2024

Notes:  
 [ ] Denotes position and direction of photo.  
 Shoreline subject to certification by State  
 Department of Land and Natural Resources.



INSET C  
 Scale: 1 in. = 200 ft.



**Exhibit 8**  
General Site Plan



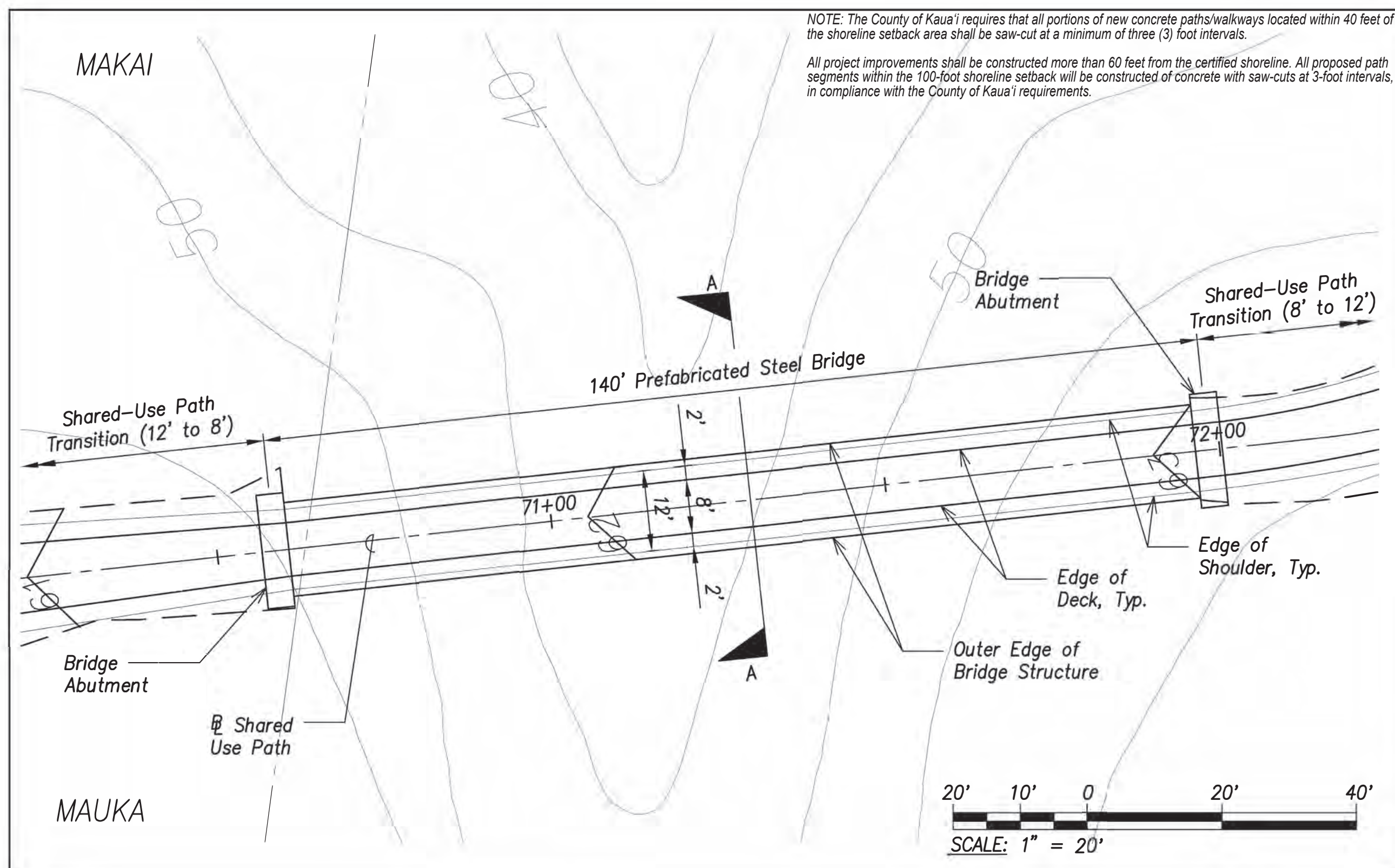


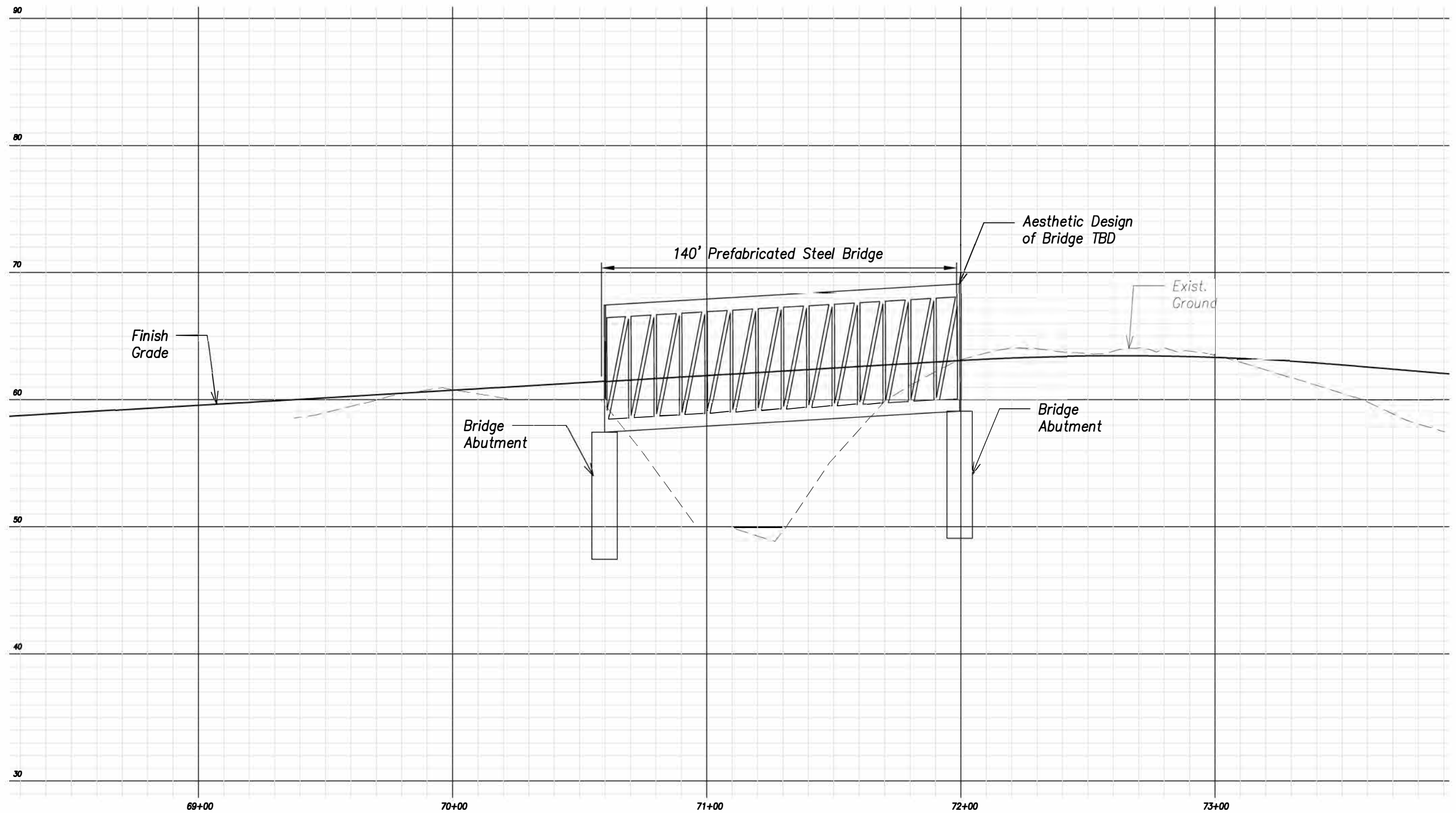




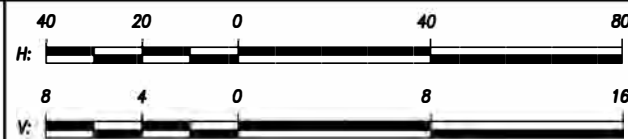
**Exhibit 9**  
Bridge and Culvert Drainage Crossing







Planning – Engineering – Environmental Services – Photogrammetry – Surveying – Construction Management  
**R. M. TOWILL CORPORATION**  
 808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-3494



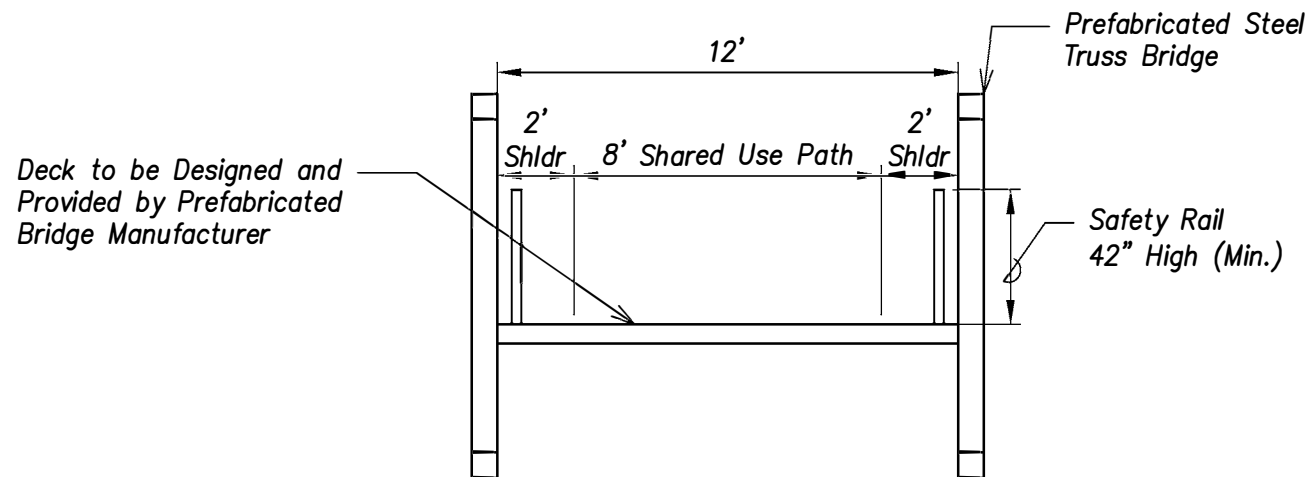
NAWLIWILI-AHUKUNI SHARED USED PATH

ELEVATION – BRIDGE CROSSING (STA. 70+59 TO STA. 71+98)

Drainage Crossing #3

**Figure  
X-X**





Existing Ground

## Section A-A – Bridge Crossing

SCALE: 1" = 5'



NAWILIWILI-AHUKUNI SHARED USED PATH



Planning – Engineering – Environmental Services – Photogrammetry – Surveying – Construction Management  
**R. M. TOWILL CORPORATION**  
 808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-3494

SECTION – BRIDGE CROSSING  
**Drainage Crossing #3**



**Exhibit 10**  
State Historic Sites Figure and No Adverse Effect Table



# Kaua'i

Project Vicinity

Ahukini Landing

08-9000

11-2097

11-2096

08-3958

Pacific Ocean

11-9402

Nāwiliwili Stream  
Railroad Bridge

11-1845

11-1999

11-B004

Pū'ali Bridge

11-6009

11-009

Nāwiliwili Harbor

Ninini Point

11-2095

11-101

11-2094

11-422

11-423

11-2093

11-421

11-424

11-2086

11-2092

11-2091

11-2090

11-2089

11-2088

11-2087

11-100

## LEGEND

- Primary Project Corridor
- Secondary Network Corridors

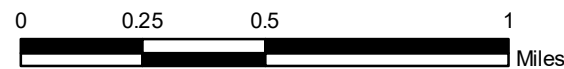
## FIGURE 5-1

### STATE HISTORIC SITES

Nāwiliwili - Ahukini Shared-Use Path

County of Kaua'i

Līhu'e, Kaua'i, Hawai'i



R.M. Towill Corporation



**“No Adverse Effect” for the following historic properties within the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-009	Kuhiau Heiau	Previously documented. No further work. Describe in interpretive display at Nāwiliwili Beach Park.
50-30-11-100	Ninini Heiau	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1999	Paukini Rock (in Nāwiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nāwiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	n/a
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	n/a
11-B004	Historic Cemetery near Nāwiliwili Park	Avoid.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker’s residence)	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer. Data recovery program to be undertaken before path construction begins.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work.
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work.
50-30-11-2093*	Plantation-era ditch drainage	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation	Preservation. Avoid with a 20-foot buffer.

**“No Adverse Effect” for the following historic properties within the APE**

50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.
--	Pū‘ali (Niumalu) Bridge	Avoid existing bridge with a buffer. Buffer distance to be determined by the SHPD, Architectural Branch.

\* Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point (CSH, 2010, 2014).



**Exhibit 11**  
Wetland Map







### Legend

- Segments B and D By Others
- Segments A,C,G, and H By County of Kaua'i
- Comfort Station

### Wetlands

- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Riverine

GIS Wetland Layer Source:  
U.S. Fish and Wildlife Service National Wetlands Inventory

### Wetland Map

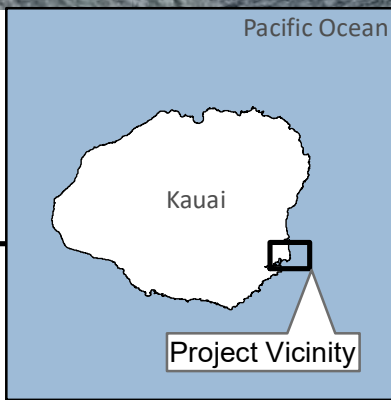
Nāwiliwili - Ahukini Shared-Use Path  
Phase A  
County of Kaua'i  
Līhu'e, Kaua'i, Hawai'i

R. M. TOWILL CORPORATION



0 900 1,800 Feet

1 in = 1,600 feet



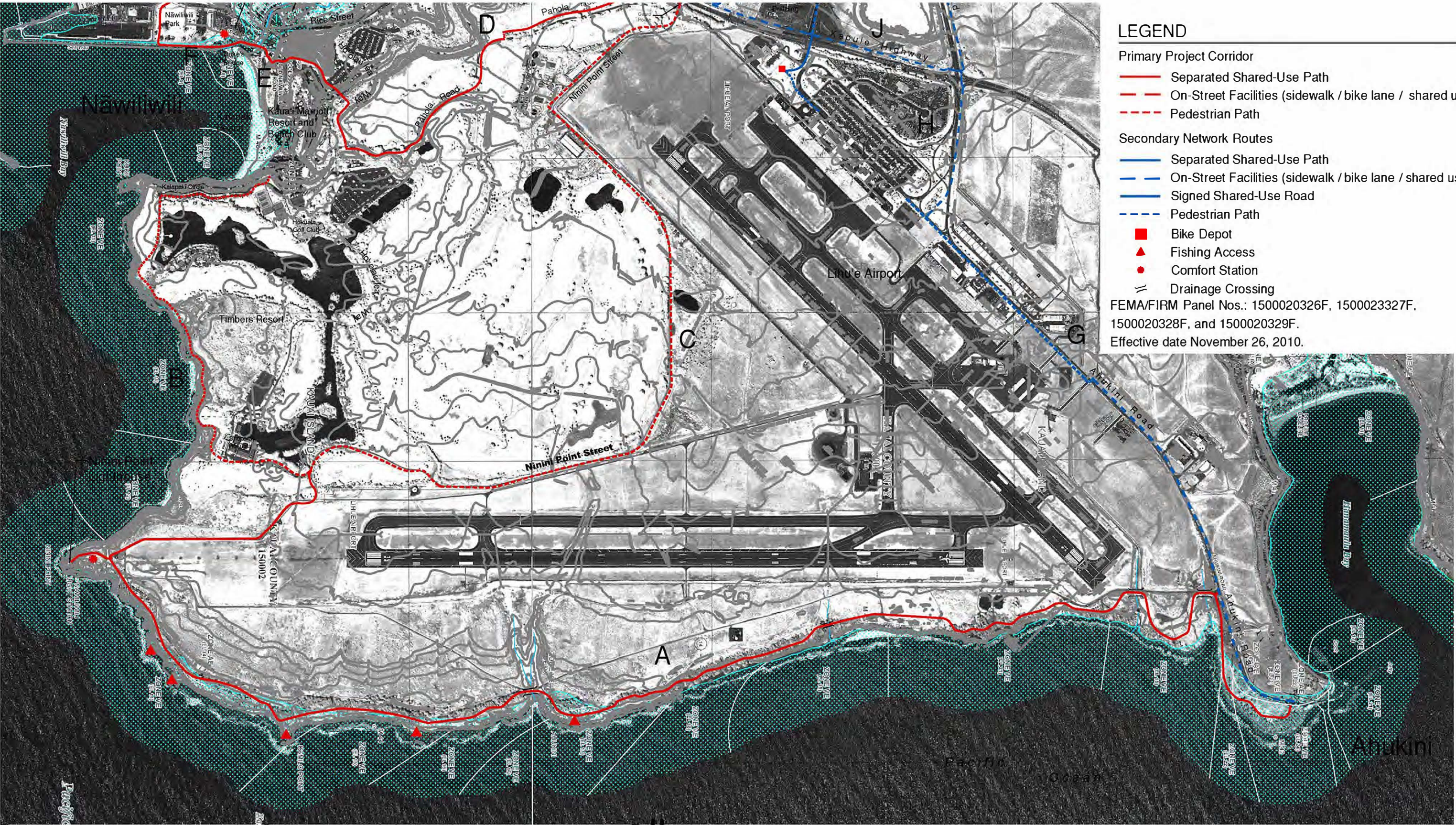


**Exhibit 12**  
FEMA/FIRM Map









# LEGEND

- Primary Project Corridor
- Separated Shared-Use Path
  - On-Street Facilities (sidewalk / bike lane / shared use)
  - Pedestrian Path
- Secondary Network Routes
- Separated Shared-Use Path
  - On-Street Facilities (sidewalk / bike lane / shared use)
  - Signed Shared-Use Road
  - Pedestrian Path
- Bike Depot
  - Fishing Access
  - Comfort Station
  - Drainage Crossing
- FEMA/FIRM Panel Nos.: 1500020326F, 1500023327F, 1500020328F, and 1500020329F.  
Effective date November 26, 2010.

Nāwiliwili - Ahukini Shared-Use Path  
County of Kaua'i  
Lihue, Island of Kaua'i, Hawai'i

FIGURE 3-3: FEMA-FIRM Map





**Exhibit 13**  
HRS 343 Finding of No Significant Impact





**NĀWILIWILI – AHUKINI SHARED-USE PATH**  
**Federal Aid Project No. CMAQ-0700(57)**  
**County of Kaua‘i, Hawai‘i**

**Final Environmental Assessment/  
Finding of No Significant Impact**  
Submitted Pursuant to Hawai‘i Revised Statutes, Chapter 343

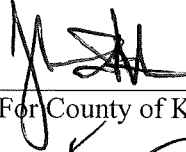
State of Hawai‘i, Department of Transportation, Highways Division  
County of Kaua‘i, Department of Public Works

12/8/17

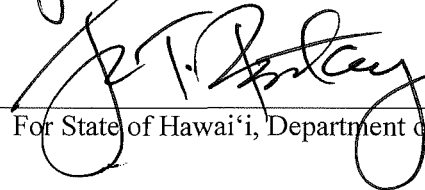
Date of Approval

1/12/18

Date of Approval



For County of Kaua‘i, Department of Public Works



For State of Hawai‘i, Department of Transportation

The following persons may be contacted for additional information concerning this document:

Jade Butay, Interim Director Department of Transportation State of Hawaii 869 Punchbowl Street Honolulu, HI 96813 Ph. (808) 587-2150	Lyle Tabata, Acting County Engineer Department of Public Works County of Kauai 4444 Rice Street, Suite 275 Lihue, HI 96766 Ph. (808) 241-4992
---	--

This Final Environmental Assessment (FEA) documents an evaluation of potential impacts from a proposed coastal, shared-use path from Nāwiliwili Park to Ahukini Landing in Līhu‘e District on the island of Kaua‘i. A path segment is also proposed between Nāwiliwili Park and Niumalu Park. Additional path segments will connect the coastal path to the Līhu‘e Airport and Līhu‘e Civic Center. The proposed project will consist of a 10- to 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors will provide additional connections through urban areas. Path improvements and amenities will include separated crossings at major drainage ways, educational signage, a comfort station at Ninini Point, adaptive reuse of the Nāwiliwili Stream Railroad Bridge, and various improvements at Nāwiliwili Park to be coordinated with the park’s master plan. The project will benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers. The project is not anticipated to have significant adverse impact to water quality, air quality, existing utilities, noise levels, social welfare, historic properties, or wildlife habitat. Measures to mitigate short-term and long-term impacts are available and will be implemented in accordance with applicable regulations and/or consultation with appropriate agencies. Anticipated effects will be temporary and will not adversely impact the environmental quality of the area. Therefore, a Finding of No Significant Impact (FONSI) has been issued under HRS, Chapter 343.



**Exhibit 14**  
HRS 6E Historic Preservation Compliance







STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA  
INTERIM FIRST DEPUTY

WILLIAM M. TAM  
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

January 21, 2014

Mr. David W. Shideler  
Cultural Surveys Hawai'i, Inc.  
P.O. Box 1114  
Kailua, HI 96734

LOG NO: 2013.6321, 2014.00187  
DOC NO: 1401SL17  
Archaeology

Dear Mr. Shideler:

**SUBJECT: Chapter 6E-8 and National Historic Preservation Act (NHPA) Section 106 Review–  
Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project  
Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island  
TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and  
various rights-of-way between various plats**

---

Thank you for the opportunity to review this revised report titled *Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats* (Altizer and Hammatt, November 2013). We received this revised draft on November 12, 2013 (Log No. 2013.6321). We subsequently determined the archaeological inventory survey (AIS) report did not indicate the project is a federal undertaking and did not include significance assessments using National Register criteria (January 3, 2014; email from Lebo to Shideler). We received the newly-revised AIS (Altizer and Hammatt, January 2014) and accompany materials via email on January 12 and 18, 2014 (Log No. 2014.00187).

The Federal Highway Administration (FHWA) is funding the State of Hawai'i Department of Transport's (HDOT) and County of Kaua'i Department of Public Work's (DPW) plan to develop the Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawai'i Master Plan – Bike Plan Hawai'i*, and in the 2003 *Bike Plan Hawai'i* update. Due to Federal Highway Administration (FHWA) funding through the State of Hawai'i Department of Transportation (HDOT), this project is a federal undertaking requiring compliance with Section 106 of the National Historic Preservation Act (NHPA), and 36 Code of Federal Regulations (CFR) Part 800.

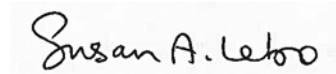
The current AIS was conducted at the request of R.M. Towill Corporation for portions of the Nāwiliwili-Ahukini Bike Path Project, which is located in coastal and near coastal portions of three ahupua'a in Līhu'e District: Hanamā'ulu, Kalapakī, and Nāwiliwili. The 6-mile (10 km) project area is one section of a larger 17-mile (27.4 km) project to connect Nāwiliwili with Anahola. The Area of Potential Effect (APE) for the current AIS consists of both alignment-option corridors linking Ahukini Landing, Nāwiliwili Harbor Light, Līhu'e Airport, Kaua'i Lagoons and Marriott Resort, Nāwiliwili Park and Harbor, and Niumalu Park. The APE also includes all lands in the vicinity of these alignment options from the western shoulder of the *mauka* (inland) corridor east to the ocean. A pedestrian survey consisting of 100% coverage at 5-10 m intervals was conducted within the APE.

The AIS report provides good discussions of the project, consultation, cultural and historic background research, previous investigations, field and laboratory methods and findings, as well as the significance assessments and recommendations. The AIS investigations identified 15 historic properties, of which 9 are assessed as potentially being affected by the project and also as being eligible for listing on the National/Hawai'i Registers of Historic Places (Table 1). In 2012, the FHWA rendered an adverse effect determination for the Nāwiliwili Stream Railroad Bridge (SIHP # 50-30-11-1845) and a determination that the current AIS project would have no adverse effect on the archaeological historic properties within the project area (Nickelson to Aila, July 25, 2012). The archaeological historic properties are being addressed in a Memorandum of Agreement to be submitted to the Advisory Council on Historic Preservation. The recommended mitigation measures will reduce the project's potentially adverse effect on these significant historic properties.

The revisions made to this document adequately address the major concerns raised in our prior correspondence (April 21, 2010, Log No. 2010.0723, Doc. No. 1004NM62; November 9, 2012, SHPD and CSH consultation, Lebo and Shideler; January 3, 2014, email from Lebo to Shideler; and January 18, 2014, email from Shideler to Lebo). The archaeological inventory survey report meets the requirements of the *Secretary of Interior Standards for Archaeological Documentation* and Hawaii Administrative Rule §13-276-5. It is accepted by SHPD. Please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the Kapolei SHPD office, attention SHPD Library.

Please contact me at (808) 692-8019 or at [Susan.A.Lebo@hawaii.gov](mailto:Susan.A.Lebo@hawaii.gov) if you have any questions or concerns regarding this letter.

Aloha,



Susan A. Lebo, PhD  
Oahu Lead Archaeologist

Table 1. Sites Assessments using National/Hawaii-Register Significance Criteria and HAR §13-275-6 Significance Criteria, and Site Recommendations

SIHP	Description	Significance Criteria		Recommendation
		NR/HR	HAR §13-275-6	
50-30-11-422	Plantation wall	Not significant	Not significant	No further work
50-30-11-423	Plantation wall	Not significant	Not significant	No further work
50-30-11-2086	Pre-Contact habitation terrace	D	“d” and “e”	Preservation, avoid with 20-ft buffer
50-30-11-2087	Historic lighthouse and associated habitation remnants	C and D	“c” and “d”	Preservation of remaining structure; adaptive reuse
50-30-11-2088	Military concrete slab base of communications tower	D	“d”	No further work
50-30-11-2089	Historic mounds, possible burial	D	“d” and “e”	Preservation in place; avoid w/50-ft buffer; data recovery prior to construction
50-30-11-2090	Military structural foundation, gun emplacement	D	“d”	Preservation; avoid w/20-ft buffer
50-30-11-2091	Historic habitation foundation	Not significant	Not significant	No further work
50-30-11-2092	Historic septic, outhouse and cesspool	D	“d”	No further work
50-30-11-2093	Plantation ditch	Not significant	Not significant	No further work
50-30-11-2094	Pre-/Post-Contact habitation terrace	D	“d” and “e”	Preservation; avoid w/20-ft buffer
50-30-11-2095	Pre-Contact scatter, activity area	D	“d” and “e”	No further work
50-30-11-2096	Historic ditch	Not significant	Not significant	No further work
50-30-11-2097	Historic ditch	Not significant	Not significant	No further work
50-30-11-2103	Historic structural foundations, industrial complex	D	“d”	Preservation, educational signage

## DEPARTMENT OF PUBLIC WORKS

TROY K. TANIGAWA, P.E., ACTING COUNTY ENGINEER

BOYD GAYAGAS, DEPUTY COUNTY ENGINEER



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

September 28, 2021

TO: Alan Downer PhD, Administrator  
State Historic Preservation Division  
Department of Land and Natural Resources  
601 Kamokila Boulevard, Suite 555  
Kapolei, Hawai'i 96707  
via: <https://shpd.hawaii.gov/hicris>

SUBJECT: Historic Preservation Review , Chapter 6E-8, Hawai'i Revised Statute (HRS)  
Nāwiliwili – Ahukini Shared-Use Path Project  
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i  
Ahupua'a of Nāwiliwili, Kalapakī , and Hanamā'ulu  
Federal Aid Project Number: CMAQ-0700 (57)  
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street; 3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Downer,

The County of Kaua'i, Department of Public Works (DPW) submits this letter to provide a project summary for the State Historic Preservation Division (SHPD) review per Hawai'i Revised Statutes (HRS) Chapter 6E-8 in connection with the Nawiliwili – Ahukini Shared-Use Path project.

The DPW, plans to develop a coastal, shared-use path between Nawiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae*, the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

Per HRS Chapter 6E-8 and Hawai'i Administrative Rules (HAR) Chapter 13-275, the DPW offers the following documentation:



## I. IDENTIFICATION AND INVENTORY OF HISTORIC PROPERTIES

There are 26 historic properties documented in the project area. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

**Table 1**  
**State Historic Sites Located in the Project Area**

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved <i>heiau</i> , whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	Avoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.

**Table 1**  
**State Historic Sites Located in the Project Area**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

\* Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point.

## II. EVALUATION OF SIGNIFICANCE

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

**Table 2**  
**State Historic Sites in the APE that Retain Aspects of Historic Integrity**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Eligibility Criteria*</b>	<b>Aspects of Integrity</b>
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.

**Table 2**  
**State Historic Sites in the APE that Retain Aspects of Historic Integrity**

50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

\* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

### III. EFFECT DETERMINATION

DPW offers a “effect, with proposed mitigation commitments” determination for this project.

### IV. PROPOSED MITIGATION COMMITMENTS

The DPW will commit to the following measures to avoid, minimize and mitigate any significant impacts to the historic properties along Nāwiliwili-Ahukini Shared-Use Path. Mitigation measures for specific historic sites are summarized in **Table 3**. Additional commitments are listed below.

**Table 3**  
**No Adverse Effect for the following historic properties within the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Mitigation Commitment</b>
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines

		developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

The DPW shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

**A. Supplemental Archaeological Inventory Survey**

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.



**B. Archaeological Monitoring Plan**

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
  - a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
  - b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
  - c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

**C. Mitigation Measures for Historic Properties**

To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities:

1. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
2. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

**D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945**

1. The County DPW shall consult with the SHPD during the design phase of the

Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.

2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell 'Ohana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

**E. Mitigation for Pū'ali (Niumalu) Bridge**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pū'ali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pū'ali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

**F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087**

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

**G. Treatment of Burial Sites and Human Remains**

1. The County DPW shall prepare appropriate documents as required to address the

treatment of any burials or other human remains encountered in the course of this project.

2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

#### **H. Preservation Plan / Interpretive Plan**

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
  - a. Interpretive signage will address the themes of each of the historic sites identified near the project.
  - b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
  - c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
  - d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

#### **I. Mitigation during Construction Activities**

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

#### **V. FEDERAL FUNDING**

Dr. Downer  
September 28, 2021  
Page 9 of 9

The proposed project will be funded from a combination of Federal and County funds. The project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y).

Consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed for the project. The SHPO concurred with FHWA's finding of "no adverse effect" determination in a letter dated June 12, 2020 (Log No.: 2020.01075, Doc. No.: 2006SH10).

Sincerely,

Troy K. Tanigawa  
Acting County Engineer

cc: Emma Kawamoto , HDOT



COK Letterhead

TO: Alan Downer PhD, Administrator  
State Historic Preservation Division  
Department of Land and Natural Resources  
601 Kamokila Boulevard, Suite 555  
Kapolei, Hawai'i 96707  
via: <https://shpd.hawaii.gov/hicris>

SUBJECT: Historic Preservation Review , Chapter 6E-8, Hawai'i Revised Statute (HRS)  
Nāwiliwili – Ahukini Shared-Use Path Project  
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i  
Ahupua'a of Nāwiliwili, Kalapakī , and Hanamā'ulu  
Federal Aid Project Number: CMAQ-0700 (57)  
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu &  
Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117,  
118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street;  
3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Downer,

The County of Kaua'i, Department of Public Works (DPW, agency) submits this letter to respectfully inform the State Historic Preservation Division (SHPD) that in accordance with Hawai'i Administrative Rules (HAR) §13-275-3(e) and §13-275-7(c)(2) the DPW concludes that the SHPD concurs with the DPW's Hawai'i Revised Statutes (HRS) Section 6E Historic Preservation review determination of "effect, with proposed mitigation commitments" for this project. HAR §13-275-3(e) states that should the SHPD not reply in writing within the time set in the HAR for historic preservation review, the SHPD is presumed to concur with the agency's submittal. HAR §13-275-7(c)(2) sets 45 days for the SHPD to respond to an effect determination. The DPW uploaded the HRS 6E effect determination to the SHPD HICRIS system on October 4, 2021. More than 300 days have passed since the DPW's submittal. The HICRIS log number is L59ESRVG5JKL. The SHPD Project Log No. is 2020PR33182.

The following is a summary of the project, identification of historic properties, basis for the effect determination, and proposed mitigation measures.

The DPW, plans to develop a coastal, shared-use path between Nawiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae*, the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and

various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

Per HRS Chapter 6E-8 and Hawai'i Administrative Rules (HAR) Chapter 13-275, the DPW offers the following documentation:

## I. IDENTIFICATION AND INVENTORY OF HISTORIC PROPERTIES

There are 26 historic properties documented in the project area. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

**Table 1**  
**State Historic Sites Located in the Project Area**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved <i>heiau</i> , whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe

**Table 1**  
**State Historic Sites Located in the Project Area**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
		in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	Avoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

\* Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point.

## II. EVALUATION OF SIGNIFICANCE

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

**Table 2**  
**State Historic Sites in the APE that Retain Aspects of Historic Integrity**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Eligibility Criteria *</b>	<b>Aspects of Integrity</b>
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.
50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

\* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).



### III. EFFECT DETERMINATION

DPW concludes a “effect, with proposed mitigation commitments” determination for this project.

### IV. PROPOSED MITIGATION COMMITMENTS

The DPW will commit to the following measures to avoid, minimize and mitigate any significant impacts to the historic properties along Nāwiliwili-Ahukini Shared-Use Path. Mitigation measures for specific historic sites are summarized in **Table 3**. Additional commitments are listed below.

**Table 3**  
**No Adverse Effect for the following historic properties within the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Mitigation Commitment</b>
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-	Military. Structural foundation for	Preserve in place. Avoid site by

2090	gun emplacement.	establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

The DPW shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

**A. Supplemental Archaeological Inventory Survey**

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

**B. Archaeological Monitoring Plan**

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
  - a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
  - b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
  - c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any

human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.

6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

**C. Mitigation Measures for Historic Properties**

1. To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities.
2. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
6. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

**D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and

consultation with the Lovell 'Ohana regarding unrecorded easement documents.

5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

**E. Mitigation for Pū'ali (Niumalu) Bridge**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pū'ali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pū'ali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

**F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087**

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

**G. Treatment of Burial Sites and Human Remains**

1. The County DPW shall prepare appropriate documents as required to address the treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

**H. Preservation Plan / Interpretive Plan**



1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
  - a. Interpretive signage will address the themes of each of the historic sites identified near the project.
  - b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
  - c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
  - d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

**I. Mitigation during Construction Activities**

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

## V. FEDERAL FUNDING

The proposed project will be funded from a combination of Federal and County funds. The project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y).

Consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed for the project. The SHPO concurred with FHWA's finding of "no adverse effect" determination in a letter dated June 12, 2020 (Log No.: 2020.01075, Doc. No.: 2006SH10).

Sincerely,

cc: Emma Kawamoto , HDOT



**Exhibit 15**  
Archaeological Inventory Survey Documents

Archaeological Literature Review and Field Inspection, June 2008.  
Archaeological Inventory Survey, September 2009.







STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA  
INTERIM FIRST DEPUTY

WILLIAM M. TAM  
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

January 21, 2014

Mr. David W. Shideler  
Cultural Surveys Hawai'i, Inc.  
P.O. Box 1114  
Kailua, HI 96734

LOG NO: 2013.6321, 2014.00187  
DOC NO: 1401SL17  
Archaeology

Dear Mr. Shideler:

**SUBJECT: Chapter 6E-8 and National Historic Preservation Act (NHPA) Section 106 Review–  
Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project  
Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island  
TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and  
various rights-of-way between various plats**

Thank you for the opportunity to review this revised report titled *Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats* (Altizer and Hammatt, November 2013). We received this revised draft on November 12, 2013 (Log No. 2013.6321). We subsequently determined the archaeological inventory survey (AIS) report did not indicate the project is a federal undertaking and did not include significance assessments using National Register criteria (January 3, 2014; email from Lebo to Shideler). We received the newly-revised AIS (Altizer and Hammatt, January 2014) and accompany materials via email on January 12 and 18, 2014 (Log No. 2014.00187).

The Federal Highway Administration (FHWA) is funding the State of Hawai'i Department of Transport's (HDOT) and County of Kaua'i Department of Public Work's (DPW) plan to develop the Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawai'i Master Plan – Bike Plan Hawai'i*, and in the 2003 *Bike Plan Hawai'i* update. Due to Federal Highway Administration (FHWA) funding through the State of Hawai'i Department of Transportation (HDOT), this project is a federal undertaking requiring compliance with Section 106 of the National Historic Preservation Act (NHPA), and 36 Code of Federal Regulations (CFR) Part 800.

The current AIS was conducted at the request of R.M. Towill Corporation for portions of the Nāwiliwili-Ahukini Bike Path Project, which is located in coastal and near coastal portions of three ahupua'a in Līhu'e District: Hanamā'ulu, Kalapakī, and Nāwiliwili. The 6-mile (10 km) project area is one section of a larger 17-mile (27.4 km) project to connect Nāwiliwili with Anahola. The Area of Potential Effect (APE) for the current AIS consists of both alignment-option corridors linking Ahukini Landing, Nāwiliwili Harbor Light, Līhu'e Airport, Kaua'i Lagoons and Marriott Resort, Nāwiliwili Park and Harbor, and Niumalu Park. The APE also includes all lands in the vicinity of these alignment options from the western shoulder of the *mauka* (inland) corridor east to the ocean. A pedestrian survey consisting of 100% coverage at 5-10 m intervals was conducted within the APE.

The AIS report provides good discussions of the project, consultation, cultural and historic background research, previous investigations, field and laboratory methods and findings, as well as the significance assessments and recommendations. The AIS investigations identified 15 historic properties, of which 9 are assessed as potentially being affected by the project and also as being eligible for listing on the National/Hawai'i Registers of Historic Places (Table 1). In 2012, the FHWA rendered an adverse effect determination for the Nāwiliwili Stream Railroad Bridge (SIHP # 50-30-11-1845) and a determination that the current AIS project would have no adverse effect on the archaeological historic properties within the project area (Nickelson to Aila, July 25, 2012). The archaeological historic properties are being addressed in a Memorandum of Agreement to be submitted to the Advisory Council on Historic Preservation. The recommended mitigation measures will reduce the project's potentially adverse effect on these significant historic properties.

The revisions made to this document adequately address the major concerns raised in our prior correspondence (April 21, 2010, Log No. 2010.0723, Doc. No. 1004NM62; November 9, 2012, SHPD and CSH consultation, Lebo and Shideler; January 3, 2014, email from Lebo to Shideler; and January 18, 2014, email from Shideler to Lebo). The archaeological inventory survey report meets the requirements of the *Secretary of Interior Standards for Archaeological Documentation* and Hawaii Administrative Rule §13-276-5. It is accepted by SHPD. Please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the Kapolei SHPD office, attention SHPD Library.



Please contact me at (808) 692-8019 or at [Susan.A.Lebo@hawaii.gov](mailto:Susan.A.Lebo@hawaii.gov) if you have any questions or concerns regarding this letter.

Aloha,

Susan A. Lebo, PhD  
Oahu Lead Archaeologist

Table 1. Sites Assessments using National/Hawaii-Register Significance Criteria and HAR §13-275-6 Significance Criteria, and Site Recommendations

SIHP	Description	Significance Criteria		Recommendation
		NR/HR	HAR §13-275-6	
50-30-11-422	Plantation wall	Not significant	Not significant	No further work
50-30-11-423	Plantation wall	Not significant	Not significant	No further work
50-30-11-2086	Pre-Contact habitation terrace	D	“d” and “e”	Preservation, avoid with 20-ft buffer
50-30-11-2087	Historic lighthouse and associated habitation remnants	C and D	“c” and “d”	Preservation of remaining structure; adaptive reuse
50-30-11-2088	Military concrete slab base of communications tower	D	“d”	No further work
50-30-11-2089	Historic mounds, possible burial	D	“d” and “e”	Preservation in place; avoid w/50-ft buffer; data recovery prior to construction
50-30-11-2090	Military structural foundation, gun emplacement	D	“d”	Preservation; avoid w/20-ft buffer
50-30-11-2091	Historic habitation foundation	Not significant	Not significant	No further work
50-30-11-2092	Historic septic, outhouse and cesspool	D	“d”	No further work
50-30-11-2093	Plantation ditch	Not significant	Not significant	No further work
50-30-11-2094	Pre-/Post-Contact habitation terrace	D	“d” and “e”	Preservation; avoid w/20-ft buffer
50-30-11-2095	Pre-Contact scatter, activity area	D	“d” and “e”	No further work
50-30-11-2096	Historic ditch	Not significant	Not significant	No further work
50-30-11-2097	Historic ditch	Not significant	Not significant	No further work
50-30-11-2103	Historic structural foundations, industrial complex	D	“d”	Preservation, educational signage

## DEPARTMENT OF PUBLIC WORKS

TROY K. TANIGAWA, P.E., ACTING COUNTY ENGINEER

BOYD GAYAGAS, DEPUTY COUNTY ENGINEER



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

September 28, 2021

TO: Alan Downer PhD, Administrator  
State Historic Preservation Division  
Department of Land and Natural Resources  
601 Kamokila Boulevard, Suite 555  
Kapolei, Hawai'i 96707  
via: <https://shpd.hawaii.gov/hicris>

SUBJECT: Historic Preservation Review , Chapter 6E-8, Hawai'i Revised Statute (HRS)  
Nāwiliwili – Ahukini Shared-Use Path Project  
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i  
Ahupua'a of Nāwiliwili, Kalapakī , and Hanamā'ulu  
Federal Aid Project Number: CMAQ-0700 (57)  
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street; 3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Downer,

The County of Kaua'i, Department of Public Works (DPW) submits this letter to provide a project summary for the State Historic Preservation Division (SHPD) review per Hawai'i Revised Statutes (HRS) Chapter 6E-8 in connection with the Nawiliwili – Ahukini Shared-Use Path project.

The DPW, plans to develop a coastal, shared-use path between Nawiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae*, the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

Per HRS Chapter 6E-8 and Hawai'i Administrative Rules (HAR) Chapter 13-275, the DPW offers the following documentation:

## I. IDENTIFICATION AND INVENTORY OF HISTORIC PROPERTIES

There are 26 historic properties documented in the project area. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

**Table 1**  
**State Historic Sites Located in the Project Area**

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved <i>heiau</i> , whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	Avoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.



**Table 1**  
**State Historic Sites Located in the Project Area**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

\* Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point.

## II. EVALUATION OF SIGNIFICANCE

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

**Table 2**  
**State Historic Sites in the APE that Retain Aspects of Historic Integrity**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Eligibility Criteria*</b>	<b>Aspects of Integrity</b>
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.

**Table 2**  
**State Historic Sites in the APE that Retain Aspects of Historic Integrity**

50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

\* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

### III. EFFECT DETERMINATION

DPW offers a “effect, with proposed mitigation commitments” determination for this project.

### IV. PROPOSED MITIGATION COMMITMENTS

The DPW will commit to the following measures to avoid, minimize and mitigate any significant impacts to the historic properties along Nāwiliwili-Ahukini Shared-Use Path. Mitigation measures for specific historic sites are summarized in **Table 3**. Additional commitments are listed below.

**Table 3**  
**No Adverse Effect for the following historic properties within the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Mitigation Commitment</b>
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines

		developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

The DPW shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

**A. Supplemental Archaeological Inventory Survey**

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

**B. Archaeological Monitoring Plan**

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
  - a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
  - b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
  - c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

**C. Mitigation Measures for Historic Properties**

To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities:

1. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
2. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

**D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945**

1. The County DPW shall consult with the SHPD during the design phase of the

Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.

2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell 'Ohana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

**E. Mitigation for Pū'ali (Niumalu) Bridge**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pū'ali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pū'ali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

**F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087**

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

**G. Treatment of Burial Sites and Human Remains**

1. The County DPW shall prepare appropriate documents as required to address the



treatment of any burials or other human remains encountered in the course of this project.

2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

#### **H. Preservation Plan / Interpretive Plan**

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
  - a. Interpretive signage will address the themes of each of the historic sites identified near the project.
  - b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
  - c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
  - d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

#### **I. Mitigation during Construction Activities**

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

#### **V. FEDERAL FUNDING**

Dr. Downer  
September 28, 2021  
Page 9 of 9

The proposed project will be funded from a combination of Federal and County funds. The project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y).

Consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed for the project. The SHPO concurred with FHWA's finding of "no adverse effect" determination in a letter dated June 12, 2020 (Log No.: 2020.01075, Doc. No.: 2006SH10).

Sincerely,

Troy K. Tanigawa  
Acting County Engineer

cc: Emma Kawamoto , HDOT



**Exhibit 16**  
Ka Pa'akai Analysis





### **Ka Pa‘akai Analysis**

Article XII, Section 7 of the Hawai‘i Constitution obligates the State and its political subdivisions to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible when granting permits and approvals under State law. In order to effectuate the State’s obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing land use interests, the Hawai‘i Supreme provided the following analytical framework as an outcome of *Ka Pa‘akai O Ka‘aina v. Land Use Commission* (94 Hawai‘i 31, 7 P.3d 1068, September 11, 2000). The framework is referred to as *Ka Pa‘akai Analysis* and consists of three parts:

1. Identify the scope of “valued cultural, historical and natural resources” in the petition area, including the extent to which traditional and customary rights and practices are exercised in the affected area;
2. Determine the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
3. Identify feasible actions, if any, that should be taken by the applicant to reasonably protect Native Hawaiian rights and practices if they are found to exist.

### **Project Description:**

The County of Kaua‘i, Department of Public Works (DPW) plans to develop a coastal, shared-use path between Nāwiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nāwiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of Ke ala Hele Makalae, the 16-mile Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 State of Hawaii Master Plan – Bike Plan Hawaii, and in the 2003 Bike Plan Hawaii update. The project will be undertaken in five phases: A, B1, B2, B3 and B4. Phase A is currently in the permitting stage. Phases B1 through B4 will be undertaken later as circumstances allow.

### **The proposed Phase A of the Nāwiliwili-Ahukini Shared-Use Path Project and consists of the following path segments:**

#### **Preliminary Coastal Path Alignment:**

- **Segment A** – Ahukini Landing to Ninini Point Lighthouse to Ninini Point Street. The total length of Segment A is 19,000 lf.

This segment will be constructed as a 10- to 12-foot-wide concrete path. Segment A details include:

- The concrete path will be pigmented to match the color of the native soil and be compatible with the appearance of the natural setting.
- The concrete path will be constructed with saw-cuts spaced every 5 feet so that individual panels can be relocated in the future if necessary.
- A 3-foot-wide vegetated shoulder will be created on each side of the path. Use drought tolerant native or indigenous plant species that are common to the local area. If site conditions do not support the establishment and growth of native or indigenous plant species, other non-invasive species may be substituted to ensure soil stability and erosion protection.
- Grading and excavation required for construction of the path and related amenities will be designed to minimize the amount of cut and fill required. The path alignment was selected to take advantage of natural grades to meet ADA accessibility standards for slopes with a minimal amount of ground disturbance and related costs.

- One pre-fabricated bridge span will be installed across an existing drainage way. Three existing drainage culverts will be modified and widened as necessary to accommodate the path and/or joint use of the existing crossing with the existing dirt road, to be determined during design.
- Separation between the path and road will be provided as necessary by means of bollards constructed of boulders, timber, or concrete, or other physical barrier to prevent motor vehicle access on the concrete path. Bollards and/or barriers will be designed and installed to be secure against dislodging by vehicle winch and to have minimal visual impact in the landscape. Public motor vehicle access on the existing dirt road will remain as a permitted use.
- Access across the concrete path will be provided at select locations to allow motor vehicle access to fishing spots on the shoreline. Bollards will be installed at crossings to prevent motor vehicle access onto the concrete path. All other fishing sites along the coast will remain accessible by foot.
- Approximately 3,000 lf of protective fencing will be installed along the path segment between Ninini Point and Timbers Resorts Hōkūala Golf Course Hole 13 and/or around Wedge-tail Shearwater nesting areas. Fencing will be designed to prevent dogs from entering protected areas. Fence materials and construction will be selected for durability in the harsh coastal environment. An inspection / maintenance program will be prepared by the County to ensure that the fence remains intact and in good condition and that necessary repairs are made in a timely fashion.
- A comfort station will be constructed at Ninini Point Lighthouse with men’s and women’s lavatories, drinking fountain, and lighting. Comfort station program details include:
  - Locate the comfort station at the site of the former lighthouse caretaker’s residence to take advantage of a previously disturbed building site.
  - Base the building design on native architectural forms or natural land forms.
  - Use natural materials and colors for exterior surfaces to minimize visual impacts. Avoid use of bright or reflective colors.
  - Keep exterior lighting to a minimum required for safety and security. Lighting will use low-intensity sources that emit long wavelength light (e.g. yellow or amber globes). Light sources will be shielded or angled downward to eliminate glare that would disturb or disorient animals.
  - Use an individual wastewater system or composting toilet for wastewater disposal. Electrical power will be supplied by existing overhead utility lines or photovoltaic cells. A water line will be installed with connection to a water service main on Ninini Point Street.
- A paved parking area will be developed at the Ninini Point Lighthouse with space for 10 automobiles.
- Interpretive signage will be installed at Ninini Point describing:
  - The history of Nāwiliwili Harbor and historic and cultural resources in the vicinity: Hawaiian settlement patterns, Ninini Heiau and Kuhiau Heiau, and development of Līhu‘e Airport.
  - The natural history of the area, including surrounding landmarks and natural features (e.g. Ha’upu, Nāwiliwili, and Kalapakī), unique flora and fauna and marine animals, and protected bird species known from the area, (e.g. nesting colonies of Wedge-tail Shearwater and Nēnē).
  - Identify views and points of interest.

- Signage will be provided as necessary to inform path users about safety, orientation, conservation efforts, user’s responsibilities, regulatory restrictions and other relevant information.
- Gates will be installed at the path entrance at Ahukini Landing and on the airport perimeter road (Ninini Point Street) to facilitate closure of the coastal area in the event of an airport incident or security operation. Signs at the gate will inform the public of access restrictions related to airport operations and security
- Utility pull-boxes that serve airport facilities and that are located near the shared-use path will be modified so that they can be locked against vandalism and theft.
- No picnic pavilions, picnic tables, or bike racks will be installed along the path corridor between Ahukini Landing and Ninini Point, except for proposed improvements at Ninini Point.

**Shared-use Road Segments:**

- Segment C – Ninini Point Street from the Segment A Connection to Kapule Highway.
- Segment D – Kapule Highway / Ninini Point Street Intersection to Ho'olaule'a Way. This will be constructed by the landowner.
- Segment G – Ahukini Point to Lihue Airport on Ahukini Road.
- Segment H – Lihue Airport to Kapule Highway. Improvements include striping, stenciling, signage and installation of bike storage lockers.

For the shared-use road segments, improvements will consist of striping and/or stenciling the existing paved roadways and the installation of “shared-use” road signage.

Phase A segments that are to be constructed by Timbers Resort include:

- Segment B – An approximately 5,600-lf segment that is being constructed entirely by Timbers Resort in accordance with Condition No. 9 of Amendment to Special Management Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning permit Z-IV-2005-30 and Special Permit SP-2008-4; and Condition No. 7 of Zoning Ordinance No. PM-2006-383.
- Segment D – An approximately 2,000-lf portion is within the SMA. The entire segment will be constructed by Timbers Resort under a separate SMA permit.

**Project Rationale:**

The project will benefit residents and visitors by preserving coastal access; creating a new safe recreational resource; supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport; and promoting health and wellness.

The existing road system that connects Nāwiliwili Bay, Līhu‘e, and the towns along the windward coast of Kaua‘i provides scant accommodation for non-motorized modes of transportation. Until the development of Ke Ala Hele Makalae was initiated, there had been no dedicated system of paths or lanes for pedestrians and bicyclists to travel between employment centers, parks, and the towns and major civic facilities in the region. Within the subject project corridor, existing pedestrian sidewalks, bike lanes, and paths remain disconnected and ancillary to the motorized vehicle roadways. As a result, there is little to encourage residents and visitors to use non-motorized vehicles as a viable means of transportation. Only the most intrepid bicyclists travel the narrow shoulders along Kapule and Kuhio Highway. The project corridor along the coast is currently open for enjoyment by the public. The segment between Ahukini Landing and Ninini Point in particular provides a wild, open-space coastal experience, relatively untouched by development, located minutes from downtown Līhu‘e. However, the existing dirt access

road and informal trails to the shoreline are unimproved and difficult to navigate without an off-road vehicle. Access to this resource is prohibitively difficult to many members of the public.

The purpose of the project is to support transportation alternatives to the automobile, to provide non-motorized path facilities for pedestrians and cyclists for recreation and fitness, and to preserve coastal areas and access. In addition, the project is being developed to enhance the quality of life for Kaua‘i’s residents by providing a safe and enjoyable place for families, friends, and individuals to play, socialize, and experience the beauty of the coastal open spaces. The project seeks to address access availability to a variety of users of different ages, physical condition, and age levels. Finally, implementation of the Nāwiliwili – Ahukini Shared-Use Path Project will help fulfill the State Department of Transportation’s Bike Plan Hawai‘i, which identifies the need for transportation improvements that support non-motorized modes of travel.

### **Consultation**

On behalf of the Applicant, County of Kaua‘i, planning consultant, R. M. Towill Corporation (RMTC), conducted consultation as part of the National Historic Preservation Act (NHPA), Section 106 process with kūpuna from the project area who have knowledge of traditional cultural practices and resources in the petition area, and conducted background studies, including an archaeological inventory survey and archaeological literature review and field inspection. The information from that consultation research is used as the basis for this the *Ka Pa‘akai Analysis*.

The following individuals and Native Hawaiian organizations, kūpuna and cultural practitioners (NHO’s) provided comments through meetings conducted for the NHPA Section 106 Consultation Process.

#### **Office of Hawaiian Affairs (OHA) and Native Hawaiian Historic Preservation Council (NHHPC)**

Consultation with OHA and the NHHPC resulted in the following outcomes:

- OHA clarified that their role is to ensure that all interested Hawaiian’s have an opportunity to participate in the consultation process in a manner that satisfies them.
- Several additional NHOs, individuals and organizations were identified by OHA and the NHHPC as potential consulting parties. All of the recommended names were added to the consultation list and attempts were made to contact them.
- No new information regarding historic properties was identified.
- General concern was raised about potential impacts to Native Hawaiian burials.
- Concern was raised about potential impacts to traditional Hawaiian marine resources from the opening of the path and increased access to coastal areas.
- Concern was raised about closure of motor vehicle access to fishing spots along the coastline.
- Recommendation was made for continued consultation with interested NHOs during the design stage, particularly with respect to the development of an interpretive/educational program for cultural and historic sites in the project corridor.

OHA and the NHHPC were represented at the April 26, 2012 NHPA Section 106 Community Consultation meeting by Ms. Kaliko Santos and Mr. Chris Kauwe respectively.

- Mr. Kauwe reiterated concerns about impacts to traditional Hawaiian marine resources and displacement of Hawaiians from opening of the path. He recommended possible adoption of a Konohiki system of resource management and rule enforcement. Mr. Kauwe is not opposed to the path project.
- Ms. Santos helped identify seven additional Hawaiian families in the project region who NHO meeting participants recommended be contacted. All seven families were interviewed subsequent to the meeting. Five of the interviewees expressed no concerns regarding construction of the path.

Two of the interviewees expressed concern about the proposed path: (i) restricting access to fishing sites, and (ii) generally furthering modern development of the island and comprising the Hawaiian culture, the Hawaiian people, and the Hawaiian islands.

Ms. Cheryl Lovell-Obatake<sup>1</sup>

- September 07, 2008 letter from Ms. Cheryl Lovell-Obatake commenting on the project EA.
- February 08, 2010 letter responding to Ms. Lovell-Obatake’s comments.
- April 02, 2012 letter from Hawai‘i Department of Transportation (HDOT) to Ms. Lovell-Obatake summarizing the findings of the NHPA Section 106 Consultation to date and inviting participation in ongoing consultation.
- April 16, 2012 letter from County of Kaua‘i to Ms. Lovell-Obatake inviting her to participate in a NHPA Section 106 community consultation meeting.

Ms. Lovell-Obatake attended the April 26, 2012 NHPA Section 106 Community Consultation Meeting for the project. Consultation with Ms. Lovell-Obatake resulted in the following outcomes:

- Ms. Lovell-Obatake requested to be consulted during the land acquisition stage of the project with respect to unrecorded title to the land possessed by her family.
- Concern expressed over impacts to water quality from runoff from the bike path.
- Recommendation that Paukini Rock be included in interpretation /educational programming related to Nāwiliwili Harbor.
- Ms. Lovell-Obatake requested to be consulted during the development of interpretive educational programming for the path project.
- No additional information regarding historic properties or cultural practices.
- Ms. Lovell-Obatake passed away on August 1, 2014.

Ms. Waldeen Palmeira

At the recommendation of OHA, RMTC contacted Ms. Palmeira as part of the NHPA Section 106 consultation process.

- May 06, 2010 notes from phone call between RMTC and Ms. Palmeira. Ms. Palmeira provided names of six NHOs to contact. Attempts were made to contact all six individuals.
- May 07, 2010 email from RMTC to Ms. Palmeira transmitting project information, copies of correspondence with the NHHPC, NHO consultation contact list, and a copy of the CIE report.
- April 02, 2012 letter from HDOT to Ms. Palmeira summarizing the findings of the NHPA Section 106 Consultation to date and inviting participation in ongoing consultation.
- April 16, 2012 letter from County of Kaua‘i to Ms. Palmeira inviting her to participate in a NHPA Section 106 community consultation meeting.

Consultation with Ms. Palmeira resulted in the following outcomes:

- Ms. Palmeira expressed opposition to the path project and is highly critical of the process for including NHOs in project consultation. She recommended that a consultation meeting(s) be held with Native Hawaiians to discuss the project.
- Ms. Palmeira expressed concern for the cumulative impacts of the overall Ke Ala Hele Makalae path project.
- Ms. Palmeira did not provide new information about historic properties in the project area.
- Ms. Palmeira identified six additional NHOs to be contacted as part of the project. The six individuals were added to the consultation contact list and attempts were made to contact them.

---

<sup>1</sup> Ms. Cheryl Lovell-Obatake deceased in 2014. Any further consultation should be directed to the representative of the Obatake family.



Ms. Palmeira did not attend the April 26, 2012 NHPA Section 106 Community Consultation meeting. However, two of the NHOs she recommended to include in the contact list (Ms. Aunty Nani Rogers and Ms. Wilma Holi) did attend the meeting.

Ms. Ka‘iulani Edens-Huff

At the recommendation of OHA, RMTC contacted Ms. Ka‘iulani Edens-Huff as part of the NHPA Section 106 consultation process.

- May 10, 2010 notes from phone call between RMTC and Ms. Edens-Huff.
- May 10, 2010 email from RMTC to Ms. Edens-Huff transmitting project information, copies of correspondence with the NHHP, and NHO consultation contact list.
- April 02, 2012 letter from HDOT to Ms. Edens-Huff summarizing the findings of the NHPA Section 106 Consultation to date and inviting participation in ongoing consultation.
- April 16, 2012 letter from County of Kaua‘i to Ms. Edens-Huff inviting her to participate in a NHPA Section 106 community consultation meeting.

Consultation with Ms. Edens-Huff resulted in the following outcomes:

- Ms. Edens-Huff expressed opposition to the path project in all its locations and forms. She is highly critical of the project purpose of enhancing coastal access. The benefit is not to the Hawaiian people.
- Ms. Edens-Huff will participate in the NHPA 106 process as a Hawaiian Kingdom subject and considers the U. S. Government to be the occupier of a sovereign Hawaiian nation.
- Ms. Edens-Huff recommended that we arrange a meeting with the Hawaiian community to discuss the project and listen to concerns.
- Ms. Edens-Huff did not provide new information about historic properties in the project area and did not identify any additional NHOs to be contacted, deferring to Ms. Palmeira’s recommendations.

Note that Ms. Edens-Huff did not attend the April 26, 2012 NHPA Section 106 Community Consultation meeting.

Additional NHOs Identified during the April 26, 2012 NHPA Section 106 Community Meeting

Seven individuals/families were identified by NHO participants Aunty Nani Rogers, Wilma Holi<sup>2</sup>, and Kaliko Santos at the April 26, 2012 NHPA Section 106 Community Consultation Meeting. They include Joe Polan<sup>3</sup>, Stanley Oana, Lester Matsushima, Leopold Durant, Roland Durant, Jacob Pia, and Laola Peahu Rapozo.

Interviews were conducted with these individuals on June 13, 15, and 27, 2012. The outcomes of the interviews are as follows:

- Mr. Stanley Oana identified the Hanamā‘ulu Pier and railroad bridge, both located outside of the Nāwiliwili – Ahukini project area, as historically significant. He recommended restoring and preserving those historic sites. Mr. Oana also identified the presence of taro lo‘i and fish ponds in the valley on both sides of Hanamā‘ulu Stream and recommended restoration of those agricultural uses. This area is also outside of the Nāwiliwili-Ahukini project area. Mr. Oana knows of no heiau sites. He is aware of present use of the coastal areas for fishing.

---

<sup>2</sup> Ms. Wilma Holi deceased in 2018. Any further consultation should be directed to the representative of the Holi family.

<sup>3</sup> Mr. Joe Polan deceased in 2017. Any further consultation should be directed to the representative of the Polan family.

- Mr. Joe Polan identified the former locations of the sugar storage area, Standard Oil facility and gas tanks, and Harbor Master Bertram’s residence at Nāwiliwili Harbor. He further noted that the McCann family owns property on the right side of Nāwiliwili Bay. He identified no other historic properties or traditional uses.
- Lester Matsushima’s maternal great grandfather (Wahinealohakeo) was the *konohiki* (headman) of Hanamā‘ulu Ahupua‘a. Mr. Matsushima’s grandfather’s house was located in the center of the beach along Hanamā‘ulu Bay. Mr. Matsushima spent much of his childhood there. Mr. Matsushima’s parents worked on and off for the Honokai Plantation. According to Mr. Matsushima, the Plantation Manager’s house also was located on the bay. During the interview, Mr. Matsushima stated 2 fishponds were located within Hanamā‘ulu Bay, on either side of the bay; a fishing spot was located on the point on north side of Hanamā‘ulu Bay; *copra* (coconut) was harvested in the area, and *lo‘i* also were located in the area. Mr. Matsushima also stated the Pu‘ali‘i family had one of the fishponds, that sharks were the Pu‘ali‘i family *‘aumakua*; and that a shark feeding hole was located on the north side of Hanamā‘ulu Bay. Mr. Matsushima stated that the Plantation Railroad tracks were near-by; there was no battle field in Hanamā‘ulu Bay; and that the area used to be comprised of sand dunes, but tsunami of 1947 wiped out the dunes.
- Leopold Durant currently lives in the village of Kapaia, northwest of Hanamā‘ulu Bay. According to Mr. Durant, cultural sites in the vicinity include an *‘akilolo* (wrasse fish) fishing area on top of bluff; *lo‘i*; and a fishing spot. Mr. Durant knew of the fishing spot, *hake nalu* (shark feeding hole) and of the coconut (*copra*) harvesting Lester Matsushima spoke of. Mr. Durant also said Lester Matsushima had *kuleana* land in the area. Mr. Durant’s concern regarding the Kauai bike path was that the bike path may restrict access to Ahukini Point and restrict access to fishing.
- Roland Durant was present during the interview with his father and offered to be interviewed. Roland Durant strongly feels that everything (*lo‘i*; *ahu*, etc.) is connected to the land and to the Hawaiian people and culture.
- Jacob Pia, a friend of the Durant family, present during the interviews with Leopold and Roland Durant, also offered to be interviewed. Mr. Pia is a freediver who indicated he was familiar with the coastal area of Hanamā‘ulu Bay as he frequently dives in this area. Mr. Pia Knew of the 2 fishponds Lester Matsushima spoke of. Mr. Pia also mentioned the *ahu hale*, for locating fish and schools of fish, on Ahukini Point and a fresh water spring. Mr. Pia’s family grew watercress on the point on the north side of Hanamā‘ulu Bay. Mr. Pia also knew of the *kilo* (fishing spot) on the north side of Hanamā‘ulu Bay that Mr. Matsushima spoke of, as well as a *kilo* on the south side of the bay; and on the bottom side of Kawaihau Stream, a spring, and *lo‘i* are still there. In addition, Mr. Pia indicted there could be *heiau*, a birthing area; and petroglyphs in the general area.
- Laola Peahu Rapozo was born in Nāwiliwili, grew up, and moved *mauka*. Mrs. Rapozo stated there were taro patches (*lo‘i*) above the Hanamā‘ulu Railroad Bridge; the Hanamā‘ulu Dairy was in the area where the Hilton Hotel currently is located. Mrs. Rapozo also said the area along stream in Hanamā‘ulu was farmed and that World War II military bunkers were located along the coastline. The Wailua Golf Course area was battleground with villages during the pre-Contact Period (pre-1778) and that Plantation-Era habitation occurred on south bank of Hanamā‘ulu Stream. She had a friend who had lived there and remembered having to take boat to house. Mrs. Rapozo also mentioned that the Pia and Kane families lived by Hanamā‘ulu Bay and that sharks were the families’ *‘aumakua*. Mrs. Rapozo thinks bike paths, in general, are a good thing as they provide access to areas otherwise inaccessible and unseen.

In summary, seven long-term, culturally knowledgeable of the project area were interviewed for the project at the request of Native Hawai‘i organization participants of the April 26, 2012 Community Consultation Meeting. Five of the interviewees expressed no concerns regarding the construction of the

bike path. One of the five interviewees with no concerns believed that the bike path would enrich the community by providing access to the beautiful coastal views which are currently inaccessible and/or unnoticed. Two of the interviewees expressed concerns regarding the construction of the bike path. One concern pertained to continued access to Ahukini Point and restricted access to fishing in the Hanamā‘ulu. The second individual who expressed concerns regarding the construction of the bike path believed that development, in general, compromised the Hawaiian culture, the Hawaiian people, and the Hawaiian Islands.

### **Ka Pa‘akai Analysis Determination**

The following determination is based on the information provided in the interviews with Native Hawaiian kūpuna and cultural practitioners from the project area, the archaeological inventory survey and archaeological literature review and field inspections prepared for project, and documentation of current conditions in the petition areas.

### **Cultural Resources and Traditional Cultural Practices**

Early consultation with Native Hawaiian organizations and kūpuna from the project area identified the following issues of interest or concern to Native Hawaiians:

- Expressed concern about impacts to water quality from runoff from the bike path.
- Expressed general concern about potential impacts to Native Hawaiian burials.
- Expressed concern about potential impacts to traditional Hawaiian marine resources from the opening of the path and increased access to coastal areas.
- Expressed concern about displacement of Hawaiians as a result of opening of the path.
- Expressed general concern that development, in general, compromises the Hawaiian culture, the Hawaiian people, and the Hawaiian Islands.
- Expressed concern about closure of motor vehicle access to customary fishing spots along the coastline.
- Expressed concern about maintaining continued access to Ahukini Point and Hanamaulu for customary fishing and gathering practices.
- Recommendation was made to consider adoption of a Konohiki system of resource management and rule enforcement.
- Expressed interest in developing appropriate interpretation /educational programming related to Paukini Rock in Nāwiliwili Harbor,
- Emphasized the importance of including Native Hawaiian cultural practitioners in the development of interpretive and educational programming.
- Emphasized the importance of continuing to consult with interested Native Hawaiian kūpuna and cultural practitioners during project development.

The primary customary and traditional practices identified through the consultation relate to access to marine resources along the coastline and nearshore waters for fishing and gathering, and traditional stewardship of those resources to support the perpetuation of the Hawaiian people and culture.

No other specific customary and traditional practices were shared by the participants.

### **Land Tenure and Land Commission Award (LCA) Properties**

The following information is from Section 3.6.1 of the *Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā‘ulu Ahupua‘a Līhu‘e District, Kaua‘i*, dated January 2014, prepared by Cultural Surveys Hawai‘i.

### **Land Commission Awards**

The following information regarding Land Commission Awards is excerpted from the *Final Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project, January 2014* prepared by Cultural Surveys Hawai‘i, Inc.

#### Hanamā‘ulu

Land Commission documents for Hanamā‘ulu describe *lo‘i*, *kula*, and house sites along both sides of the Hanamā‘ulu River, extending from the shore up to the village of Kapaia. *Kula* and *lo‘i* lands are often included together in one *‘āpana* (portion of a claim), with house sites belonging to separate *‘āpana*, slightly removed from the floodplain.

There are four claims in the back bay area of Hanamā‘ulu and two claims for house lots (LCA 3650 and 3653) near the beach, south of Kapule Highway. Most of the *kuleana* claims for Hanamā‘ulu are located in lands that have been under sugar cane cultivation for much of the 20<sup>th</sup> century; occasionally, traditional artifacts can still be found in the cane fields.

#### Kalapakī

In Kalapakī Ahupua‘a, *kalo* (taro) *lo‘i* claims were on the north side of Nāwiliwili River (the *wauke* land in Claim 3907 on the south side of the river being the sole exception) and along the smaller drainages of Kalapakī and Koena‘awa, where there were also reportedly springs. Two streams, Koena‘awa-nui and Koena‘awa-iki, were also identified in the claims, but neither is named on current maps. These two streams, however, can be seen in an undated photograph on file at the Kaua‘i Museum (see Figure 1).



Figure 1 – Kalapakī Bay, showing location of two streams and their outlets (red Xs) to Kalapakī Bay; Koena‘awa nui stream is on the left and Koena‘awa iki is on the right (undated photograph in Kaua‘i Museum files, see <http://www.hawaii.edu/environment.ainakumuwai.html>)

Most Kalapakī claimants lived at the shore in the *kulana kauhale*, or village, of Kalapakī, located near Nāwiliwili Bay. Several claimants describe their village house lots in relation to the fishponds of Koena‘awa (Koena‘awai-nui and Koena‘awa-iki). There is also a description of the *muliwai*, or estuary, of Koena‘awa-nui.

Claim 3640 mentions a footpath for the ‘ili of Limawela near the shore at the boundary between Hanamā‘ulu and Kalapakī. These documents therefore indicate a north/south path along the shoreline, and other paths going inland from the shore, which is a traditional transit pattern for Kaua‘i *ahupua‘a*.

Paulo Kanoa, Governor of Kaua‘i at the time of the Māhele, claimed both the *ahupua‘a* of Hanamā‘ulu and Kalapakī but was awarded neither. Instead, Victoria Kamāmalu was awarded both *ahupua‘a* under LCA (Land Commission Award) No. 7713:2. A portion of this award (7713:2 part 7) includes land within the present project area. Following the death of Victoria Kamāmalu in 1866, Princess Ruth Ke‘elikōlani inherited her lands. In 1870, Ke‘elikōlani sold large portions of her Kalapakī and Līhu‘e lands to William Hyde Rice of Lihue Plantation. In addition, in 1870, Paul Isenberg purchased the *ahupua‘a* of Hanamā‘ulu from J.O. Dominis, which includes the land of the present airport area. William Hyde Rice made subsequent land purchases from Princess Ruth in 1879:

William Hyde Rice, who already had his own home on the hill east of the mill, bought a large makai section of the *ahupua‘a* of Kalapakī from Princess Ruth in 1879 and there conducted the Lihue Ranch. In later years he sold most of this land to the plantation. (Damon 1931:747)

The large tracts of inland areas (*kula*), not in the river valleys or at the shore, are not described in the claims but were probably in use. This *kula* land at the time of the Māhele belonged to Victoria Kamāmalu. Land use is not elaborated in her claims for Hanamā‘ulu or Kalapakī. Traditional *kula* resources for all claimants would have been medicines, herbs, construction materials such as *pili* grass and trees for building houses, canoes, and perhaps lithic materials for tools. Sweet potatoes and other dryland crops, such as *wauke*, probably were cultivated in patches throughout the area at one time or another.

#### Nāwiliwili

Victoria Kamāmalu was awarded over two thousand acres of Nāwiliwili *Ahupua‘a* (LCA 7713), along with much of Niumalu, Ha‘ikū and Kīpū, as well as Kalapakī and Hanamā‘ulu. In addition to Kamāmalu’s large award at Nāwiliwili, there were many smaller *kuleana* awards. According to Hammatt and Creed (1993):

Within the valley floor and adjacent to the alluvial plain [in Nāwiliwili] ... are 14 land Commission Awards for which there are testimonies available in the Land Commission records. The awards vary in size between one to two acres and are generally around one acre. The majority of land recorded is for *lo‘i* (wetland agriculture) but *kula* (dryland plots) are present as are a few houselots.

In all there are 54 *lo‘i* recorded. Each award is generally two to three *lo‘i* plots. The largest award comprised eight *lo‘i*; a single award consisted of one *lo‘i*. All awards contained *lo‘i* and nine of the fifteen total awards had *kula* lots. Without exception, the nine awards containing *kula* mention only one *kula* per award. This is of interest because it shows that the alluvial plain was not entirely dedicated to wetland planting and that a small *kula* lot was essential for subsistence agriculture. Some awards at Nāwiliwili mention houselots along the shoreline.

#### Historic Properties

The County of Kaua‘i identified numerous historic properties within the project area (see Figure 2). Project plans have been modified to avoid potential effects to historic properties and to create opportunities for education and interpretation.



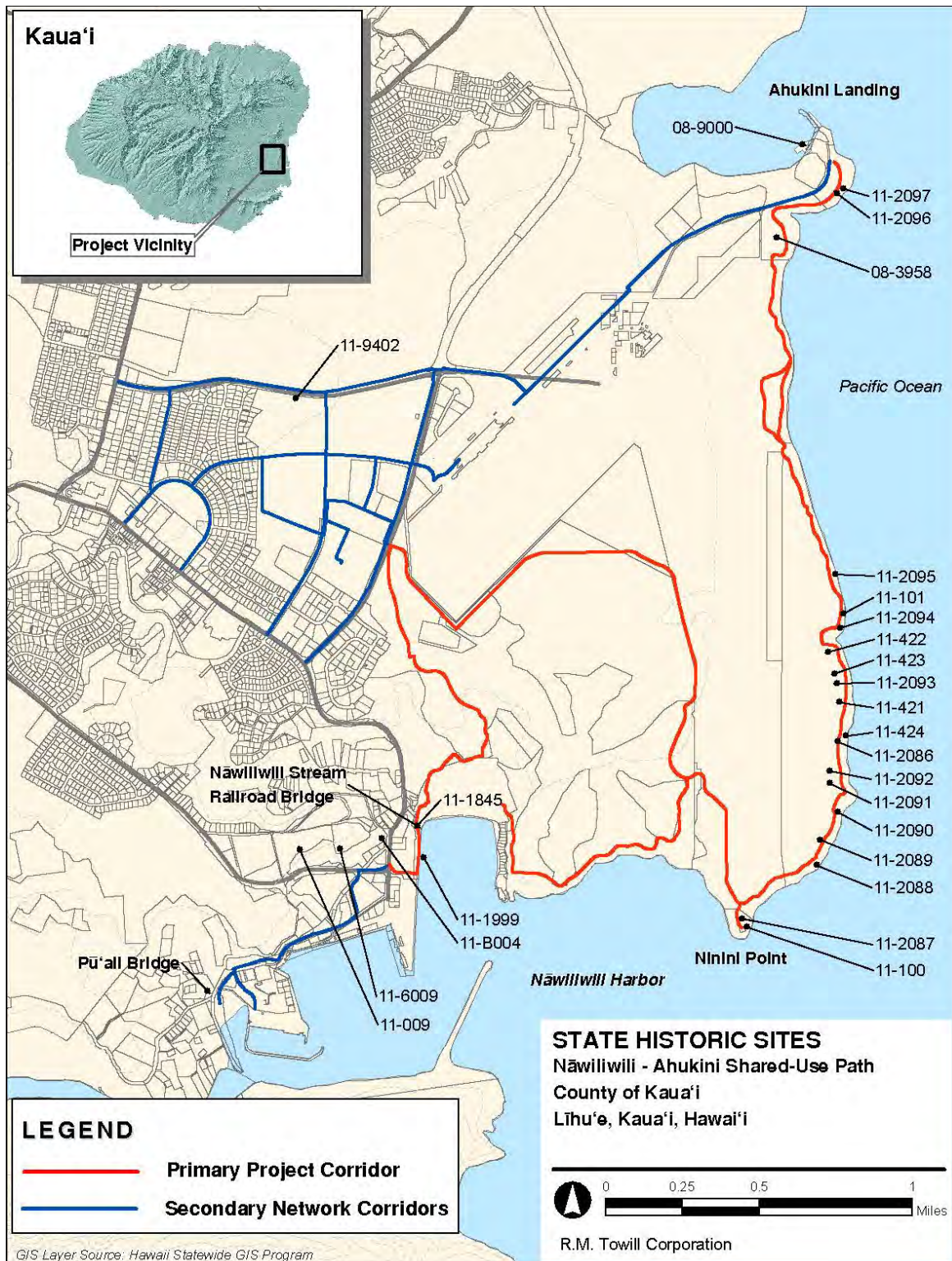


Figure 2 - State Historic Sites

**Table 1**  
**Historic Properties Located within the Project Area**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-009	Kuhiau Heiau. Nāwiliwili; A large paved <i>heiau</i> , whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nāwiliwili Beach Park
50-30-11-100	Ninini Heiau, near Nāwiliwili Harbor Light. Previously destroyed.	Documented by Thrum as destroyed (Bennett, 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Nāwiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure. . On this basis, the Undertaking will not diminish the integrity of the historic property’s location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nāwiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nāwiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	n/a
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	n/a
11-B004	Historic Cemetery near Nāwiliwili Park	Avoid.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot

**Table 1**  
**Historic Properties Located within the Project Area**

		buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker’s residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer. Data recovery program to be undertaken before path construction begins.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.
--	Pū‘ali (Niumalu) Bridge	Avoid existing bridge with a buffer. Buffer distance to be determined by the SHPD, Architectural Branch.

\* Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point (CSH, April 2010).

### **Mitigation Policies**

The County of Kauai will ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources and cultural practices:

#### **A. Supplemental Archaeological Inventory Survey**

1. The County DPW shall prepare a Supplemental AIS, in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the “Secondary Network Routes” located in interior lands prior to the design and construction of those alignments.

2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

## **B. Archaeological Monitoring Plan**

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
  - a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
  - b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
  - c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

## **C. Mitigation Measures for Historic Properties**

1. To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities.
2. For SIHP Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

5. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
6. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

**D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell ‘Ohana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

**E. Mitigation for Pū‘ali (Niumalu) Bridge**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pū‘ali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pū‘ali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.



**F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087**

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

**G. Treatment of Burial Sites and Human Remains**

1. The County DPW shall prepare appropriate documents as required to address the treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and Kauai Niihau Islands Burial Council in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

**H. Preservation Plan / Interpretive Plan**

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE (see Figure 3).
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
  - a. Interpretive signage will address the themes of each of the historic sites identified near the project.
  - b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
  - c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
  - d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

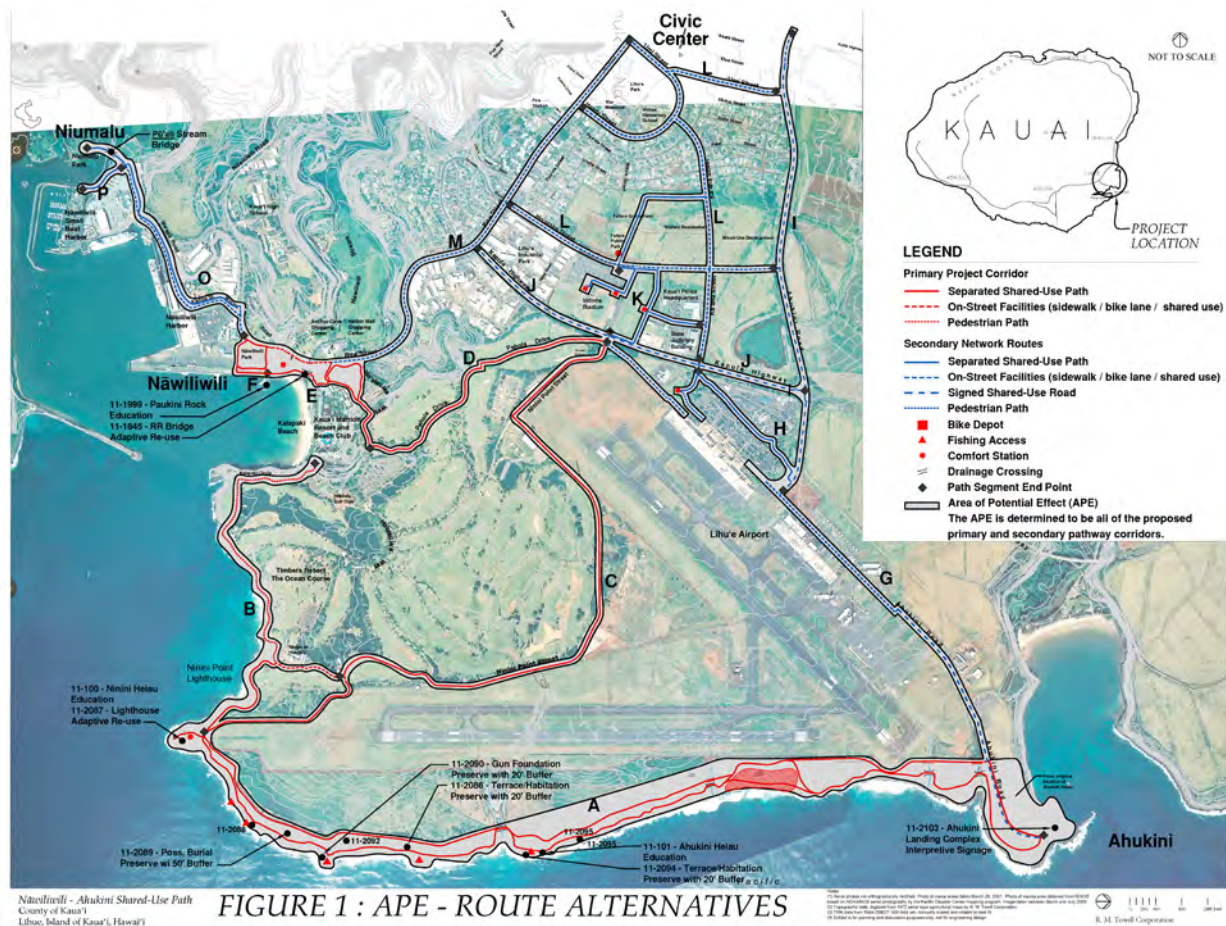


Figure 3 - APE - ROUTE ALTERNATIVES

## I. Mitigation during Construction Activities

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 "Procedures for Property Treatment of Burial Sites and Human Skeletal Remains."

## Determination

The project will preserve and ensure continued access to the shoreline and coastal areas and will not impose conditions that would prevent traditional and customary fishing, gathering, or other subsistence practices. The project will be designed with drainage features and vegetation ground cover to control and treat storm water runoff and prevent pollutant discharges that could degrade coastal water quality. Interested Native Hawaiian kūpuna and cultural practitioners will continue to be consulted throughout the design and development of the path project.

Based on consultation with kupuna and Native Hawaiian cultural practitioners with knowledge regarding native Hawaiians’ exercise of customary and traditional practices in the project area and vicinity, and the findings of the resource studies, and the mitigation commitments developed through those consultations, the proposed Nāwiliwili-Ahukini Shared-Use Path Project is not anticipated to affect the rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians, and does not affect or impair any Hawai‘i State Constitution, Article XII, Section 7 uses, or the feasibility of protection of those uses.

**Exhibit 17**  
NHPA 106 and 6E Consultation Timeline and Correspondence





**Project Chronology**  
**National Historic Preservation Act (NHPA) Section 106 Consultation and**  
**Hawai‘i Revised Statutes (HRS) Section 6E Historic Preservation Review Process**

**Nawiliwili to Ahukini Landing Bike/Pedestrian Path, CMAQ-0700(57)**

<b>Date</b>	<b>Event</b>
February 2007	Notice to Proceed with project issued to project consultant, R. M. Towill Corporation (RMTC)
May 2008	Initial request for NHPA 106 consultation sent by letter to preliminary list of agencies, Native Hawaiian organizations (NHOs) and individuals.
2008 through 2009	Continued informal consultation with original and additional agencies, NHOs and individuals identified through the NHPA 106 process.
June 2009	Archaeological Inventory Survey (AIS) prepared by Cultural Surveys Hawai‘i, Inc.
October 1, 2009	NHPA 106 consultation put on hold pending guidance from Federal Highways Administration (FHWA) and the Advisory Council for Historic Preservation (ACHP) regarding NHPA 106 consultation with Native Hawaiian organizations (NHOs), State Historic Preservation Officer (SHPO) review of project AIS to support NHPA 106 process, and Office of Hawaiian Affairs’ (OHA) participation in NHPA 106 consultation.
April 22, 2011	ACHP Draft guidelines for Hawai‘i NHPA 106 consultation process issued to County of Kaua‘i (COK) and Hawaii Department of Transportation, Highways Division (HDOT-HWY). Continue contact with participating NHOs.
September 2011 – April 2012	Consultant contract amended to provide further Section 106 work requested by FHWA to assure consistency with the new draft guidelines from the ACHP for consultation with NHOs.
April to July 2012	FHWA and COK conduct Section 106 consultation with NHO’s in accordance with ACHP guidelines, including NHPA 106 public consultation meetings and individual interviews. COK and consultant finalize NHPA 106 consultation documents, prepare NHPA 106 Memorandum of Agreement (MOA) for review by SHPD, FHWA and HDOT.
July 2, 2012	FHWA NHPA 106 Authorization letter to SHPO.
July 25, 2012	FHWA issues letter requesting SHPO’s concurrence with NHPA 106 effect determination and review of the proposed NHPA 106 MOA.
August 28, 2012	SHPD responds to FHWA’s Section 106 concurrence request with request for additional information. Additional documentation required.
November 9, 2012	COK, HDOT meeting with SHPO to resolve outstanding NHPA 106 Consultation mitigation commitments.
December 4, 2012	COK and consultant follow up with SHPO on response to NHPA 106 effect determination and MOA. Consultant revises MOA to address SHPO comments.

## Project Chronology

Date	Event
December 13, 2012	FHWA and SHPO review revised NHPA 106 documents and MOA.
January 2013	Consultant revises NHPA 106 MOA and FHWA effect determination letter to address FHWA comments. Consultant tracks SHPD review of project AIS, updates administrative record for NHPA 106 consultation, and prepares draft notification and invitation to ACHP to participate in MOA.
February 25, 2013	FHWA sends letter to ACHP with notification of NHPA 106 effect determination and invitation to participate in MOA.
February 26, 2013	Consultant submitted NHPA 106 Consultation supporting documents to FHWA.
April 5, 2013	FHWA sends effect determination letter to SHPO requesting concurrence on the Section 106 determination of adverse impact with mitigation measures to prevent the disturbance to historic properties or resources to the extent possible, and sends revised draft NHPA Section 106 MOA also submitted to SHPO for review. COK submits Section 106 MOA to HDOT for processing.
April 10, 2013	ACHP responds to FHWA that they are not participating in the consultation process. Notes requirement to complete MOA and file it with SHPO.
November 2013	Consultant contract amended to provide additional time for further Section 106 work.
November 12, 2013	Final AIS submitted to SHPO.
December 18, 2013	Revised NHPA 106 MOA submitted by COK to HDOT and FHWA. Consultant resubmitted NHPA 106 consultation docs and MOA to SHPO for action. Waiting on SHPO response to NHPA 106.
December 27, 2013	Consultant revised NHPA 106 MOA addressing additional SHPO comments and re-submitted to COK, HDOT, FHWA and SHPO.
January 21, 2014	State Historic Preservation Division (SHPD) accepts AIS as complete.
March 25, 2014	COK, HDOT, FHWA, Consultant meeting to update NHPA 106 consultation status. Draft NHPA 106 MOA redistributed to COK and FHWA for review. Waiting for SHPO response to the NHPA 106 MOA.
March 2014	Waiting on SHPO action on NHPA 106 MOA and effect determination. Consultant contract amended to provide additional time for further Section 106 work.
February 11, 2015	COK, HDOT, FHWA and consultant meeting to update project status.
March – Sept. 2015	Periodic phone communication with SHPO to check status of NHPA 106 review.
September 2, 2015	Revise NHPA 106 MOA to include HHF as a concurring party and HDOT as signatory.
November 5, 2015	COK, HDOT, FHWA and consultant meeting to update status of project. Waiting on SHPO to respond to current draft NHPA 106 MOA.
January 12, 2016	Consultant contact SHPO for status of NHPA 106 MOA review.

## Project Chronology

Date	Event
January 19, 2016	COK letter to Historic Hawai'i Foundation (HHF) to invite participation in the NHPA 106 MOA as a concurring party.
March 14, 2016	COK submits a revised draft NHPA Section 106 MOA to SHPO for review. No response from SHPD through
May 2016	Coordination meeting with COK, DOT-HWY, FHWA and SHPD. No resolution of MOA.
August 2016 to June 2018	Periodic inquiries to SHPD for response to draft MOA.
June 2018	Coordination meeting with COK, DOT-HWY and SHPD. No resolution of MOA.
November 2018 to November 2019	Coordination among COK, DOT-HWY, FHWA and SHPD to change the NHPA 106 effect determination from "adverse effect with mitigation" to "no adverse effect". Also, coordinate with SHPD to withdraw recommendation for data recovery for SIHP -2089, due to proposed mitigation of avoidance with a 50-foot buffer. Iterative revisions to modify the FHWA effect determination letter, coordinated with DOT-HWY and FHWA.
December 2019	Meeting with COK, DOT-HWY, FHWA and SHPD to request to delete data recovery for 50-30-11-2089 and to request to change effect determination and delete MOA requirement.
December 2019 to January 2020	SHPD reviewing request.
February to May 2020	SHPD approves request to change NHPA 106 effect determination and eliminate the MOA and eliminate data recovery for SIHP 50-30-11-2089. Iterative revisions and processing revised concurrence request letter with FHWA. Letter sent in May.
June 2020	SHPO concurs with FHWA effect determination.
May to September 2021	Restart work. Prepare HRS 6E effect determination letter from COK to SHPD.
September 28, 2021	COK HRS 6E letter submitted to SHPD.
September 2021 to December 2022.	Routine inquiries by DOT-HWY, COK and consultant to SHPD for response to HRS 6E effect determination concurrence request letter. Waiting SHPD response.



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**Hawaii Federal-Aid Division**

April 3, 2013

300 Ala Moana Blvd, Rm 3-306  
Box 50206  
Honolulu, Hawaii 96850  
Phone: (808) 541-2700  
Fax: (808) 541-2704

In Reply Refer To:  
HDA-HI

Mr. William J. Aila, Jr.  
Chairperson and State Historic Preservation Officer  
Hawaii Department of Land and Natural Resources  
601 Kamokila Boulevard, Suite 555  
Kapolei, HI 96707

Subject: National Historic Preservation Act Section 106 Consultation  
Nāwiliwili – Ahukini Shared-Use Path Project  
Līhu‘e District (puna moku), Island of Kaua‘i, Hawai‘i  
Ahupua‘a of Nāwiliwili, Kalapakī, and Hanamā‘ulu  
Federal-aid Project Number CMAQ-0700 (57)  
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa‘apā  
Roads; 3-2-04:1, 2, 3 & Wa‘apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-  
02:Kā‘ana Street, Hardy Street, Rice Street, & ‘Umi Street; 3-6-08: Wa‘apā Road,  
Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Aila:

In accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, the Federal Highway Administration (FHWA) requests the State Historic Preservation Officer's (SHPO) concurrence on the effect determination for the proposed improvements. The FHWA is rendering an adverse effect determination for the subject project.

The FHWA intends to provide funds for the proposed improvements. Therefore, the FHWA has required the State of Hawaii Department of Transportation (HDOT) and County of Kaua‘i to comply with the National Environmental Policy Act, NHPA, and other federal requirements. The FHWA has authorized the HDOT and the County of Kauai to act on behalf of the FHWA regarding the NHPA Section 106 notification and consultation.

### **Overview of the Undertaking**

The FHWA, HDOT, and County of Kaua‘i, Department of Public Works (DPW), plan to develop a coastal, shared-use path between Nāwiliwili Park and Ahukini Landing in Līhu‘e District on the island of Kaua‘i. A path segment is also proposed between Nāwiliwili Park and Niumalu Park. Additional path segments will connect the coastal path to the Līhu‘e Civic Center and Līhu‘e Airport. The project is a key segment of *Ke ala Hele Makalae*, the 16-mile

Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawai‘i*, and in the 2003 *Bike Plan Hawai‘i* update.

The County of Kaua‘i will construct, own, and operate the facility. The project will be funded through the HDOT using FHWA funds. The project is, therefore, considered a federal undertaking subject to consultation requirements in accordance with Section 106 of the NHPA and 36 Code of Federal Regulations (CFR), Part 800.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors will provide additional connections through urban areas. Path improvements and amenities will include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nāwiliwili Stream Railroad Bridge, and various improvements at Nāwiliwili Park to be coordinated with the park’s master plan. The project will benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

The FHWA, HDOT, and County of Kaua‘i DPW have conducted consultations for the subject project with Native Hawaiian organizations (NHOs) and other consulting parties in compliance with NHPA Section 106. This letter is submitted to the SHPO to request concurrence with the FHWA’s effect determination regarding historic properties in the subject project’s area of potential effects (APE) for the purpose of satisfying NHPA Section 106 consultation requirements.

For the proposed project, the APE is determined to be all of the proposed primary and secondary pathway corridors, as depicted on Figure 1 in the enclosed report summarizing the NHPA 106 Consultation. Historic properties identified within the APE are shown on Figure 2 of the report.

## **Consultation Overview**

The FHWA delegated NHPA Section 106 Consultation activities to the HDOT; the HDOT, in turn allowed the coordination of NHPA Section 106 activities to be administered by the County of Kaua‘i. The County of Kaua‘i acted on behalf of the FHWA in NHPA Section 106 consultations with the State Historic Preservation Division (SHPD), the Office of Hawaiian Affairs (OHA), the Native Hawaiian Historic Preservation Council (NHHPC), the Kaua‘i Historic Preservation Review Commission (KHPRC), and other county, state, and federal agencies, NHOs, and private parties. The FHWA remains responsible for all findings and determinations charged to the agency in the review process.

The NHPA Section 106 consultation process conducted for this project is documented in the enclosed report. The report includes a list of all consulted parties, a summary of comments received, agency responses, and outcomes. Written correspondence, minutes from public consultation meetings, notes from personal interviews with consulted parties, including NHOs, records of public notices, and project information that was provided to the public are appended to the report.



## Historical, Cultural, and Archaeological Background

The project area is located between the two main bays and streams of Nāwiliwili and Hanamā‘ulu. These two streams, which drain the slopes of Kilohana, were once home to thousands of native Hawaiians living a traditional subsistence lifestyle. The *ahupua‘a* of Hanamā‘ulu, Kalapakī and Nāwiliwili were permanently inhabited and intensively used in precontact times, based on a large amount of archaeological, historical, and oral-historical documentation. The coastal areas were the locus of permanent house sites and temporary shelters, *heiau*, including *ko‘a* and *kū‘ula*, and numerous trails. There were fishponds at Kalapakī and Nāwiliwili. Before the historic era, there were villages at Kalapakī, Nāwiliwili, and the mouth of the Hanamā‘ulu Stream. The upland areas of these *ahupua‘a* contained native forests and were cultivated with crops of *wauke* (paper mulberry, *Broussonetia papyrifera*), *‘uala* (sweet potatoes, *Ipomoea batatas*), and *ipu* (bottle gourd). Legends and historic documentation elaborate on many of these important natural resources. The archaeological record of the Līhu‘e District indicates a date range of circa A.D. 1100 to 1650 for pre-contact Hawaiian habitations (Walker et al. 1991).

Early historic accounts of the area are limited to travelers, missionaries, and survey expeditions. They describe this side of Kaua‘i as having good land that is mostly unoccupied with lots of grass, trees, and streams (Damon 1931). Whaling and sandalwood were short-lived commercial enterprises, and part of a transitional period to a cash crop economy. Missionaries settled in Līhu‘e in the 1840s and built the first infrastructure of the area, consisting of schools and churches. Cash crops were attempted in the form of cotton, which proved unsuccessful. The missionaries also tried to move the local inhabitants of the shore to higher, more fertile agricultural lands. The first commercial agriculture was attempted in the late 1830s by Governor Kaikio‘ewa, but was not consistent or successful until after the *Māhele* of the 1850s.

The middle 19<sup>th</sup> century brought the *Māhele*, and commercial sugar cane agriculture, which firmly established Līhu‘e’s place in state and global economic markets. In 1870, the Līhu‘e Plantation Company bought approximately 17,000 acres of undeveloped land in Hanamā‘ulu, which were then used to grow sugar cane and to capture and deliver water to both plantations. Later, in 1870, George N. Wilcox started the first sugar cane plantation in Hanamā‘ulu, the Hanamaulu Plantation (Dorrance and Morgan 2000). In 1898, Hanamaulu Plantation was merged into Līhu‘e Plantation. Commercial sugar cane agriculture continued in Līhu‘e until 2000, when it and the Kekaha Sugar Co. were permanently shut down. The nearby Kipu Plantation, founded in 1907, operated until 1942 (Dorrance and Morgan 2000).

The beginning of the 20<sup>th</sup> century brought big changes as Nāwiliwili Harbor was proposed as a deep water harbor for the island of Kaua‘i. The harbor was dredged and the dredge material was used to fill in the wharf areas. A breakwater was also constructed in the harbor and was completed after much debate in the legislature. The Nāwiliwili Harbor Light was also upgraded during this time. Nāwiliwili Harbor was utilized by the sugar plantations; however, it was not until after a tidal wave devastated Ahukini Landing in the late 1940s that Nāwiliwili Harbor was used almost exclusively for sugar cane and other commercial transport. Līhu‘e Airport was opened outside of Līhu‘e town in 1949, further extending transportation options for local residents. The airport sits on approximately 850 acres of former sugarcane fields. The addition of the airport brought an increase in tourist traffic to Kaua‘i which has had a major economic

impact to the island. The airport has been continually upgraded through the years and continues to serve as Kaua'i's only public airport.

Thrum and Bennett conducted the first island wide archaeological surveys in the early part of the 20th century. The early surveys of this area of Kaua'i documented a number of *heiau* which, at the time of survey, were only remnants or already destroyed (Thrum 1907). Other types of sites observed during these early surveys include dune burials and Paukini Rock, which is now under water in Nāwiliwili Bay. Most of the previous archaeological work in and around the project area has been conducted only within the last 30 years. Later research of the area documented pre-contact habitation sites and activity areas, additional burials, and infrastructure related to the plantation era. Of particular note to the current project are the Cultural Surveys Hawaii (CSH) surveys of 1988 and 1990 which covered approximately 50 percent of the current project area (Hammatt 1988 and 1990). The survey documented five sites related to prehistoric activity and plantation era infrastructure. A CSH survey conducted in 1998 reported structures related to Ahukini Landing and portions of this survey fall within the current project area (Creed et al. 1999). A survey by Bell et al. (2006) of various lands around the airport documented one site, a historic piggery, which is located approximately 150 m east of the path alignment, near the north end of runway 3-21. .

Prior to the extensive land alteration caused by over a century of commercial agricultural activities, portions of the project area would likely have contained historic properties related to habitation and coastal resource exploitation. These historic properties would have included both permanent and temporary habitation terraces, activity areas, and burial mounds. Subsurface precontact cultural deposits within the project area may consist of midden, artifact scatters, and possible human remains. Remnants of post-contact agricultural infrastructure are also likely to exist within the project area and may include terraces, historic artifact scatters, and water control features. Other historic infrastructure, including the remains of single family residences and commercial structures, may be present and there is also a possibility of encountering WWII-era military infrastructure. Previously identified historic properties within the current project area consist of pre-contact habitation remnants and historic infrastructure related to commercial agriculture and ranching activities.

### **Summary of Archaeological Sites within the APE**

For the proposed project, the APE is determined to be all of the proposed primary and secondary pathway corridors, as depicted on the enclosed Figure 1. Historic properties identified within the APE are shown on the enclosed Figure 2. A report that summarizes the NHPA Section 106 consultation process and findings of the archaeological studies conducted for the project is also enclosed for your reference. A summary description of the archaeological sites is also provided in the following effect determination discussion.

### **Effect Determination**

Based on an analysis, site observations, and consultation with the SHPD, the OHA, the NHHPC, the KHPRC, and other county, state, and federal agencies, NHOs, and private parties, the FHWA has determined that there will be an adverse effect on the following historic property.

**Adverse Effect for the following historic property within the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-1845	Nāwiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines stipulated in a memorandum of agreement.

The adverse effect determination is being rendered because adaptive reuse of the Nāwiliwili Stream Railroad Bridge to carry a segment of the shared-use path will require modifications to the original bridge structure. The adverse effect will be mitigated through the application of historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch.

The FHWA has determined that there will be no adverse effect for the following historic properties identified within the APE. The no adverse effect determination is being rendered based on the recommendations summarized in the following table and because the path will be aligned to avoid these historic properties.

**No Adverse Effect for the following historic properties within the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-009	Kuhiau Heiau. Nāwiliwili; a large paved <i>heiau</i> , whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nāwiliwili Beach Park
50-30-11-100	Ninini Heiau. Near Nāwiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated. No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated. No further work.
50-30-11-424	Oval terrace alignment	Previously recorded. No further work.
50-30-11-1999	Paukini Rock (in Nāwiliwili Bay)	Previously recorded. Describe in interpretive display.

**No Adverse Effect for the following historic properties within the APE**

50-30-11-6009	Nāwiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	n/a Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-08-9402	Historic building remnant at site of radio station KIVM	Avoid.
11-B004	Historic cemetery near Nāwiliwili Park	Avoid.
50-30-11-2086*	Pre-contact terrace habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic mounds. Possible burial.	Preserve in place. Avoid site by establishing a 50-foot buffer. Data recovery program to be undertaken before path construction begins.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic septic outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact scatter activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic drainage ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic drainage ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic industrial complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

**No Adverse Effect for the following historic properties within the APE**

--	Pū'ali (Niumalu) Bridge	Avoid existing bridge with a buffer. Buffer distance to be determined by the SHPD, Architectural Branch.
----	-------------------------	--

\* Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point (CSH, April 2010).

**Mitigation Policies**

Mitigation measures during the construction of the proposed improvements have been and will continue to be implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources. The following mitigation measures have been or will be implemented, at a minimum:

- If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
- If human remains are discovered, Hawaii Administrative Rules Title 13, Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 "Procedures for Property Treatment of Burial Sites and Human Skeletal Remains."

The HDOT and County of Kaua'i will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

Additionally, enclosed is a draft memorandum of agreement (MOA) to be executed among the FHWA and SHPO, with the County of Kaua'i participating as an invited signatory. The MOA stipulates terms under which the undertaking will be implemented in order to avoid, minimize and/or mitigate its effects on historic properties.

We request your concurrence with the FHWA's effect determination and ask for a written response within thirty (30) days of receipt of this letter in accordance with 36 CFR Part 800.3(c)(4). We appreciate your assistance with this important transportation project.



If you have any questions, please feel free to contact me at (808) 541-2316 or by email at [meesa.otani@dot.gov](mailto:meesa.otani@dot.gov). Thank you for your assistance.

Sincerely yours,



Meesa T. Otani  
Environmental Engineer

Enclosures: Figure 1 – Proposed Path Routes  
Figure 2 – Historic Properties in the APE  
Report summarizing NHPA Section 106 Consultations  
Draft MOA among the FHWA, SHPO, and County of Kaua'i

cc: Mr. Doug Haigh, Kaua'i DPW, Building Division (w/ enclosures)  
Mr. Jim Niermann, R. M. Towill Corporation (w/o enclosures)  
Ms. Christine Yamasaki, HDOT-HWY-D (w/o enclosures)  
Ms. Holly Yamauchi, HDOT, HWY-D (w/o enclosures)  
Mr. Todd Nishioka HDOT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA  
INTERIM FIRST DEPUTY

WILLIAM M. TAM  
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

January 21, 2014

Mr. David W. Shideler  
Cultural Surveys Hawai'i, Inc.  
P.O. Box 1114  
Kailua, HI 96734

LOG NO: 2013.6321, 2014.00187  
DOC NO: 1401SL17  
Archaeology

Dear Mr. Shideler:

**SUBJECT: Chapter 6E-8 and National Historic Preservation Act (NHPA) Section 106 Review–  
Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project  
Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island  
TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and  
various rights-of-way between various plats**

Thank you for the opportunity to review this revised report titled *Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats* (Altizer and Hammatt, November 2013). We received this revised draft on November 12, 2013 (Log No. 2013.6321). We subsequently determined the archaeological inventory survey (AIS) report did not indicate the project is a federal undertaking and did not include significance assessments using National Register criteria (January 3, 2014; email from Lebo to Shideler). We received the newly-revised AIS (Altizer and Hammatt, January 2014) and accompany materials via email on January 12 and 18, 2014 (Log No. 2014.00187).

The Federal Highway Administration (FHWA) is funding the State of Hawai'i Department of Transport's (HDOT) and County of Kaua'i Department of Public Work's (DPW) plan to develop the Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawai'i Master Plan – Bike Plan Hawai'i*, and in the 2003 *Bike Plan Hawai'i* update. Due to Federal Highway Administration (FHWA) funding through the State of Hawai'i Department of Transportation (HDOT), this project is a federal undertaking requiring compliance with Section 106 of the National Historic Preservation Act (NHPA), and 36 Code of Federal Regulations (CFR) Part 800.

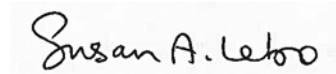
The current AIS was conducted at the request of R.M. Towill Corporation for portions of the Nāwiliwili-Ahukini Bike Path Project, which is located in coastal and near coastal portions of three ahupua'a in Līhu'e District: Hanamā'ulu, Kalapakī, and Nāwiliwili. The 6-mile (10 km) project area is one section of a larger 17-mile (27.4 km) project to connect Nāwiliwili with Anahola. The Area of Potential Effect (APE) for the current AIS consists of both alignment-option corridors linking Ahukini Landing, Nāwiliwili Harbor Light, Līhu'e Airport, Kaua'i Lagoons and Marriott Resort, Nāwiliwili Park and Harbor, and Niumalu Park. The APE also includes all lands in the vicinity of these alignment options from the western shoulder of the *mauka* (inland) corridor east to the ocean. A pedestrian survey consisting of 100% coverage at 5-10 m intervals was conducted within the APE.

The AIS report provides good discussions of the project, consultation, cultural and historic background research, previous investigations, field and laboratory methods and findings, as well as the significance assessments and recommendations. The AIS investigations identified 15 historic properties, of which 9 are assessed as potentially being affected by the project and also as being eligible for listing on the National/Hawai'i Registers of Historic Places (Table 1). In 2012, the FHWA rendered an adverse effect determination for the Nāwiliwili Stream Railroad Bridge (SIHP # 50-30-11-1845) and a determination that the current AIS project would have no adverse effect on the archaeological historic properties within the project area (Nickelson to Aila, July 25, 2012). The archaeological historic properties are being addressed in a Memorandum of Agreement to be submitted to the Advisory Council on Historic Preservation. The recommended mitigation measures will reduce the project's potentially adverse effect on these significant historic properties.

The revisions made to this document adequately address the major concerns raised in our prior correspondence (April 21, 2010, Log No. 2010.0723, Doc. No. 1004NM62; November 9, 2012, SHPD and CSH consultation, Lebo and Shideler; January 3, 2014, email from Lebo to Shideler; and January 18, 2014, email from Shideler to Lebo). The archaeological inventory survey report meets the requirements of the *Secretary of Interior Standards for Archaeological Documentation* and Hawaii Administrative Rule §13-276-5. It is accepted by SHPD. Please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the Kapolei SHPD office, attention SHPD Library.

Please contact me at (808) 692-8019 or at [Susan.A.Lebo@hawaii.gov](mailto:Susan.A.Lebo@hawaii.gov) if you have any questions or concerns regarding this letter.

Aloha,



Susan A. Lebo, PhD  
Oahu Lead Archaeologist

Table 1. Sites Assessments using National/Hawaii-Register Significance Criteria and HAR §13-275-6 Significance Criteria, and Site Recommendations

SIHP	Description	Significance Criteria		Recommendation
		NR/HR	HAR §13-275-6	
50-30-11-422	Plantation wall	Not significant	Not significant	No further work
50-30-11-423	Plantation wall	Not significant	Not significant	No further work
50-30-11-2086	Pre-Contact habitation terrace	D	“d” and “e”	Preservation, avoid with 20-ft buffer
50-30-11-2087	Historic lighthouse and associated habitation remnants	C and D	“c” and “d”	Preservation of remaining structure; adaptive reuse
50-30-11-2088	Military concrete slab base of communications tower	D	“d”	No further work
50-30-11-2089	Historic mounds, possible burial	D	“d” and “e”	Preservation in place; avoid w/50-ft buffer; data recovery prior to construction
50-30-11-2090	Military structural foundation, gun emplacement	D	“d”	Preservation; avoid w/20-ft buffer
50-30-11-2091	Historic habitation foundation	Not significant	Not significant	No further work
50-30-11-2092	Historic septic, outhouse and cesspool	D	“d”	No further work
50-30-11-2093	Plantation ditch	Not significant	Not significant	No further work
50-30-11-2094	Pre-/Post-Contact habitation terrace	D	“d” and “e”	Preservation; avoid w/20-ft buffer
50-30-11-2095	Pre-Contact scatter, activity area	D	“d” and “e”	No further work
50-30-11-2096	Historic ditch	Not significant	Not significant	No further work
50-30-11-2097	Historic ditch	Not significant	Not significant	No further work
50-30-11-2103	Historic structural foundations, industrial complex	D	“d”	Preservation, educational signage

Date: 01/21/14

CSH Job Code: NAWILIWILI 4

Submittal Sheet for Historic Preservation Review Filing Fees

State Historic Preservation Division

Department of Land and Natural Resources

Agency/Firm (Requesting Review): Cultural Surveys Hawai'i Inc.

Contact: David Shideler

Phone: (808) 262-9972 Fax: (808) 262-4950

Address: P.O. Box 1114 Kailua, HI 96734

Email: dshideler@culturalsurveys.com

Title of Report/Plan:

Final Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project, Federal Aid Project Number CMAQ-0700(57), Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i, TMKs: [4] 3-5-01:4, 8, 27, 60, 83, 85, 102, 118, 128, 159, and, 160 por. and various rights-of-way between various plats (Altizer and Hammatt 2014)		
Island <u>Kaua'i</u>	District <u>Līhu'e</u>	Ahupua'a <u>Nāwiliwili, Kalapakī, and H</u>
TMK <u>[4] 3-5-01:4, 8, 27, 60, 83, 85, 102, 118, 128, 159, and, 160 por. and various rights-of-way between various plats</u>		
Acreage Inventoried		Number of new sites inventoried
<u>6 linear miles</u>		<u>13 new (2 previously identified; 15 total)</u>

Submittal Plan/Report Fee & Type: (All reports or plans submitted to the SHPD for review shall be accompanied by the appropriate fee in accordance with HAR§13-275-4 and §284-4).

<input checked="" type="checkbox"/>	Check if Report is a Re-Submittal (no fee charged)
<input type="checkbox"/>	Final Report with CD
<input type="checkbox"/> \$25	Literature Review & Field Check
<input type="checkbox"/> \$50	Archaeological Assessment
<input type="checkbox"/> \$150	Archaeological Inventory Survey Plan
<input type="checkbox"/> \$450	Archaeological, Architectural or Ethnographic Survey Report
<input type="checkbox"/> \$150	Preservation Plan
<input type="checkbox"/> \$25	Monitoring Plan
<input type="checkbox"/> \$150	Archaeological Data Recovery Plan
<input type="checkbox"/> \$250	Burial Treatment Plan
<input type="checkbox"/> \$100	Archaeological Monitoring Report, if resources reported
<input type="checkbox"/> \$450	Archaeological Data Recovery Report
<input type="checkbox"/> \$450	Ethnographic Documentation Report
<input type="checkbox"/> \$25	Burial Disinterment Report
<input type="checkbox"/> \$50	Osteological Analysis Report

RECEIVED  
HISTORIC PRES. DIV.  
DEPT. OF LAND &  
NATURAL RESOURCES  
2014 JAN 24 PM 12:13

Fee Total: 0.00 (make checks payable to "Hawaii Historic Preservation Special Fund")  
For Office Use Only:

Date Received	Payment Method
	Cash \$
	Check Check No:
Log No.	Receipt Issued:



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**Hawaii Federal-Aid Division**

May 12, 2020

300 Ala Moana Blvd, Rm 3-306  
Box 50206  
Honolulu, Hawaii 96850  
Phone: (808) 541-2700  
Fax: (808) 541-2704

In Reply Refer To:  
HDA-HI

Ms. Suzanne D. Case  
State Historic Preservation Officer and Chairperson  
Department of Land and Natural Resources  
601 Kamokila Boulevard, Suite 555  
Kapolei, HI 96707

Subject: National Historic Preservation Act Section 106 Effect Determination  
Nawiliwili – Ahukini Shared-Use Path Project  
Lihue District (Puna Moku), Island of Kauai, Hawaii  
Ahupuaa of Nawiliwili, Kalapaki, and Hanamaulu  
Federal-aid Project Number: CMAQ-0700(57)  
Tax Map Key(s): (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Waapa Roads; 3-2-04:1, 2, 3 & Waapa Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02: Kaana Street, Hardy Street, Rice Street, & Umi Street; 3-6-08: Waapa Road, Nawiliwili Stream; and 3-7-02: Ahukini Road

Dear Ms. Case:

The Federal Highway Administration (FHWA), in cooperation with the State of Hawaii Department of Transportation (HDOT) and the County of Kauai Department of Public Works (DPW), is planning the Nawiliwili – Ahukini Shared-Use Path project. In accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (2006), the FHWA requests the State Historic Preservation Officer's (SHPO) concurrence on the effect determination for the proposed improvements. The FHWA has made a no adverse effect determination for the proposed project.

This request is in follow up to previous correspondence dated April 3, 2013 and revises the previous determination of adverse effect to State Inventory of Historic Places (SIHP) Site No. 50-30-11-1845, the Nawiliwili Stream Railroad Bridge. The FHWA has determined that the proposed preservation and adaptive reuse of the bridge to carry a section of the shared-use path would have no adverse effect because all modifications to the original bridge structure would be reversible and would be mitigated through the application of historic preservation design guidelines developed in consultation with the State Historic Preservation Division (SHPD), Architectural Branch.



## **Description of the Undertaking and Area of Potential Effect**

The County of Kauai DPW plans to develop a coastal shared-use path between Nawiliwili Park and Ahukini Landing in the Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae*, the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

For the proposed project, the Area of Potential Effect (APE) is determined to be all the proposed primary and secondary pathway corridors, as depicted on Figure 1 (enclosed). Historic properties identified within the APE are shown on Figure 2 (enclosed). In a letter dated March 29, 2012, HDOT requested SHPO concurrence with the APE, but no response from SHPO was received. SHPD issued a letter to FHWA dated August 28, 2012 (Log No.2012.2561, Doc. No. 1208RS56) which acknowledges the APE, and issued a letter to the project archaeologist, Mr. David Shideler of Cultural Surveys Hawaii, Inc. (CSH), dated January 21, 2014 (Log No.2013.6321, 2014.00187, Doc. No. 1401SL17) which also acknowledges the APE.

## **Steps Taken to Identify Historic Properties**

To identify historic properties in the APE, the FHWA, HDOT, and County of Kauai DPW conducted background studies including archaeological inventory surveys, cultural impact assessment and architectural inventory survey; and conducted public meetings and individual consultations for the subject project with Native Hawaiian Organizations (NHOs) and other consulting parties in compliance with National Historic Preservation Act, Section 106. As part of the special studies, CSH archaeologists conducted background research including a review of previous archaeological studies on file at SHPD; review of documents at Hamilton Library of the University of Hawaii at Manoa, the Hawaii State Archives, the Mission Houses Museum Library, the Hawaii Public Library, and the Archives of the Bishop Museum; study of historic photographs at the Hawaii State Archives and the Archives of the Bishop Museum; and study of historic maps at the Survey Office of the Department of Land and Natural Resources. Historic maps and photographs from the CSH library were also consulted. In addition, Mahele records were examined from the Waihona Aina database ([www.waihona.com](http://www.waihona.com)).

Four studies were prepared to help identify historic properties within the APE, assess potential effects, and develop recommended mitigation measures.

Four key studies were prepared to identify historic properties in the APE:

- a. An Archaeological Literature Review and Field Inspection Report (LRFI) was conducted for the entire APE.
- b. A Cultural Impact Evaluation was conducted for the entire APE, including consultation with Native Hawaiian Organizations (NHOs) and cultural practitioners.
- c. An Archaeological Inventory Survey (AIS) was conducted for the coastal alignment corridor between Ahukini Point and Ninini Point (portion of Segment A-1), including limited subsurface testing as necessary within the footprint of planned improvements involving ground disturbing activities (e.g. bridge abutments, culvert crossing). The SHPD accepted the AIS as final and approved the agreed-upon mitigation measures by letter to CSH dated January 21, 2014.
- d. An Architectural Inventory Survey was prepared for two historic bridges located within the proposed alignments: (1) a historic railroad bridge over Nawiliwili Stream, and (2) Niumalu Bridge, a narrow, single-lane concrete bridge that spans Puali Stream.

These reports documented 26 historic properties in the APE, including pre-contact cultural resources and post-contact historical structures.

#### **Summary of NHPA Section 106 Consultation Work**

Native Hawaiian organizations, agencies, and community members were contacted in order to identify potentially knowledgeable individuals with cultural expertise and/or knowledge of the project area and vicinity. The organizations consulted include SHPD, the Office of Hawaiian Affairs (OHA), Native Hawaiian Historic Preservation Council (NHHPC), the Historic Hawaii Foundation (HHF), and Kauai Island organizations pertinent to the proposed project area including the Kauai/Niihau Islands Burial Council (KNIBC), Kauai Historical Preservation Review Commission (KHPRC), Kauai Historical Society (KHS), State Department of Land and Natural Resources Kauai Land Division, Kauai Paths, Royal Order of Kamehameha, Kaumualii Chapter No. 3, Kale O Kauai, and other county, state, and federal agencies, NHOs, and private parties.

Ten culturally knowledgeable individuals with long-term ties to the project area were interviewed for the NHPA Section 106 consultation process. These interviews resulted in the identification of two historic properties within the APE:

- a. Paukini Rock (SIHP No. 50-30-11-1999) – Which will be avoided by the undertaking and is recommended to be included in interpretation /educational programming related to Nawiliwili Harbor.
- b. Ahukini Landing (SIHP No. 50-30-11-2103) – Which is documented in the project AIS and is recommended to be included in interpretation /educational programming related to Ahukini Point.

#### **Description of Historic Properties within the APE**

There are 26 historic properties documented in the APE. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

**Table 1**  
**State Historic Sites Located in the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved <i>heiau</i> , whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	n/aAvoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work

**Table 1**  
**State Historic Sites Located in the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

\* Historic sites identified during the AIS of the coastal area between Ahukini Landing and Ninini Point.

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

**Table 2**  
**State Historic Sites in the APE that Retain Aspects of Historic Integrity**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Eligibility Criteria*</b>	<b>Aspects of Integrity</b>
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.
50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

\* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

## Undertaking's Effects on Historic Properties

**Table 3** lists each eligible historic property and describes the basis for a determination of no adverse effect by the Undertaking on the qualities that make the historic property eligible.

**Table 3**  
**State Historic Sites Located in the APE and Basis for No Adverse Effect**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Basis for No Adverse Effect</b>
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	The existing structure will be preserved and will be adaptively reused for a segment of the path in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. The new bridge deck and railings proposed for the Undertaking will be designed to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, setting, feeling and association.
50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	The undertaking will preserve this historic property through the implementation of a 20-foot buffer. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, and feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	The existing structures will be preserved and will be adaptively reused as a feature of interest and will be included in interpretive signage along the adjacent path segment. The path design will be integrated with the lighthouse facility in accordance with historic preservation design guidelines developed in consultation with the SHPD,



		Architectural Branch. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	The undertaking will preserve this historic property through the implementation of a 50-foot buffer. On this basis, the Undertaking will not diminish the integrity of the historic property's location, setting, and materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	The undertaking will preserve this historic property through the implementation of a 20-foot buffer and interpretive signage. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	The undertaking will preserve this historic property through the implementation of a 20-foot buffer. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, feeling and association.

### Copies of Summaries Provided by Consulting Parties

Please see enclosed Attachment A for copies of consultation notifications meeting notes, and correspondence with consulting parties including letters from people and organizations requesting to be consulting parties and documentation of comments participants have had on the identification of historic properties in the APE.

### Effect Determination

Based on our analysis, site observations, and consultation with the SHPD, KNIBC, OHA, the NHHPC, the KHPRC, the KHS, the HHF, county, state, and federal agencies, NHOs, and private parties, and the recommendations summarized in **Table 4** below, the FHWA has determined that the proposed undertaking has no adverse effect to historic properties identified within the APE.

**Table 4****No Adverse Effect for the following historic properties within the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

**Mitigation Policies**

The FHWA shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

**A. Supplemental Archaeological Inventory Survey**

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary

Network Routes” located in interior lands prior to the design and construction of those alignments.

2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

#### **B. Archaeological Monitoring Plan**

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
  - a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
  - b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
  - c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

#### **C. Mitigation Measures for Historic Properties**

1. To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities.
2. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

5. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
6. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

**D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell 'Ohana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

**E. Mitigation for Pū'ali (Niumalu) Bridge**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pū'ali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pū'ali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

**F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087**

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

**G. Treatment of Burial Sites and Human Remains**

1. The County DPW shall prepare appropriate documents as required to address the treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

**H. Preservation Plan / Interpretive Plan**

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
  - a. Interpretive signage will address the themes of each of the historic sites identified near the project.
  - b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
  - c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
  - d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

**I. Mitigation during Construction Activities**

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.



2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The HDOT and County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

#### **Section 4(f) of the U.S. Department of Transportation Act of 1966**

Section 4(f) of the U.S. Department of Transportation Act of 1966 established the requirement for the consideration of park and recreational lands, wildlife and waterfowl refuges, and historic sites in transportation project development. The law, now codified in 49 U.S.C. §303 and 23 U.S.C. §138, is implemented by the FHWA through 23 CFR 774.

Section 4(f) stipulates that the Federal Highway Administration (FHWA) and other U.S. DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the following conditions apply:

- There is a feasible and prudent avoidance alternative to the use of land; and the action includes all possible planning to minimize harm to the property resulting from such use; or
- The Administration determines that the use of the property will have a *de minimis* impact.

Under Section 4(f), the impacts of a transportation project on a historic site that qualifies for Section 4(f) protection may be determined to be *de minimis* if:

1. FHW has considered the views of any consulting parties participating in the consultation required by Section 106 of the NHPA;
2. The SHPO is informed of FHWA’s intent to make a *de minimis* impact finding based on their written concurrence in the Section 106 determination of no adverse effect; and
3. The Section 106 process results in a determination of no adverse effect with the written concurrence of the SHPO.

Based on the above information, the FHWA is notifying SHPO of it’s intent to make a *de minimis* impact based on SHPO’s concurrence with the no adverse effect determination for all of the historic properties listed in **Table 4**.

The FHWA is requesting SHPO’s concurrence with the no adverse effect determination for the Nawiliwili – Ahukini Shared-Use Path project. If the SHPO objects to the no adverse effect determination, please inform us within 30 days of receipt of this letter. In the absence of a SHPO response by this date, the FHWA will assume the SHPO concurs with this determination and will proceed with the undertaking.

If you have any questions, please feel free to contact me at (808) 541-2316 or by email at [meesa.otani@dot.gov](mailto:meesa.otani@dot.gov). Thank you for your assistance.

Sincerely yours,

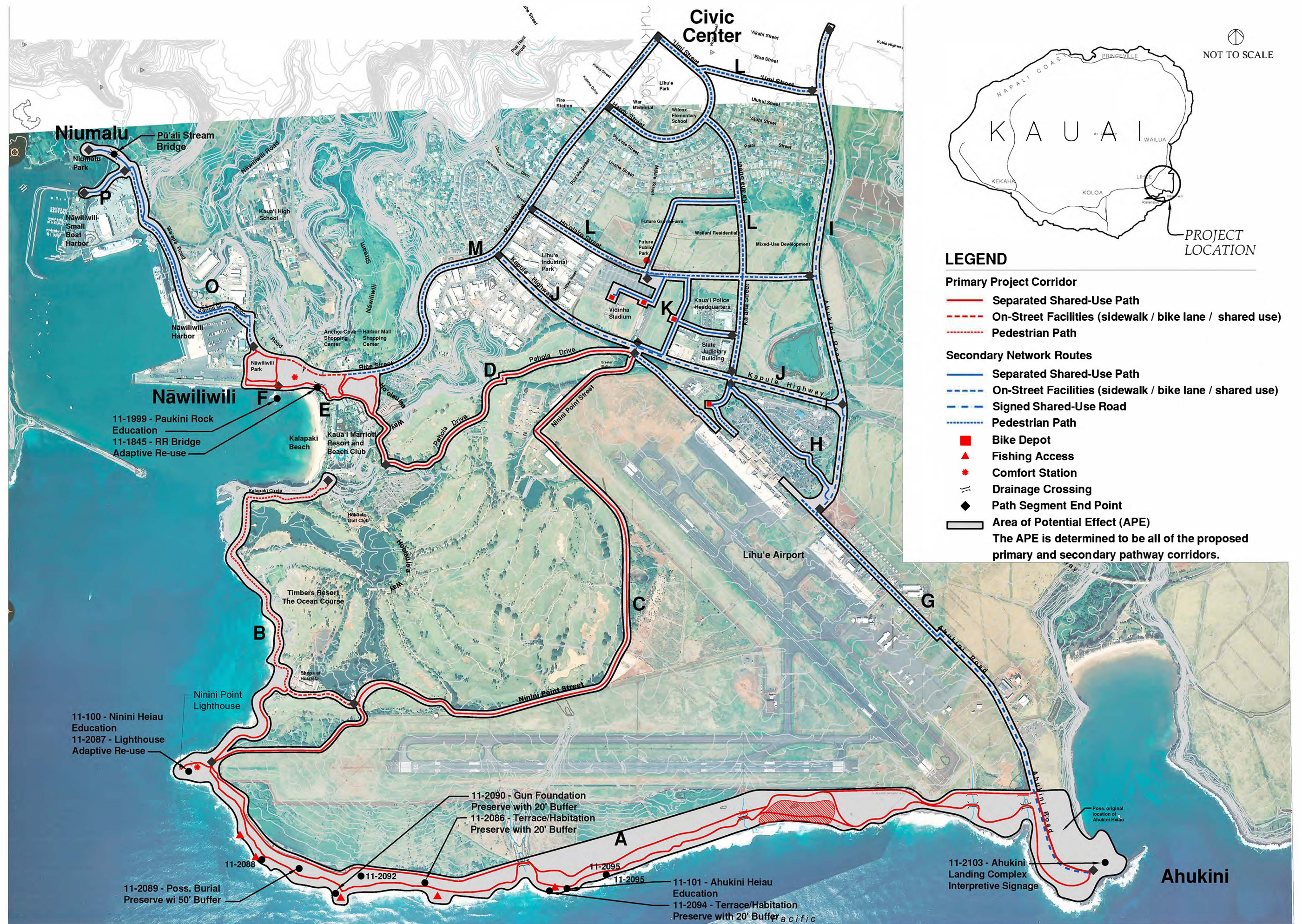
Meesa Otani  
Environmental Engineer

Enclosures

cc: Emma Kawamoto, HDOT, HWY-DD  
Misako Mimura, HDOT, HWY-DE  
Doug Haigh, Kauai DPW, Building Division  
Jim Niermann, R. M. Towill Corporation







Nāwiliwili - Ahukini Shared-Use Path  
County of Kaua'i  
Lihue, Island of Kaua'i, Hawai'i

FIGURE 1 : APE - ROUTE ALTERNATIVES

NOT TO SCALE

0 200 400 800 1200 Feet

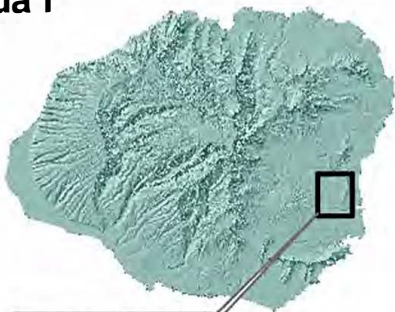
R. M. Towill Corporation



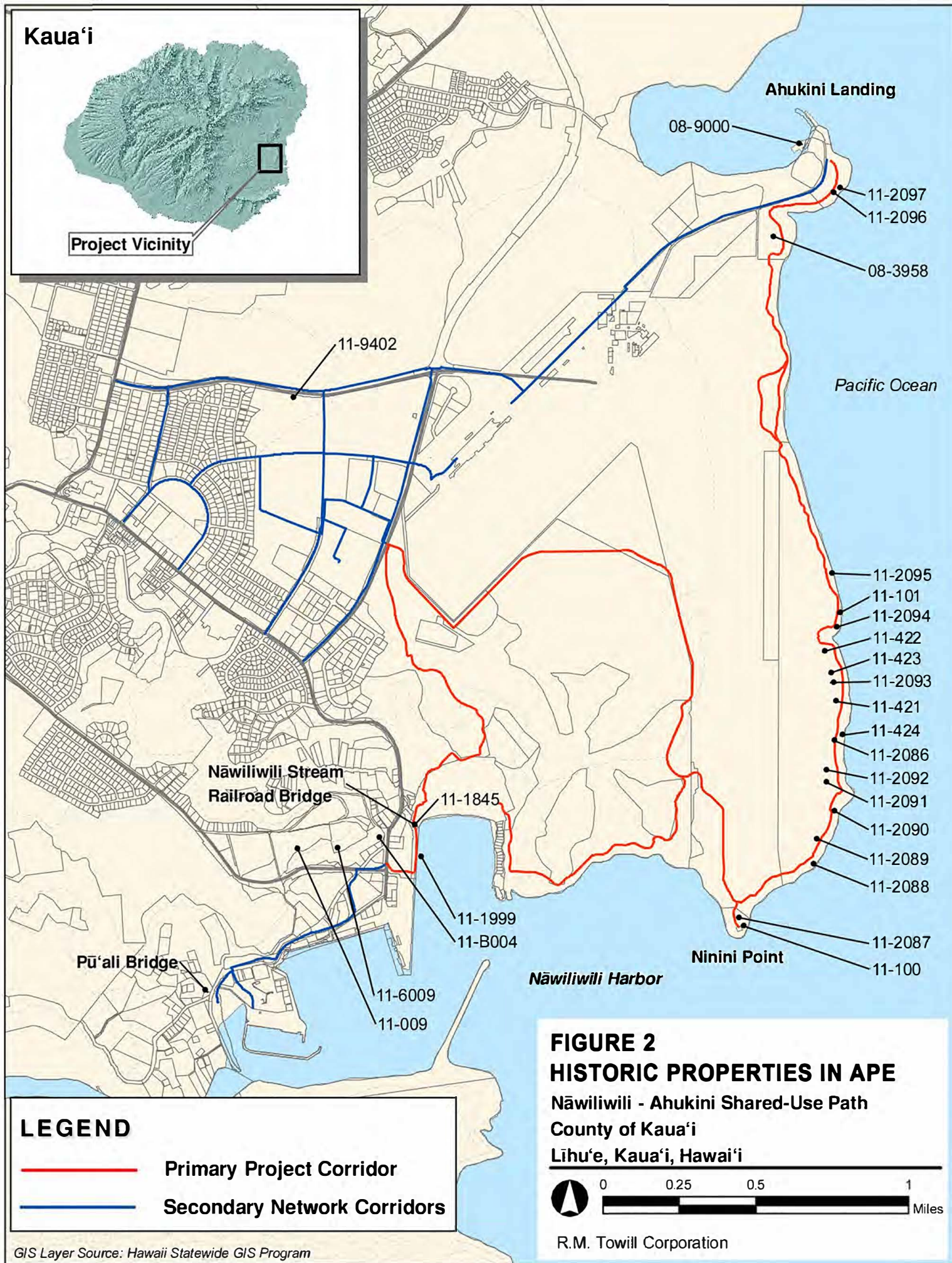




Kaua'i



Project Vicinity



Ahukini Landing

08-9000

11-2097

11-2096

08-3958

Pacific Ocean

11-9402

Nāwiliwili Stream  
Railroad Bridge

11-1845

11-1999

11-B004

Pū'ali Bridge

11-6009

11-009

Nāwiliwili Harbor

Ninini Point

11-2095

11-101

11-2094

11-422

11-423

11-2093

11-421

11-424

11-2086

11-2092

11-2091

11-2090

11-2089

11-2088

11-2087

11-100

## LEGEND



Primary Project Corridor



Secondary Network Corridors

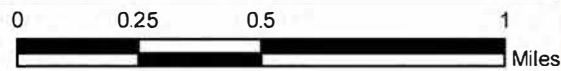
## FIGURE 2

### HISTORIC PROPERTIES IN APE

Nāwiliwili - Ahukini Shared-Use Path

County of Kaua'i

Līhu'e, Kaua'i, Hawai'i



R.M. Towill Corporation

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  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

June 12, 2020

Meesa T. Otani, Environmental Engineer  
Federal Highways Administration  
U.S. Department of Transportation  
300 Ala Moana Boulevard  
Room 3-306, Box 50206  
Honolulu, Hawai'i 96850  
Email: [Meesa.Otani@dot.gov](mailto:Meesa.Otani@dot.gov)

IN REPLY REFER TO:  
Log No.: 2020.01075  
Doc. No.: 2006SH10  
Archaeology  
Architecture

Dear Meesa Otani:

**SUBJECT: National Historic Preservation Act (NHPA) Section 106 Review – Request for Concurrence with the Revised Effect Determination Nawiliwili – Ahukini Shared-Use Path Project**  
**Ref. No. HDA-HI, Federal Aid Project No. CMAQ-0700(57)**  
**Nawiliwili, Kalapaki, and Hanamaulu Ahupua'a, Lihue District, Island of Kaua'i**  
**TMK: (4) 3-2-002:001 and Niumalu Road, (4) 3-2-003 Niumalu and Waapa Roads; (4) 3-2-004:001, 002, 003 and Waapa Road, (4) 3-5-001:004, 005, 008, 027, 102, 117, 118, (4) 3-5-002:002, (4) 3-6-002 Kaana Street, Hardy Street, Rice Street, and Umi Street, (4) 3-6-008 Waapa Road, Nawiliwili Stream, and (4) 3-7-002 Ahukini Road**

The State Historic Preservation Division (SHPD) received a letter dated May 12, 2020 from Federal Highway Administration (FHWA) to request the State Historic Preservation Officer's (SHPO's) concurrence with a revised effect determination for the Nawiliwili-Ahukini Shared-Use Path project on the island of Kaua'i. The SHPD received this submittal on May 12, 2020; FHWA granted a review-period extension to SHPD through June 18, 2020 (Email Correspondence Meesa Otani [FHWA] to Stephanie Hacker [SHPD]).

According to the subject letter, the County of Kauai Department of Public Works (DPW) plans to develop a coastal shared-use path between Nawiliwili Park and Ahukini Landing in the Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of Ke ala Hele Makalae, the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 State of Hawaii Master Plan – Bike Plan Hawaii, and in the 2003 Bike Plan Hawaii update. The proposed HDOT project will receive funding from the Federal Highways Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y). The proposed project is subject to compliance with Section 106 of the NHPA and historic preservation review under Hawaii Revised Statutes (HRS) §6E-8.

The planned project consists of a 12-foot-wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan.

The FHWA's notes this letter comes as a follow up to previous correspondence dated April 3, 2013 and revises the previous determination of adverse effect due to impacts to State Inventory of Historic Places (SIHP) Site No. 50-30-11-1845, the Nawiliwili Stream Railroad Bridge. The FHWA has determined that the proposed preservation and adaptive reuse of the bridge to carry a section of the shared-use path would have no adverse effect because all modifications to the original bridge structure will be reversible and will be mitigated through the application of historic preservation design guidelines developed in consultation with the State Historic Preservation Division (SHPD), Architecture Branch.

The Area of Potential Effects (APE) has been determined to be all the proposed primary and secondary pathway corridors, as depicted on Figure 1 accompanying FHWA's letter; historic properties identified within the APE are shown on Figure 2.

To identify historic properties in the APE, the FHWA, HDOT, and the County of Kauai DPW conducted background studies including archaeological inventory surveys, cultural impact assessment and architectural inventory survey and conducted public meetings and individual consultations for the subject project with Native Hawaiian Organizations (NHOs) and other consulting parties in compliance with Section 106. A total of 26 historic properties were identified within the APE, 9 of which were determined to be significant per Hawai'i Administrative Rules (HAR) §13-275-6 as well as eligible to be listed on the National Register for Historic Places (NRHP).

The historic properties determined significant under Chapter 6E and eligible for listing on the NRHP are listed in the table below (derived from FHWA's letter) along with FHWA's basis for why the criteria of *adverse effect* were found inapplicable as well as the proposed actions to avoid, minimize, and mitigate adverse effects.

SIHP No.	Description	Basis for no adverse effect
50-30-11-1845	Nawiliwili Stream Railroad Bridge. Constructed 1931.	The existing structure will be preserved and will be adaptively reused for a segment of the path in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. The new bridge deck and railings proposed for the Undertaking will be designed to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, setting, feeling and association.
50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, feeling and association.
50-30-11-2086	Pre-contact Terrace Habitation	The undertaking will preserve this historic property through the implementation of a 30- foot buffer during project implementation. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, and feeling.

SIHP No.	Description	Basis for no adverse effect
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	The existing structures will be preserved and will be adaptively reused as a feature of interest and will be included in interpretive signage along the adjacent path segment. The path design will be integrated with the lighthouse facility in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds; possible burial	The undertaking will preserve this historic property through the implementation of a 50-foot buffer. On this basis, the Undertaking will not diminish the integrity of the historic property's location, setting, and materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	The undertaking will preserve this historic property through the implementation of a 20-foot buffer and interpretive signage. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historical terrace habitation	The undertaking will preserve and avoid this historic property with a 20-foot buffer. Information about this historic property will be included in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, feeling and association.

FHWA also provided the following text describing the proposed treatment of the identified historic properties:

The FHWA has committed to the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

A. Supplemental Archaeological Inventory Survey

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) §13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR §13-275. Unless the SHPD objects [to the proposed mitigation commitments specified in the AIS] within 45 days after receipt of such Plan [sic; AIS], the County DPW shall ensure that its [proposed mitigation] provisions are implemented.

B. Archaeological Monitoring Plan

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR §13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.



2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements: a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

C. Mitigation Measures for Historic Properties

1. To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities.
2. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.
3. For SIHP Site 50-30-11-2089, a possible burial mound, the County DPW shall provide a 50- foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.
6. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.

D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell 'Ohana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge."



6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
  7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.
- E. Mitigation for Pū'ali (Niumalu) Bridge
1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pū'ali (Niumalu) Bridge and a new, shared-use path bridge.
  2. Prior to undertaking modifications to the Pū'ali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.
- F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087
1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
  2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
  3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.
- G. Treatment of Burial Sites and Human Remains
1. The County DPW shall prepare appropriate documents as required to address the treatment of any burials or other human remains encountered in the course of this project.
  2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR §13-300.
  3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.
- H. Preservation Plan/Interpretive Plan
1. The County DPW shall prepare a Preservation Plan in accordance with HAR §13-277 for SIHP 50-30-11-2086 (habitation terrace), SIHP Site 50-30-2089 (possible burial mound), SIHP 50-30-11-2090 (gun emplacement foundation), SIHP 50-30-11-2094 (pre/post-contact habitation terrace), and SIHP 50-30-11-2103 (industrial complex).
  2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
  3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions: a. Interpretive signage will address the themes of each of the historic sites identified near the project. b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path. c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage. d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
  4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

I. Mitigation during Construction Activities

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13, Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 "Procedures for Property Treatment of Burial Sites and Human Skeletal Remains."

The SHPD has determined the proposed alterations to the Nawiliwili Stream Railroad Bridge will be differentiated from the old; therefore, the new bridge deck and railings are compatible with the essential form and integrity of the historic property and its environment will be unimpaired. The design, workmanship, materials, location, setting, association, and feeling of the proposed project will not affect the integrity of the historic property. The historic character of the property will be retained and preserved. Additionally, the SHPD notes the alterations and additional interpretive signage along the path will comply with the *Secretary of the Interior's Standards for Preservation* guidelines.

The FHWA has determined proposed undertaking will not diminish the integrity of the nine historic properties listed in the table above and therefore the proposed project will result in *no adverse effect*. **The SHPO concurs.**

The SHPD looks forward to receiving a draft supplemental archaeological inventory survey report meeting the requirements of HAR §13-276-5, an archaeological monitoring plan meeting the requirements of HAR §13-279-4, and a draft preservation plan meeting the requirements of HAR §13-277 for SHPD review and acceptance prior to the start of project work. Additionally, the SHPD looks forward to the opportunity to comment on the proposed interpretive signage.

The SHPD acknowledges the FHWA's notification of its intent to make a *de minimis* impact based on SHPO's concurrence with the no adverse effect determination for all the historic properties.

Please contact Julia Flauaus, Architectural Historian, at (808) 692-8029 or [julia.flauaus@hawaii.gov](mailto:julia.flauaus@hawaii.gov) for matters regarding architectural resources. Please contact Stephanie Hacker, Historic Preservation Archaeologist IV, at [Stephanie.Hacker@hawaii.gov](mailto:Stephanie.Hacker@hawaii.gov) or at (808) 692-8046 for matters regarding archaeological resources or this letter.

The FHWA, DPW, and the HDOT are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Aloha,

*Alan Downer*

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

cc: Doug Haigh, Kauai DPW ([DHaigh@kauai.gov](mailto:DHaigh@kauai.gov))  
Emma Kawamoto, HDOT ([Emma.g.Kawamoto@hawaii.gov](mailto:Emma.g.Kawamoto@hawaii.gov))  
Misako Mimura, HDOT ([Misako.k.Mimura@hawaii.gov](mailto:Misako.k.Mimura@hawaii.gov))  
Julia Flauaus, SHPD ([Julia.Flauaus@hawaii.gov](mailto:Julia.Flauaus@hawaii.gov))

## DEPARTMENT OF PUBLIC WORKS

TROY K. TANIGAWA, P.E., ACTING COUNTY ENGINEER

BOYD GAYAGAS, DEPUTY COUNTY ENGINEER



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

September 28, 2021

TO: Alan Downer PhD, Administrator  
State Historic Preservation Division  
Department of Land and Natural Resources  
601 Kamokila Boulevard, Suite 555  
Kapolei, Hawai'i 96707  
via: <https://shpd.hawaii.gov/hicris>

SUBJECT: Historic Preservation Review , Chapter 6E-8, Hawai'i Revised Statute (HRS)  
Nāwiliwili – Ahukini Shared-Use Path Project  
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i  
Ahupua'a of Nāwiliwili, Kalapakī , and Hanamā'ulu  
Federal Aid Project Number: CMAQ-0700 (57)  
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street; 3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Downer,

The County of Kaua'i, Department of Public Works (DPW) submits this letter to provide a project summary for the State Historic Preservation Division (SHPD) review per Hawai'i Revised Statutes (HRS) Chapter 6E-8 in connection with the Nawiliwili – Ahukini Shared-Use Path project.

The DPW, plans to develop a coastal, shared-use path between Nawiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae*, the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

Per HRS Chapter 6E-8 and Hawai'i Administrative Rules (HAR) Chapter 13-275, the DPW offers the following documentation:

## I. IDENTIFICATION AND INVENTORY OF HISTORIC PROPERTIES

There are 26 historic properties documented in the project area. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

**Table 1**  
**State Historic Sites Located in the Project Area**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved <i>heiau</i> , whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	Avoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.

**Table 1**  
**State Historic Sites Located in the Project Area**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Recommendations</b>
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

\* Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point.

## II. EVALUATION OF SIGNIFICANCE

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

**Table 2**  
**State Historic Sites in the APE that Retain Aspects of Historic Integrity**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Eligibility Criteria*</b>	<b>Aspects of Integrity</b>
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.



**Table 2**  
**State Historic Sites in the APE that Retain Aspects of Historic Integrity**

50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

\* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

### III. EFFECT DETERMINATION

DPW offers a “effect, with proposed mitigation commitments” determination for this project.

### IV. PROPOSED MITIGATION COMMITMENTS

The DPW will commit to the following measures to avoid, minimize and mitigate any significant impacts to the historic properties along Nāwiliwili-Ahukini Shared-Use Path. Mitigation measures for specific historic sites are summarized in **Table 3**. Additional commitments are listed below.

**Table 3**  
**No Adverse Effect for the following historic properties within the APE**

<b>SIHP No.</b>	<b>Site Description</b>	<b>Mitigation Commitment</b>
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines

		developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

The DPW shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

**A. Supplemental Archaeological Inventory Survey**

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

**B. Archaeological Monitoring Plan**

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
  - a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
  - b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
  - c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

**C. Mitigation Measures for Historic Properties**

To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities:

1. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
2. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

**D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945**

1. The County DPW shall consult with the SHPD during the design phase of the

Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.

2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell 'Ohana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

**E. Mitigation for Pū'ali (Niumalu) Bridge**

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pū'ali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pū'ali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

**F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087**

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

**G. Treatment of Burial Sites and Human Remains**

1. The County DPW shall prepare appropriate documents as required to address the

treatment of any burials or other human remains encountered in the course of this project.

2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

#### **H. Preservation Plan / Interpretive Plan**

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
  - a. Interpretive signage will address the themes of each of the historic sites identified near the project.
  - b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
  - c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
  - d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

#### **I. Mitigation during Construction Activities**

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

#### **V. FEDERAL FUNDING**



Dr. Downer  
September 28, 2021  
Page 9 of 9

The proposed project will be funded from a combination of Federal and County funds. The project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y).

Consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed for the project. The SHPO concurred with FHWA's finding of "no adverse effect" determination in a letter dated June 12, 2020 (Log No.: 2020.01075, Doc. No.: 2006SH10).

Sincerely,

Troy K. Tanigawa  
Acting County Engineer

cc: Emma Kawamoto , HDOT

---

# **Section VI**

## **Volume II Exhibits:**

**Exhibit 18**  
HRS 343 EA with Appendices

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

## DIRECTOR'S REPORT

### I. SUMMARY

**Action Required by Planning Commission:** Consideration of Class IV Zoning Permit, Use Permit, Special Management Use Permit, and Shoreline Setback Variance to allow the construction of the Nāwiliwili-Ahukini Shared-Use Path.

**Permit Application Nos.** Class IV Zoning Permit Z-IV-2023-10  
Use Permit U-2023-7  
Special Management Area Use Permit SMA(U)-2023-10  
Shoreline Setback Variance SSV-2023-1

**Name of Applicant(s)** COUNTY OF KAUA'I, APPLICANT  
R.M. TOWILL CORPORATION, AUTHORIZED AGENT

### II. PERMIT INFORMATION

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	Pursuant to Article 11, Section 8-11.3 of the KCC, 1987 as amended, a Use Permit is required to allow any development, structures or uses within the Special Treatment District (ST).
<input type="checkbox"/> Project Development Use Permit	
<input checked="" type="checkbox"/> Variance Permit	Pursuant to Section 8-27.9 of the KCC (1987), a Shoreline Setback Variance Permit is required to allow a prefabricated bridge within the shoreline setback area.
<input type="checkbox"/> Special Permit	
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-3.1 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement in applying for a Use Permit.
<input checked="" type="checkbox"/> Special Management Area Permit <input checked="" type="checkbox"/> Use <input type="checkbox"/> Minor	Pursuant to Section 205A of the Hawaii Revised Statutes (HRS) and the Special Management Area Rules and Regulations of the County of Kaua'i, a SMA Use Permit is required as defined in Section 7.3(C) of the SMA Rules and Regulations where the Director finds that the proposal (1) is a "Development" as defined in Section 1.4F; and (2) is in excess of \$500,000.
AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	

F.2.a.1.

May 9, 2023

<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

**Date of Receipt of Completed Application:** March 15, 2023

**Date of Director's Report:** April 26, 2023

**Date of Public Hearing:** May 9, 2023

**Deadline Date for PC to Take Action (60<sup>TH</sup> Day):** June 25, 2023

### III. PROJECT DATA

PROJECT INFORMATION			
<b>Parcel Location:</b>	The proposed shared-use path traverses through various parcels between Nāwiliwili Park, along the eastern coastal area of Ninini Point, to Ahukini Landing back up to Kapule Highway (See Section VI, Exhibit 1, Project Location Map).		
<b>Tax Map Key(s):</b>	(4) 3-5-001:005, 008, 009, 092, 102, 158, 160; (4) 3-7-002:999	<b>Area:</b>	967.48 acres (total)
ZONING & DEVELOPMENT STANDARDS			
<b>Zoning:</b>	Open (O), Industrial- General/ Special Treatment Public (IG-ST-P) Industrial-General (I-G), Conservation (CON), and Agriculture (A)		
<b>State Land Use District:</b>	Agricultural (A), Urban(U), Conservation (CON)		
<b>General Plan Designation:</b>	Natural, Transportation, Parks & Recreation		
<b>Height Limit:</b>	N/A		
<b>Max. Land Coverage:</b>	N/A		
<b>Parking Requirement:</b>	N/A		
<b>Front Setback:</b>	N/A		
<b>Rear Setback:</b>	N/A		
<b>Side Setback:</b>	N/A		
<b>Community Plan Area:</b>	Līhu'e Community Plan		
<b>Community Plan Land Use Designation:</b>	N/A		
<b>Deviations or Variances Requested:</b>	Shoreline Setback		

### IV. LEGAL REQUIREMENTS

<b>Section 8-3.1(f), KCC:</b>	This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Section 8-3.1 (f), relating to the provision of the Planning Director's report and recommendation on the subject
-------------------------------	--

	proposal within sixty (60) days of the filing of a completed application. The application was received on March 15, 2023, and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.
<b>Public Hearing Date:</b>	May 9, 2023

## V. PROJECT DESCRIPTION AND USE

The proposed project is a key section of *Ke Ala Hele Makālae*, a sixteen (16) mile Nāwiliwili to Anahola Shared-Use Path that was initially proposed in the 1994 State of Hawai'i Master Plan-Bike Plan Hawai'i, and in the 2003 Bike Plan Hawai'i update. The project is being set in phases: A, B1, B2, B3, and B4.

Phases B1, B2, B3, and B4 are not included in these application's request for approval, the proposed action of this application is for Phase A only. Phase A of the Nāwiliwili-Ahukini Shared-Use Path which consists of the Segments A, C, E, F, G and H.

Segment A Coastal Path Alignment's proposed route is approximately 19,350 linear feet (LF), of which 17,000 LF is located within the Special Management Area (SMA). The route runs through Ahukini Landing to Ninini Point lighthouse to Ninini Point Street. This segment will be constructed as ten (10) to twelve (12) foot wide concrete walks. The path alignment was selected to take advantage of the natural grade to meet American with Disabilities Act (ADA) accessibility standards for slopes with minimal ground disturbance and to related costs. The path along Segment A and the road will be separated as necessary by means of bollards constructed out of boulder/ timber placement, and concrete, or any physical barrier to deter motor vehicle access on the concrete path. Motor vehicle access shall be permitted on the exiting dirt road shall remain. (See Supplemental Information, Part B., Figure 1-Path Cross Section). Only a few select areas for access to fishing will be allowed to be accessed by motor vehicle (See Section VII, Exhibit 5-Site Photos). All other fishing areas would still be accessible on foot.

As represented, the path will cross and impact four (4) drainage ways. As noted on Section VII, Exhibit 6-Special Management Area Map, drainage 1 and 2 are outside of the SMA Area. Improvements to drainageways 1 and 2 would remain as-is or be widened to accommodate the width of the path. It would be determined at such time the design becomes finalized. Drainageway 3 is located within the SMA area and improvements to this area will include a prefabricated bridge that would span, approximately 140 feet in length. The bridge would provide 8 to 12 feet of clear travel width. Drainageway 4 is also located within the SMA area. The existing culvert will be widened on the mauka side to accommodate grading work as well as construction of an eight (8) to twelve (12) foot wide path segment along the makai side of the existing dirt road corridor. The widening will require grading, fill, and construction of either a sloped bank or new retaining wall that would be approximately 100 feet in length and 5 to 8 feet in height situated along the mauka side of the existing road path. There will be a 42-inch-high safety railing and an extension of the existing box culvert inlet to the face of the new embankment.



Protective fencing will be installed along the path segment between Ninini Point and Timbers Resorts Hōkūala golf course to prohibit dogs from entering the property.

A total of ten (10) paved parking stalls and a comfort station will be constructed at Ninini Point Lighthouse with men's and women's facilities, drinking fountain, and lighting. The proposed parking lot and comfort station is located outside of the SMA area.

Gates will be installed at the path entrance at Ahukini Landing on the airport perimeter road and be shut in cases of an airport incident or security operation. Signs on the gate will notify the public of access restrictions due to airport or security operations.

Interpretive signage will be installed along the pathway to inform and educate the public of the history of Nāwiliwili Harbor, Hawai'ian settlement patterns, Ninini Heiau and Kuhiau Heiau, and development of Līhu'e Airport. Signage will also provide information on the natural history of the area, including surrounding landmarks and natural features such as unique flora and fauna and marine animals. Safety, orientation, conservation efforts, user's responsibilities, regulatory restrictions, and other relevant information.

No picnic pavilions, picnic tables, or bike racks will be installed along the path corridor between Ninini Point and Ahukini Landing.

Segments C, G, and H are part of the Shared-use Road Segment. The shared use road segments, improvements will consist of striping, and/or stenciling the existing paved roadways and installation of "shared-use road signage. A description of the respective segments are as follows:

- Segment C- Ninini Point Street from Segment A, connection to Kāpule Highway.
- Segment G- Ahukini Point to Līhu'e Airport.
- Segment H- Līhu'e to Kāpule Highway stenciling, signage and installation of Bike Storage lockers.

## **VI. APPLICANT'S REASONS/JUSTIFICATION**

Please refer to the application.

## **VII. ADDITIONAL FINDINGS**

1. The proposed path corridor goes through undeveloped, former agricultural land located along the coast makai of Līhu'e Airport. Existing land uses include undeveloped open space, fallow agricultural land, shoreline fishing, and recreational off-road vehicle activity.
2. The majority of the project is located in a plateau area makai of the Līhu'e airport within the ahupua'a of Kalapakī and Hanamā'ulu. The topography of the area is gently sloped downward west to east makai of the property. The coastline from Ahukini to Ninini consists of cliffs approximately twenty (20) to thirty (30) feet in height down to a rocky shoreline. The project traverses State Land Use Districts (SLUD) "Agricultural, Conservation, and Urban. The

project also traverses through General Plan (GP) designations of Parks and Recreation, Golf, Natural, Urban Center, and Transportation.

3. Segment A of the proposed development is shoreline property and within the 500 feet shoreline setback threshold. This segment will be subjected to the County's shoreline setback requirements contained in Chapter 8, Article 27 of the Kaua'i County Code (1987), as amended. The applicant submitted a Shoreline Setback Determination SSD-2023-39 and presented to the May 9<sup>th</sup>, 2023 Planning Commission. A Shoreline Variance is requested for the prefabricated bridge at drainageway No. 3, approximately seventy-five (75) feet away from the shoreline. The shoreline setback for this structure is a minimum of 100 feet.
4. The project site is within the extreme tsunami inundation area. The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) indicates that the project between Ahukini Landing and Ninini Point is designated as Zone "VE" Coastal High Hazard Area. The project corridor also passes through Zone "X" designation which has been determined to be outside the .2% annual chance of flooding.
5. Special Management Area (SMA)  
In addressing the issues of the Special Management Area and its objectives and policies, the following aspects will be considered and evaluated:
  - a. Recreational Resources
  - b. Cultural/ Historic Resources
  - c. Scenic Resources
  - d. Coastal Ecosystems
  - e. Coastal Hazards

Furthermore, the proposal does not:

- Involve dredging, filling or otherwise altering any bay, salt marsh, river mouth, slough or lagoon;
- Reduce the size of any beach or other area usable for public recreation;
- Reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers , and streams, within SMA; and
- Adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

6. Comprehensive Zoning Ordinance (CZO) Standards

The proposed development is subjected to standards prescribed in CZO Sections 8-7.3, 8-8.2, 8-9.2, and 8-11.4 respectively.

The proposed development is a shared-use path that traverses through several various County Zoning designations. The standards prescribed in the above-mentioned sections of the Comprehensive Zoning Ordinance (CZO) pertains to residential and commercial building standards such as setbacks, setback between buildings, and building heights to which none is applicable to the new development. However, the project involves the construction of a new comfort station that is situated within State Land Use Conservation. The County of Kaua'i has no land use jurisdiction within this area. Given the size of the parcels involved, the proposed development would not exceed land coverage within its respective County zoning districts.

## **7. Use Permit**

- a. Pursuant to Article 11 of the Comprehensive Zoning Ordinance (CZO), Chapter 8 of the Kauai County Code (1987), all uses, structures, or development shall require a Use Permit for parcels with the County Zoning designation of Special Treatment-Public (ST-P). the Use Permit Procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations of a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit the uses if proper integration cannot be assured. Section 8-3.2 of the CZO specifies a Use Permit may be granted only if the Planning Commission finds that the use meets the following criteria:

- 1) The use must be a compatible use;
- 2) The use must not be detrimental to persons or property in the area;
- 3) The use must not cause substantial environmental consequences; and
- 4) The use must not be inconsistent with the intent of the Comprehensive Zoning Ordinance (CZO) and General Plan.

## **8. Shoreline Setback Variance Permit**

Pursuant to Sec. 8-27.10 (a)(7) Criteria for approval of a variance.

- a. A shoreline setback variance may be considered for a structure otherwise prohibited by this Article, if the Commission finds in writing, based on the record presented, that the proposed structure meets those standards established under Section 8-3.3 and is necessary for or ancillary to:

- (7) Private and public structures that are clearly in the public interest;

In accordance with Section 8-3.3 of the Kaua'i County Code (KCC), a Variance shall be granted only if it is found that because of special circumstances applicable to the property, such as size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and precludes the property from reasonable use if the regulations are applied.

The Applicant is seeking to deviate from the shoreline setback requirement of 100 feet. The proposal involves a pre-fabricated bridge that would be located within 75 feet of the certified shoreline.

## **VIII. AGENCY COMMENTS**

Agency comments are forthcoming.

## **IX. PRELIMINARY EVALUATION**

In evaluating the applicant's request to construct the proposed development, the following should be considered:

### **1. General Plan**

The proposed development satisfies the following policies of the General Plan, as taken from Section 1.3 and 1.4:

#### **a. Section 1.3, entitled "VISIONS AND GOALS"**

- 1) Goal #1 "Sustainable Island" – The coastal shared- use path would meet the needs of current and future generations by supporting a multimodal transportation system other than the use of gas operated motorized vehicles that rely on non-renewable energy resources. The path would promote a chance for visitors and kama'āina to have access to Līhue's eastern coastal area.
- 2) Goal #2 "Unique and Beautiful Place" – The proposed development is part of the overall *Ke Ala Hele Makālae* shared-use path system which would connect the Lydgate and Ahukini path segment with Līhu'e Town and the Līhu'e Airport. Consultation with the public and Kānaka Maoli community created conditions and mitigation measures to avoid sensitive cultural and historic sites located along the path's corridor and to provide educational and interpretive programs with signage along the path to highlight Native Hawai'i culture and heritage.
- 3) Goal #3 "Healthy and Resilient People" – The proposed pedestrian and bicycle shared-use path would create a safe and pleasant connection of Kaua'i's eastern coastline to residential and commercial areas. The shared-use path would encourage a more physical lifestyle by providing a multimodal transportation system that provides an alternative to the use of gas operated vehicles.
- 4) Goal #4" An Equitable Place, with Opportunity for All" – The shared-use path system, including the subject development, would support multimodal transportation that would reduce the reliance of gas operated vehicles. The path would link the Līhu'e and Kapa'a- Wailua area where economic opportunities by generating patronage and commerce at businesses located along other segments of the path.

#### **b. Section 1.4, entitled POLICIES TO GUIDE GROWTH"-**

- 1) Policy #4 “Design Healthy and Complete Neighborhoods” – The proposed path is a key component to the linking of other path segments along the eastern coast of Kauaʻi. The shared-use path system would provide connectivity of safe routes to walk or bike to existing town centers, residential areas, public services, and public transportation lines.
- 2) Policy #5 “Make Strategic Infrastructure Investments” – The proposed development aligns with and supports the Kauaʻi General plan and Līhuʻe Community Plan’s vision:
  - Create a balanced, multi-modal transportation system that improves local and regional connectivity;
  - Create economic opportunities and equitable communities;
  - Improve island resiliency;
  - Preserve coastal environments and historic and cultural resources; and
  - Encourage active lifestyles and improve public health.

The Kauaʻi General Plan identifies and recommends the completion of the *Ke Ala Hele Makālae* path system.

- 3) Policy #6 “Reduce the Cost of Living” – The proposed shared-use path would help by providing alternative means of transportation besides the use of gas operated vehicles to connect communities to urban and suburban centers of the island. The option to walk, bicycle, or the use of other non-motorized devices (e.g.: skateboards), offers an affordable mode of transportation.
- 4) Policy #7 “Build a Balanced Multimodal Transportation System” – The proposed project would provide a multimodal transportation system for pedestrians and cyclists. The path facilities would provide access to residential areas, employment and service centers, and recreational areas to Kauaʻi’s coastlines.
- 5) Policy #8 “Protect Kauai’s Scenic Beauty”- The project path would be designed to maintain visual quality and open space along the coastal area between Ninini point to Ahukini Landing. The proposed comfort station at Ninini Point will be sited and designed to blend in with the surrounding environment.
- 6) Policy #14 “Prepare for Climate Change” – The proposed shared-use path is designed to follow the existing natural land contours as much as possible to minimize grading and avoid disturbing existing drainage patterns. The concrete walkways would be constructed more than sixty (60) feet away from the certified shoreline. Any portion of the public shared-use path that is less than forty (40) feet away from certified shoreline shall not be reinforced and shall be cut in three (3) foot intervals.
- 7) Policy #15 “Respect Native Hawaiian Rights and Wahi Pana” – The applicant consulted Kūpuna with knowledge of any known on going traditional cultural practices and resources within the area. The applicant also conducted background studies, including an Archaeological Inventory Survey (AIS), a Cultural Impact Assessment (CIA), and a Ka



Pa‘akai Analysis. All known cultural and historical resources within the project area would be avoided and left undisturbed by routing the path alignment away from sensitive cultural and historic resources. The proposed project also includes educational programming and installing interpretive signage along the project corridor to educate path users about cultural resources and practices and historic information of the project area.

- 8) Policy #16 “Protect Access to Kauai’s Treasured Places” – The *Ke Ala Hele Makālae* coastal path was designed to preserve public access to shoreline areas. The subject development is a key segment of this system to connect East Kaua‘i communities to Līhu‘e Town. The path would preserve access to undeveloped coastal areas between Ahukini and Ninini Point. These areas are customarily used for fishing, gathering and recreational activities. The proposed path improvements would ensure that existing access to favored fishing sites along the coastal area is not hindered or restricted.

## 2. Native Hawaiian Traditional and Cultural Rights

The proposal involves a coastal, shared-use path between Nāwiliwili Park and Ahukini Landing that runs along the eastern coastline of Kaua‘i. Additional path sections are being proposed between Nāwiliwili Park to Nūmalu Park and Līhu‘e Civic Center to Līhu‘e Airport. As previously mentioned, this project is a key section to the *Ke Ala Hele Makālae*, a 16-mile Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 State of Hawai‘i Master Plan-Bike Plan Hawai‘i, and in the 2003 Bike Plan Hawai‘i update. The project will be undertaken in five (5) phases: A, B1, B2, B3, and B4. This application is for Phase A only. Phases B1 through B4 are yet to be determined.

Through the National Historic Preservation Act (NHPA), Section 106 process, the applicant’s consultant R.M. Towill Corporation (RMTc) conducted consultation with kūpuna from the project area with knowledge of traditional cultural practices and resources in the petition area. A list of Native Hawai‘ian Organizations, kūpuna, cultural practitioners, and individuals can be found in Exhibit 16 “Ka Pā‘akai Analysis” Page 4 of the application.

Based on the available information, traditional agriculture and aquaculture practices would not be affected or impaired by the proposed development.

The individuals and organizations who are familiar with the area and evaluating historical information that was available to the department, the department finds that the proposed Project involving the shared-use path traversing through various parcels should have no impact on any known Hawaiian traditional or customary practices for the following reasons:

- a. There are no known traditional and customary practices of native Hawai‘ians that are presently occurring within the project path’s area.
- b. There are no special gathering practices taking place within the projects path area.
- c. The project will not detrimentally affect any access to any streams, access to the shoreline or in the ocean.

- d. There are no known religious practices taking place within the project path's area.
- e. There are no known pre-contact cultural or historic sites or resources located within the project paths area. Any known
- f. All known cultural and historical resources within the project area would be avoided and left undisturbed by routing the path alignment away from sensitive cultural and historic resources.

The primary customary and traditional practices identified through the consultation process pertain to access to marine resources along the coastline and nearshore waters for fishing and gathering.

No other specific customary and traditional practices were shared by the participants.

### 3. SMA Rules and Regulations

The County of Kaua'i (COK) SMA Rules and Regulations contains objectives, policies and guidelines designed to protect coastal resources. With the SMA, special considerations are given to recreational opportunities, cultural and historic resources, scenic qualities, and open space, coastal ecosystems, and coastal hazards. In evaluating the proposed development relative to the goals and objectives of the SMA rules and regulations, the following aspect are taken into consideration:

- a. **Public Access and Coastal Recreation** – The proposed project would significantly enhance public access to coastal and shoreline areas along the paths route. The project would include facilities such as a ten (10) car parking lot area, comfort station, pedestrian/ bike path, and interpretive and educational signage. During construction, parts of the roads may be closed or detoured for a short period of time. The public will be notified via road signs and public service announcements for this inconvenience. Existing access for fishing will also be preserved, however motor vehicle access to fishing spots will be limited to five (5) designated locations where vehicle access can cross the path.
- b. **Cultural/ Historic Resources** – Four studies were prepared to help identify historic properties, assess the potential effects, and develop recommended mitigation measures for the entire project area. The Archaeological Inventory Survey (AIS) identified a total of twenty-seven (27) historic sites in the project area, fifteen (15) of those historic sites are located within path Segment A. The sites along with mitigation measures are identified in Section VII, Exhibit 10 -State Historic Sites Figure and Adverse Effect table in the application. Nine (9) out of fifteen (15) of the historic sites are considered to be significant historic properties according to the criteria established for the Hawai'i Register of Historic Places.

In the 2008 archaeological literature review and field inspection report prepared by Cultural Surveys Hawai'i for the entire project identified two (2) heiaus located near segment A. The two (2) heiaus are the Ninini Heiau (SIHP No. 50-30-11-100) which is out of the SMA area and was previously destroyed in the early 1900's and Ahukini

Heiau (SIHP No. 50-30-11-101) which is located at Ahukini Point Midway from Ninini to Ahukini landing. The Ahukini Heiau was destroyed by erosion and Hurricane Iniki in 1993.

One historic mound/ possible burial (SHIP No. 0-30-11-2089) identified during the archaeological inventory survey of the coastal area near Segment A.

Through the NHPA Section 106 consultation process, the FHWA has determined that there will be “no adverse effect” based on the recommendations summarized in Section VII, Exhibit 10- State Historic Sites Figure and No Adverse Effect Table. The shared-use multi path will be aligned to avoid these historic properties.

- c. Scenic and Open Space Resources – The shoreline path alignment follows the undeveloped coastal space in close proximity and accessible to Līhu‘e Town. Signage and bollards would be designed to minimize their visual presence. The path would be dyed to match the color of the native soil. No lighting will be used along the coastal alignment within the SMA. It is anticipated that the proposed path should have minimal negative impacts to the scenic and open space resources in the surrounding area.
- d. Coastal Ecosystems – Through the studies previously conducted, it was determined that there is no designated critical habitat in the project area. However the following protected species such as the Hawai‘ian Monk Seal, Hawaiian hoary bat, green sea turtles, hawksbill turtles, the Nēnē (Hawai‘ian goose), Koloa (Hawai‘ian duck), the Hawai‘ian endemic subspecies of the ‘Alae ‘ula (common moorhen), and the ‘Alae ke‘oke‘o (Hawai‘ian Coot) are recorded in the area. In compliance with NPDES Permit requirements, measures to prevent sediment discharge in storm water run-off during construction will be in place and functional before any project activities begin. The proposed project does not involve alterations to stream channels or other water bodies or water sources. The shared-use path does not encroach on any wetland areas and is not situated in or abutting a Natural Area Reserve or Wildlife Refuge or Sanctuary.
- e. Coastal Hazards – According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), the project corridor is Zone “VE” costal high hazard area with some portions of the project within Zone “X”. (See Section VII, Exhibit 12- FEMA/ FIRM maps). The proposed path is located on a coastal rocky shoreline bluff and is generally stable. The comfort station is located outside of Zone “VE”, path improvements located within the Zone “VE” portion will be limited to at grade path segments, bollards, and signage; no other structures are proposed.

#### 4. Use Permit

The proposed request is to be evaluated pursuant to Section 8-3.2 of the Kaua‘i County Code (KCC), 1987, as amended, relating to the standards of issuance for a Use Permit.

- a. A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity,

or use in particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

- 1) The use must be a compatible use;
- 2) The use must not be detrimental to the persons or property in the area;
- 3) The use must not cause substantial environmental consequences; and
- 4) The use must not be inconsistent with the intent of the Comprehensive Zoning Ordinance (CZO) and General Plan.

b. Based on the foregoing, the following aspects are considered:

- 1) Compatible Use – The proposed development is a shared-use concrete path. As noted in the Director’s Report, portion of the shared-use path traverse through a parcel holding a County Zone designation of ST-P. As such, the proposed use is compatible with the surrounding uses and is not expected to impact urban activities in the area.

5. Variance Permit

In consideration the proposed shoreline setback deviation, the following criteria is noted:

- a. Pursuant to Section 8-3.3 of the CZO, KCC (1987) as amended, Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he or she cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the Variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a Variance.

b. Based on the above, the following aspect is contemplated:

- 1) Special Circumstances – The Applicant is seeking a deviation from the requirement shoreline setback for a prefabricated bridge located at drainageway No. 3 with a proposed setback of 75 feet. The shoreline setback variance involves a 25-foot departure from the required setback of 100 feet for rocky shoreline parcels with an average lot depth over 220 feet. As represented, the bridge is part of the shared-use path to be used by the

public. The necessity for the deviation is due to the existing topography of the land in that area since it determines the placement of the bridge. While it is not considered a minimal departure from the standards, it is necessary to facilitate a public improvement, and it is directly involved with the safety and welfare of the general public.

## **X. PRELIMINARY CONCLUSION**

Based on the foregoing, it is concluded that through proper mitigative measures, the proposed development can be considered, and it complies with the policies and guidelines of the Special Management Area and Regulations in that:

1. The development will not have any substantial adverse environment or ecological effect.
2. The development is consistent with the objectives/ goals/ policies of the County General Plan, the Comprehensive Zoning Ordinance, and other applicable ordinances.

Furthermore, the proposal DOES NOT:

- a. Involve dredging, filling, or otherwise altering any bay, estuary, salt march, river mouth, slough, or lagoon;
- b. reduce the size of any beach or other area usable for public recreation;
- c. reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers, or streams, within the special management area; and
- d. adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, or existing agricultural uses of land.

In addition, the Planning Department concludes the following:

1. The project will not have significant adverse impacts to the environment or the surrounding area. The proposal is generally in compliance with the criteria outlined for the granting of a Use Permit, Variance Permit, and Class IV Zoning Permit; and

Finally, the proposed development should not have any detrimental impact on the environment or the surrounding area, and in compliance with the criteria outlined for the granting of the various permits noted above. However, the Applicant should institute the “Best Management Practices” to ensure that the proposed development does not generate additional impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

## **XI. PRELIMINARY RECOMMENDATION**




Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of the Nāwiliwili-Ahukini shared-use path and associated structures under Class IV Zoning Permit Z-IV-2023-10, Use Permit U-2023-7, Special Management Area Use Permit SMA(U)-2023-10, and Shoreline Setback Variance Permit SSV-2023-1 be **approved** with the following conditions:

1. The proposed development shall be constructed as represented. Any changes to the development shall be reviewed by the Department of Planning to determine whether Planning Commission review and approval is required.
2. The Applicant is advised that 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 County of Kaua'i, Department of Planning to determine mitigation measures.
3. The applicant shall develop and utilize Best Management Practices (BMP's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project abutting properties.
4. The applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, and the County Departments of Public Works, Fire, Transportation, and Water.
5. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.
6. The applicant is advised that prior to construction, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).
7. The Planning Commission reserves the right to add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create, or revoke the permits through the proper procedures should conditions of approval be violated or adverse impacts be created that cannot be addressed.
8. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or

activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

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 May 9, 2023, 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   
ROMIO IDICA  
Planner

Approved & Recommended to Commission:

By   
RA'AINA S. HULL  
Director of Planning

Date: 4/25/2023

# BELLES GRAHAM LLP

ATTORNEYS AT LAW

MAX W.J. GRAHAM, JR.  
JONATHAN J. CHUN  
IAN K. JUNG

Federal I.D. No. 99-0317663

DYNASTY PROFESSIONAL BUILDING  
3135 AKAHI STREET, SUITE A  
LIHUE, KAUAI, HAWAII 96766-1191

TELEPHONE NO: (808) 245-4705  
FACSIMILE NO: (808) 245-3277  
E-MAIL: mail@kauai-law.com

OF COUNSEL

MICHAEL J. BELLES  
DAVID W. PROUDFOOT  
DONALD H. WILSON

February 7, 2023

Mr. Ka'āina S. Hull  
Director of Planning  
Planning Department  
County of Kauai  
4444 Rice Street, Suite A473  
Lihue, Kauai, Hawaii 96766

**VIA EMAIL & HAND DELIVERY**

Re: Deferral Request – Order to Show Cause Petition  
Use Permit No. U-90-38  
Class IV Zoning Permit No. Z-IV-90-51  
In the Matter of the Application of Mark and Diane Daniels for  
a Use Permit, and Class IV Zoning Permit For Real Property  
Situated at Hanalei, Kauai, Hawaii  
Property: Lot 7 of the Sanborn Subdivision  
Waioli, District of Hanalei, Kauai, Hawaii  
Kauai TMK No. (4) 5-5-004:003  
Prior Owners: Mark and Diane Daniels  
New Owner: Bula Tree House LLC, a Hawaii limited liability company

Dear Mr. Hull:

I am writing to you on behalf of Bula Tree House LLC, a Hawaii limited liability company (the "Applicant").

The Applicant requests a deferral of the Order to Show Cause Petition regarding Use Permit No. U-90-38 and Class IV Zoning Permit No. Z-IV-90-51 ("Master Permit") pursuant to the Planning Commission's meeting on June 14, 1990, and said approval was memorialized in the Planning Department's letter of June 15, 1990.

I, along with one of the members of the Bula Tree House LLC, a Hawaii limited liability company, will be off island during the Planning Commission's meeting scheduled for February 14, 2023, and given there is no video conferencing capabilities, we request a deferral until the March 28, 2023, Planning Commission meeting.

{W:/DOCS/29229/1/W0178793.DOCX}

**K.1.** **K.1.** **H.1.a.**  
**May 9, 2023** **April 11, 2023** **Feb. 14, 2023**

Mr. Ka'aina S. Hull  
Page 2  
Februaury 7, 2023

The Planning Department began their inquiry into the Master Permit in 2019. The Applicant responded to the Planning Department's request for a site inspection and requested documents. Thereafter, further inquiry was issued on February 7, 2022. On March 9, 2022, the Applicant submitted its enclosed Status Report. The Status Report was intended to provide an update as requested by the Planning Department to its letter dated February 7, 2022.

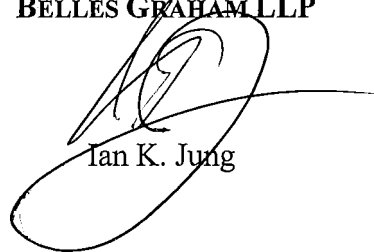
The Applicant would further like to schedule a meeting with the Planning Department and complainants in an effort to resolve this matter in lieu of holding a contested case hearing on the Order to Show Cause Petition.

Therefore, a six week deferral is a reasonable request given the Applicant has been engaged with your Department on this matter since 2019 and provided all requested documentation. Moreover, allowing additional time to resolve this matter may result in an agreement to settle this matter without costly administrative litigation.

Thank you very much for your continued assistance in this matter.

Sincerely yours,

**BELLES GRAHAM LLP**

A handwritten signature in black ink, appearing to read 'Ian K. Jung', is written over the printed name. The signature is stylized with a large, looping 'I' and a long horizontal stroke extending to the right.

IKJ:jaug

Enclosure

cc: Mr. Leslie Milnes, w/enc. (via email only)

# BELLES GRAHAM LLP

ATTORNEYS AT LAW

MAX W.J. GRAHAM, JR.  
JONATHAN J. CHUN  
IAN K. JUNG

Federal I.D. No. 99-0317663

DYNASTY PROFESSIONAL BUILDING  
3135 AKAHI STREET, SUITE A  
LIHUE, KAUAI, HAWAII 96766-1191

TELEPHONE NO: (808) 245-4705  
FACSIMILE NO: (808) 245-3277  
E-MAIL: mail@kauai-law.com

OF COUNSEL

MICHAEL J. BELLES  
DAVID W. PROUDFOOT  
DONALD H. WILSON

March 9, 2022

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

**VIA EMAIL & HAND DELIVERY**

Re: STATUS REPORT

Use Permit No. U-90-38

Class IV Zoning Permit No. Z-IV-90-51

In the Matter of the Application of Mark and Diane Daniels for  
a Use Permit, and Class IV Zoning Permit For Real Property  
Situated at Hanalei, Kauai, Hawaii

Property: Lot 7 of the Sanborn Subdivision

Waioli, District of Hanalei, Kauai, Hawaii

Kauai TMK No. (4) 5-5-004:003

Prior Owners: Mark and Diane Daniels

New Owner: Bula Tree House LLC, a Hawaii limited liability company

Dear Mr. Hull:

I am writing to you on behalf of Bula Tree House LLC, a Hawaii limited liability company (the "Applicant").

In accordance with Condition No. 3 of Use Permit No. U-90-38 and Class IV Zoning Permit No. Z-IV-90-51 ("Master Permit") pursuant to the Planning Commission's meeting on June 14, 1990, and said approval was memorialized in the Planning Department's letter of June 15, 1990, I have enclosed a Status Report. This Status Report is intended to provide an update as requested by the Planning Department in its letter dated February 7, 2022.

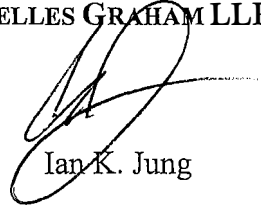


Mr. Ka'āina S. Hull  
Page 2  
March 9, 2022

Thank you very much for your continued assistance in this matter.

Sincerely yours,

**BELLES GRAHAM LLP**

A handwritten signature in black ink, appearing to read 'Ian K. Jung', is written over the printed name. The signature is stylized with a large loop at the end.

Ian K. Jung

IKJ:jaug

Enclosure

cc: Mr. Leslie Milnes, w/encl. (via email only)  
Mr. Romio Idica, w/encl. (via email only)

## STATUS REPORT

Re: STATUS REPORT

Use Permit No. U-90-38

Class IV Zoning Permit No. Z-IV-90-51

In the Matter of the Application of Mark and Diane Daniels for  
a Use Permit, and Class IV Zoning Permit For Real Property  
Situated at Hanalei, Kauai, Hawaii

Property: Lot 7 of the Sanborn Subdivision  
Waioli, District of Hanalei, Kauai, Hawaii  
Kauai TMK No. (4) 5-5-004:003

Prior Owners: Mark and Diane Daniels

New Owner: Bula Tree House LLC, a Hawaii limited liability company

This Status Report ("Report") is submitted by Bula Tree House LLC, a Hawaii limited liability company (the "Applicant"). This Report is intended to provide an update as requested by the Planning Department in its letter dated February 7, 2022. The Applicant reserves its right to supplement this Report once additional information is obtained from the files of the Planning Department as it relates to this matter.

### I. COMPLIANCE WITH INITIAL CONDITIONS

The Planning Commission of the County of Kauai ("Planning Commission") approved Use Permit No. U-90-38 and Class IV Zoning Permit No. Z-IV-90-51 ("Master Permit") pursuant to the Planning Commission's meeting on June 14, 1990, and said approval was memorialized in the Planning Department's letter of June 15, 1990. (See, Exhibit "A"). The Planning Commission thereafter amended Condition No. 3 by action on April 13, 2010, and said approval was memorialized in the Planning Department's letter of April 15, 2010. (See, Exhibit "A") The approval letters contain ten (10) conditions of approval ("Conditions"). The Applicant is providing the Planning Commission with this Report on each Condition.

1. Condition 1. *The size of the art studio shall be limited that proposed (288) square feet). No expansion or further commercial use or development shall be allowed on this site.*

Status. The Applicant continues to acknowledge this limitation concerning the allowable size of the art studio/gallery ("Project"). The size of the structure permitted under Building Permit Nos. 00-3130 and 00-3131 remains the same. (See, Exhibits "B" and "C" for the building permit references). Attached is a survey illustrating the art/studio structure. (See, Exhibit "D").

2. Condition 2. *In accordance with Ordinance No. 396, the applicant shall pay an Environmental Assessment Fee upon building permit review by the Planning Department.*

Status. The Applicant assumes the Environmental Assessment Fee was paid by the prior owner following the approval of the Master Permit given the approval of Building Permit Nos. 00-3130 and 00-3131. The Applicant has requested the Planning Department's file for the 1990 Master Permit and will supplement this Report once additional information is discovered.

3. Condition 3. *The subject permits are specifically for a 288 square feet art studio/gallery and shall be re-evaluated by the Planning Commission every three (3) years and be accompanied with a status report. However, the Applicant shall make every effort to relocate the retail portion of the use should commercially zoned retail space become available within Hanalei Town. In the event of change of ownership, the new owner shall notify the Planning Commission.*

Status. The Applicant purchased the property in June of 2019. (See, Exhibit "F"). Thereafter, the Applicant notified the Planning Department of the change in ownership. (See, Exhibit "E"). The Planning Department performed a site visit to the property on December 4, 2019. The Applicant was informed that the Master Permit was in compliance and no further action was taken after the Applicant submitted the requested information. (See, Exhibit "E"). To the Applicant's surprise, the Planning Department issued the Notice and the Applicant was requested to submit this Report. Since the Applicant acquired the Project, it had been actively leasing the 288 square foot Project to local artists. However, the art studio/gallery Project was vacated in January of 2022 and now the Applicant has put the Project back up for lease. The Applicant has surveyed existing retail space in Hanalei town and no small retail space is currently available. Counsel for the Applicant also spoke to a Hanalei Town commercial landlord and was informed there is no space like the Project currently available.

4. Condition 4. *The Planning Commission reserves the right to impose additional conditions, revises existing conditions, or move for revocation of permits should unforeseen or unanticipated conditions be created that cannot be mitigated.*

Status. The Applicant will observe this condition.

5. Condition 5. *Requirements of the State Department of Health, County Water, Fire and Public Works Departments, and State Highways Division must be complied with and/or resolved with the respective agencies.*

Status. The Applicant acknowledges that original Master Permit request was submitted to the Mayor, Public Works Department, Department of Water, Department of Health, Highways Division, Fire Department, Real Property Division, and H-PIAC as noted in the June 15, 1990 letter. Given Building Permit Nos 00-3130 and 00-3131 were issued for the 288 square foot structure, it is likely the building permit applications were routed to these same agencies. The certificates of occupancy were issued, and as such it is likely no concerns were

1

raised during the building permit review process. Nonetheless, the Applicant has requested the entire file from the Planning Department to review prior submittals regarding this Project. However, the Applicant was required to deliver this Report within a limited time in response to the Notice and is committed to supplement this request once additional information is provided by the Planning Department.

6. Condition 6. *All parking shall be accompanied on-site, and not on the Kuhio Highway shoulders or adjacent properties. If parking cannot be controlled, this shall be considered grounds for revocation of the permits.*

Status. During the Planning Department's site visit of the Property, the location of the parking was confirmed. Additionally, in response to the Notice, the Applicant submitted an ariel photograph of the parking area. The Applicant has requested the file of the Master Permit from the Planning Department. Given the limited time given to the Applicant to respond to the Notice, it has not generated any additional site plan of the Project's parking area. Should the Planning Department's file on the Master Permit illustrate a difference in the current parking area, the Applicant commits to an updated site plan showing the parking area in relationship to the 288 square foot Project.

7. Condition 7. *Applicant shall provide a suitable barrier (chain link or wooden fence) to separate the school and studio use.*

Status. The Applicant has attached photographs of the existing fence area. (See, Exhibit "G" for the photographs and Exhibit "D" for the survey of the Property). A fence currently exists along between the art studio/gallery and the residence. However, as noted below, the Applicant no longer wishes to continue the preschool operation authorized in Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 issued on February 24, 1978, thereby eliminating the need for this requirement.

8. Condition 8. *Applicant shall submit for Planning Department review and approval, prior to building permit consideration, a revised parking and access plan. A minimum of five (5) parking spaces shall be reflected. The access point to Kuhio Highway shall be approved by the State Highways Division.*

Status. Given Building Permit Nos. 003130 and 00-3131 were issued for the 288 square foot Project, it is likely the building permit application was routed to the State Highways Division. The certificates of occupancy were issued, and as such it is likely no concerns were raised during the building permit review process. Nonetheless, the Applicant has requested the entire file from the Planning Department to review prior submittals regarding this Project. The Applicant was required to deliver this Report within a limited time in response to the Notice. The Applicant will supplement this request once additional information is provided by the Planning Department.

9. Condition 9. *The hours of operation shall be limited to weekends, holidays, and when school is not in session.*

Status. The Applicant had informed the Planning Department that it is no longer wishes to continue Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 for the preschool operation issued on February 24, 1978. The Applicant will work with the Planning Department to formally abandon and cancel Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28.

10. Condition 10. *The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).*

Status. The Applicant acknowledges that original Master Permit request was submitted to the Mayor, Public Works Department, Department of Water, Department of Health, Highways Division, Fire Department, Real Property Division, and H-PIAC as noted in the June 15, 1990 letter. Given Building Permit Nos. 00-3130 and 003131 were issued for the 288 square foot Project, it is likely the building permit application was routed to these same agencies. No issues were raised by the Planning Department during the December 4, 2019 site visit as it relates to the parking, and as such it is likely no concerns were raised during the building permit review process over twenty (20) years ago. Nonetheless, the Applicant has requested the entire file from the Planning Department to review prior submittals regarding this Project. However, the Applicant was required to deliver this Report within a limited time in response to the Notice, and it will supplement this request once additional information is provided by the Planning Department.



**EXHIBIT "A"**

## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

February 7, 2022

Bula Tree, LLC  
c/o Michael Rodger  
P.O. Box 374  
Hanalei, HI 96714

RE: USE Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
Tax Map Key: (4) 5-5-004:023  
Hanalei, Kaua'i

The Planning Commission at its meeting held on June 14, 1990, approved the above permits to operate an art studio/ gallery within 288 square foot structure currently existing on your property, subject to the following conditions:

6. *All parking shall be accommodated on-site, not on the Kūhiō Highway shoulders or adjacent properties. If parking cannot be controlled, this shall be considered grounds for revocation of the permits.*
8. *Applicant shall submit for Planning Department review and approval, prior to building permit consideration, a revised parking and access plan. A minimum of five (5) parking spaces shall be reflected. The access point to Kūhiō Highway shall be approved by the State Highways Division.*

Please be advised that to date the Planning Department does not have a revised parking plan as required per item 8 of the June 14, 1990 Conditions of Approval.

The Planning Commission at its meeting held on April 13, 2010 approved an amendment to Condition No. 3 of the subject permits the following:

3. *The subject permits are specifically for a 288 square feet art studio/ gallery and shall be re-evaluated by the Planning Commission every three (3) years and be accompanied with a status report. However, the Applicant shall make every effort to relocate the retail portion of the use should commercially zoned retail space become available within the Hanalei Town. In event of change of ownership, the new owner shall notify the Planning Commission.*

Please be advised that the Planning Department does not have any record of any status reports as required in Condition No. 3 or the submittal of the revised parking and access plan reflecting a minimum of five (5) parking spaces as required in condition No.8 of the subject permits. Pursuant to Condition No. 3, please **submit an updated status report to the Planning Department within one week of receipt of this notice.** The updated status report shall contain the information as required in condition No. 3 and include a current parking and access plan as required in condition No. 8.

Bula Tree, LLC  
USE Permit U-90-38, Class IV Zoning Permit Z-IV-90-51  
Tax Map Key: (4) 5-5-004:023  
Hanalei, Kaua'i

Page | 2

Failure to timely comply will result in the Planning Department issuing an Order to Show Cause for the revocation of permits. Should you have further questions regarding this matter, please contact Romio Idica of my staff at (808) 241-4056.



Ka'aina Hull  
Director of Planning

Cc: file

Encls.:

Conditions of approval letter dated June 14, 1990  
Amendment approval letter dated April 13, 2010

JOANN A. YUKIMURA  
MAYOR



PETER A. NAKAMURA  
PLANNING DIRECTOR

ROLAND D. SAGUM, III  
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4280 RICE STREET  
LIHUE, KAUAI, HAWAII 96766

COPY

June 15, 1990

Mr. Mark Daniells  
P. O. Box 191  
Hanalei, Hawaii 96714

Subject: Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
TMK: 5-5-04:23 Hanalei, Kauai

The Planning Commission at its meeting held on June 14, 1990, approved the above permits to operate an art studio/gallery within a 288 square foot structure currently existing on your property, subject to the following conditions:


1. The size of the art studio shall be limited to that proposed (288 square feet). No expansion or further commercial use or development shall be allowed on this site.
2. In accordance with Ordinance No. 396, the applicant shall pay an Environmental Assessment Fee upon building permit review by the Planning Department.
3. Said permits shall be temporary in nature, for one (1) year, beginning from the date of occupancy. At the conclusion of one year, the Planning Department shall re-evaluate the subject permits. Applicant shall make every effort to relocate the retail portion of the use should commercial retail space become available within Hanalei Town prior to that date.
4. The Planning Commission reserves the right to impose additional conditions, revise existing conditions, or move for revocation of permits should unforeseen or unanticipated conditions be created that cannot be mitigated.

Mr. Mark Daniells

Page 2

June 15, 1990

5. Requirements of the State Health Department, County Water, Fire and Public Works Departments, and State Highways Division must be complied with and/or resolved with the respective agency(ies).
6. All parking shall be accommodated on-site, and not on the Kuhio Highway shoulders or adjacent properties. If parking cannot be controlled, this shall be considered grounds for revocation of the permits.
7. Applicant shall provide a suitable barrier (chain link or wooden fence) to separate the school and studio uses.
8. Applicant shall submit for Planning Department review and approval, prior to building permit consideration, a revised parking and access plan. A minimum of five (5) parking spaces shall be reflected. The access point to Kuhio Highway shall be approved by the State Highways Division.
9. The hours of operations shall be limited to weekends, holidays, and when school is not in session.
10. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).



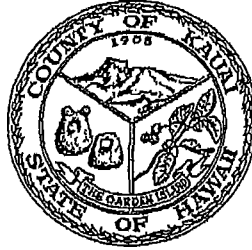
PETER A. NAKAMURA  
Planning Director

cc: Mayor  
Public Works Dept.  
Water Dept.  
Health Dept.  
Highways Div.  
Fire Dept.  
Real Property Div.  
H-PIAC



**BERNARD P. CARVALHO, JR.**  
MAYOR

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**IMAIKALANI P. AIU**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TEL (808) 241-4050 FAX (808) 241-6699

April 14, 2010

Mark & Diane Daniells  
PO Box 191  
Hanalei, Hawai'i 96714

**RE: Amendment to Condition No. 3  
Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
Tax Map Key: (4) 5-5-04:03  
Hanalei, Kaua'i**

The Planning Commission at its meeting held on April 13, 2010 approved an amendment to Condition No. 3 of the subject permits and it shall read as follows:

- "3. The subject permits are specifically for a 288 square feet art studio/gallery and shall be re-evaluated by the Planning Commission every three (3) years and be accompanied with a status report. However, the Applicant shall make every effort to relocate the retail portion of the use should commercially zoned retail space become available within Hanalei Town. In the event of change of ownership, the new owner shall notify the Planning Commission."**

Should you have further questions regarding this matter, please contact Dale A. Cua of my staff at (808) 241-4050. Aloha!

  
Ian K. Costa  
Director of Planning

**EXHIBIT "B"**

## Structure Detail

**Parcel ID:**

5-5-004-023

**Address:**

5-5428 KUHIO HWY

**Application Date:**

12/19/00

**Owner:**DANIELS, MARK/DIANE  
MARIE**Application #:**

00 - 3130

**Application Type:**RELOCATE  
COMMERCIAL BLDG**Valuation:**

\$4,500

**Square Footage:**

000000000

**Tenant Name:****Application Status:**

CERTIFICATE ISSUED

**Tenant Unit Number:****General Contractor:**

DANIELLS, STEVEN

**Zoning Description:**RESIDENTIAL 4  
UNITS/ACRE**EXHIBIT "B"**

**Str# / Seq#:**

000 / 000

**Structure Description:**

RELOC: WITHIN SAME TMK

Description	Value
CONSTRUCTION TYPE	TYPE V NON-RATED
OCCUPANCY TYPE	PRIV GAR SHED AG BLDG
FULL BATHROOMS:	0
1/2 BATHROOMS:	0
BEDROOMS:	0
TOTAL FLOOR AREA: (SF)	288
PRINCIPAL FRAMING:	WOOD
OFF ST PARKING OUTDOORS	0
OFF STREET PARKING ENCL	0
TYPE OF SEWAGE:	CESSPOOL
NUMBER OF STORIES:	1
NBR OF UNITS FOR CENSUS	1.00

Showing 1 to 12 of 12 entries

## Plan Tracking Action Comments

**Parcel ID:**

5-5-004-023

**Address:**

5-5428 KUHIO HWY

**Application Date:**

12/19/00

**Owner:**DANIELS, MARK/DIANE  
MARIE**Application #:**

00 - 3130

**Application Type:**RELOCATE  
COMMERCIAL BLDG**Agency Description:**

PLANNING DEPT

**Action Description:**

XX DO NOT USE-APPROVED

No Action Log Comment found.

[« Plan Tracking Status Detail \(permitinfo.html?OWASP\\_CSRFTOKEN=0ZWM-I5NX-DOLO-30IB-EVXT-921G-0MOH-REQU&planTrackDetailView=true\)](#)



## Status Detail

**Parcel ID:**

5-5-004-023

**Address:**

5-5428 KUHIO HWY

**Application Date:**

12/19/00

**Owner:**DANIELLS, MARK/DIANE  
MARIE**Application #:**

00 - 3131

**Application Type:**ALTER/REPAIR  
COMMERCIAL**Valuation:**

\$11,500

**Square Footage:**

000000000

**Tenant Name:****Application Status:**

CERTIFICATE ISSUED

**Tenant Unit Number:****General Contractor:**

DANIELLS, STEVEN

**Zoning Description:**RESIDENTIAL 4  
UNITS/ACRE

[Structure Detail \(permitinfo.html?OWASP\\_CSRFTOKEN=0ZWM-I5NX-DOLO-30IB-EVXT-921G-0MOH-REQU&structureDetailView=true&structureNumber=000&structureSequence=000&structureDesc=ALTC%3A+RENO](#)

# **EXHIBIT "C"**

## Plan Tracking Action Comments

**Parcel ID:**

5-5-004-023

**Address:**

5-5428 KUHIO HWY

**Application Date:**

12/19/00

**Owner:**DANIELLS, MARK/DIANE  
MARIE**Application #:**

00 - 3131

**Application Type:**ALTER/REPAIR  
COMMERCIAL**Agency Description:**

PLANNING DEPT

**Action Description:**

XX DO NOT USE-APPROVED

No Action Log Comment found.

[« Plan Tracking Status Detail \(permitinfo.html?OWASP\\_CSRFTOKEN=0ZWM-I5NX-DOLO-30IB-EVXT-921G-0MOH-REQU&planTrackDetailView=true\)](#)

**EXHIBIT "C"**

**EXHIBIT "D"**

**LOT COVERAGE  
CALCULATION**  
BUILDING FOOTPRINTS  
1,766 SQ. FT.  
CONC. WALKS & PAVERS  
507 SQ. FT.  
**TOTAL = 2,273 SQ. FT.**  
% COVERAGE = 28.7%

APRIL 11, 2018  
REV. APRIL 18, 2018  
PREPARED FOR:

TITLE GUARANTY OF HAWAII, INC.  
P.O. Box 223330  
Princeville, HI 96122

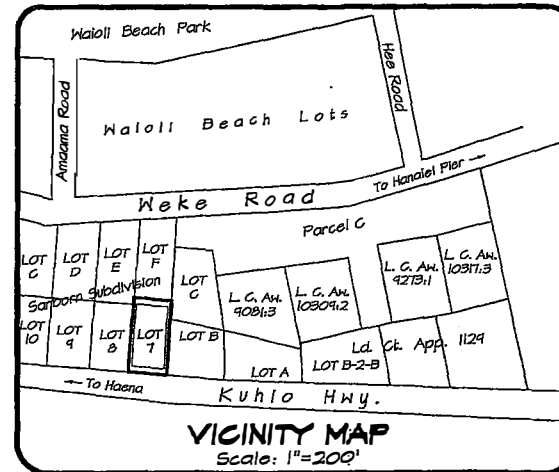
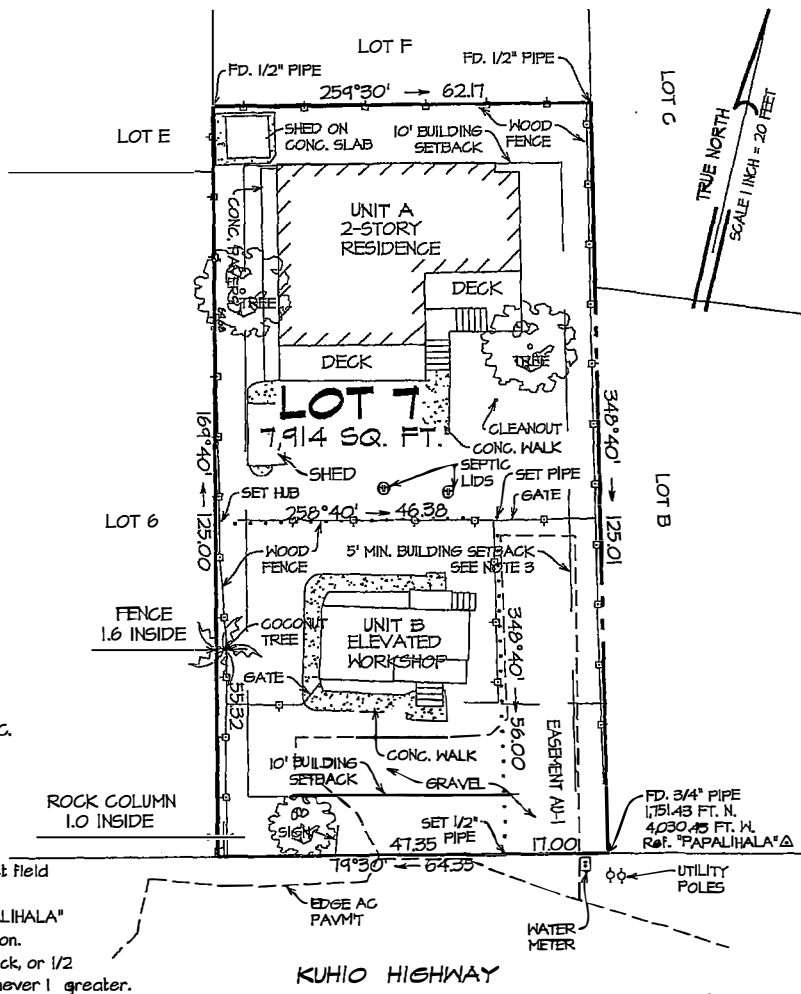
RE: DANIELLS TO DEPRESS  
ESCROW NO. 18110198

**Note:**

1. Features shown hereon reflect field conditions on April 9, 2018.
2. Azimuth referenced to "PAPALIHALA" Government Triangulation Station.
3. 5' Minimum yard building setback, or 1/2 the top-plate of building, whichever is greater.



**Honua Engineering, Inc.**  
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



Survey of  
**LOT 7**  
Sanborn Subdivision (File Plan 336)  
Being also  
"Hanalei Waterfalls" Condominium  
Map No. 4912, as amended  
at Waialeale, Hanalei, Kauai, Hawaii



THIS MAP WAS PREPARED BY ME OR  
UNDER MY SUPERVISION

*Brian M. Hennessy*  
**BRIAN M. HENNESSY**  
Licensed Professional Land Surveyor  
Certificate No. 14,484 EXP. 4/30/20



**EXHIBIT "E"**

Begin forwarded message:

**From:** Mike Rodger <mike@kauaiexperience.com>

**Date:** November 12, 2020 at 2:41:24 PM HST

**To:** Leslie Milnes <lmilnes@kauai.gov>, Leila Rodger <leila.k@me.com>, Mike Rodger <kauaiislandexperience@gmail.com>

**Subject:** TMK 5-5-04-23 Bula Tree House LLC

Aloha Les,

We hope you and your Ohana are safe, happy and healthy.

Just spoke with Ian Jung. He mentioned that we should contact you regarding a status report on our little art gallery located in Hanalei. We have not changed ownership since we purchased the property in June 2019, however we did put the property into "Bula Tree House LLC". Although we are still the owners. Please let me know if there is anything else that you need from us at this time. Other than that everything is exactly the same since you came for your friendly visit. Thank you very much for your assistance.

Mahalo,

Leila & Michael Rodger  
(808) 346-3094

Begin forwarded message:

**From:** Leslie Milnes <[lmilnes@kauai.gov](mailto:lmilnes@kauai.gov)>  
**Subject:** RE: TMK 5-5-04-23 Bula Tree House LLC  
**Date:** December 6, 2019 at 7:41:01 AM HST  
**To:** Leila K Rodger <[leila.k@me.com](mailto:leila.k@me.com)>  
**Cc:** "Ian K. Jung" <[ikj@kauai-law.com](mailto:ikj@kauai-law.com)>, Mike Rodger <[mike@kauaiexperience.com](mailto:mike@kauaiexperience.com)>

Good morning Rodger clan,

Thanks for the Elevation Cert. and survey map. Exactly what the Department needed.

Much appreciated, LPM

*Aloha, Leslie P Milnes*

CZM Enforcement Officer, Enforcement Division  
County of Kauai, Department of Planning  
4444 Rice Street, Suite A473  
Lihue, Hawaii 96766  
(808)-241-4064

**CONFIDENTIALITY NOTICE:** This message is covered by the Electronic Communications Privacy Act, Title 18, United States Code, Sec. 2510-2521. This e-mail and any attached files are deemed privileged and confidential, and are intended solely for the use of the individual(s) or entity to whom this e-mail is addressed. If you are not one of the named recipient(s) or believe that you have received this message in error, please delete this e-mail and any attached files from all locations in your computer, server, network, etc., and notify the sender IMMEDIATELY at [lmilnes@kauai.gov](mailto:lmilnes@kauai.gov). Any other use, re-creation, dissemination, forwarding or copying of this e-mail and attached files is strictly prohibited and may be unlawful. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege. Nothing in this message is intended to constitute an Electronic signature for purposes of the Uniform Electronic Transactions act (UETA) or the Electronic Signatures in Global and National Commerce Act ("E-Sign") unless a specific statement to the contrary is included in this message. Thank you for your cooperation.

**From:** Leila K Rodger <[leila.k@me.com](mailto:leila.k@me.com)>  
**Sent:** Wednesday, December 04, 2019 6:53 PM  
**To:** Leslie Milnes <[lmilnes@kauai.gov](mailto:lmilnes@kauai.gov)>  
**Cc:** Ian K. Jung <[ikj@kauai-law.com](mailto:ikj@kauai-law.com)>; Mike Rodger <[mike@kauaiexperience.com](mailto:mike@kauaiexperience.com)>  
**Subject:** Re: TMK 5-5-04-23 Bula Tree House LLC

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 Les,

Nice seeing you today...

Attached is the Elevation Certification and the Survey Report from Brian Hennessy. Please let us know if you need anything else from us.

We appreciate you assisting and helping us moving forward.

Mahalo,  
Leila

On Dec 4, 2019, at 10:43 AM, leila kawaihalau <[leila.k@me.com](mailto:leila.k@me.com)> wrote:

Thank you Les.

See you around 1:45 or 2:00 today.

 Mahalo,

Leila K Rodger / Property Manager  
e - [leila.k@me.com](mailto:leila.k@me.com)  
m - 808.635.8088

On Dec 4, 2019, at 10:36 AM, Leslie Milnes  
<[lmilnes@kauai.gov](mailto:lmilnes@kauai.gov)> wrote:

Thank you Leila for the response,

I shall call you when I'm in Kilauea heading your way. It should be around 1:45 PM or so. Ian Jung has contacted me. See you this afternoon.

Regards, LPM

**From:** leila kawaihalau <[leila.k@me.com](mailto:leila.k@me.com)>  
**Sent:** Wednesday, December 04, 2019 8:07 AM  
**To:** Leslie Milnes <[lmilnes@kauai.gov](mailto:lmilnes@kauai.gov)>  
**Subject:** Re: TMK 5-5-04-23 Bula Tree House LLC

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.  
Good Morning Les,

Yes, today will work. Let us know what time works between 12 - 2 for you.

 Mahalo,

Leila K Rodger

On Dec 3, 2019, at 3:28 PM, Leslie Milnes <[lmilnes@kauai.gov](mailto:lmilnes@kauai.gov)> wrote:

Leila K Rodger / Property Manager  
e - [leila.k@me.com](mailto:leila.k@me.com)  
m - 808.635.8088

REF: TMK 5-5-04-23 Bula Tree House LLC

Aloha Mrs. Rodger, 'Leila"

The Department would like to conduct an on-site inspection of the subject property to identify current conditions and uses occurring thereon.

Attached with this email are two documents relative to Use Permit U-90-38, Class IV Zoning Permit Z-IV 90-51 issued to the subject property for the commercial art studio/gallery. Please review their content as this will be discussed on the day of the inspection.

Please provide me a time to meet, post noon up to 2PM, on the following days that might fit into your schedule. This Wednesday the 4th or Friday the 6th. Please let me know if these days and time are acceptable in your world.

***Mahalo, Leslie P Milnes***

CZM Enforcement Officer, Enforcement Division

County of Kauai, Department of  
Planning  
4444 Rice Street, Suite A473  
Lihue, Hawaii 96766  
(808)-241-4064

CONFIDENTIALITY NOTICE: This message is covered by the Electronic Communications Privacy Act, Title 18, United States Code, Sec. 2510-2521. This e-mail and any attached files are deemed privileged and confidential, and are intended solely for the use of the individual(s) or entity to whom this e-mail is addressed. If you are not one of the named recipient(s) or believe that you have received this message in error, please delete this e-mail and any attached files from all locations in your computer, server, network, etc., and notify the sender IMMEDIATELY at [lmilnes@kauai.gov](mailto:lmilnes@kauai.gov). Any other use, re-creation, dissemination, forwarding or copying of this e-mail and attached files is strictly prohibited and may be unlawful. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege. Nothing in this message is intended to constitute an Electronic signature for purposes of the Uniform Electronic Transactions act (UETA) or the Electronic Signatures in Global and National Commerce Act ("E-Sign") unless a specific statement to the contrary is included in this message. Thank you for your cooperation.

<Z-IV-90-51, U-90-38  
approval.pdf>  
<Z-IV-90-51amd.pdf>



# **EXHIBIT "F"**



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

July 11, 2019 8:01 AM

Doc No(s) A-71310108



1 1/1 SKC  
B-33354832

/s/ LESLIE T. KOBATA  
REGISTRAR

Conveyance Tax: \$30.00

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail ( ) Pickup ( )

BULA TREE HOUSE LLC

P O BOX 374

HANALEI HI 96714

TITLE GUARANTY OF HAWAII HAS  
FILED THIS DOCUMENT FOR RECORDATION  
AS AN ACCOMMODATION ONLY. THIS  
DOCUMENT HAS NOT BEEN  
REVIEWED OR IN ANY WAY EXAMINED  
AS TO ITS EFFECT ON REAL PROPERTY.

TGA: 201916236C

ISE: 24219126323

Glenda Matsushima

RLS

TYPE OF DOCUMENT:

QUITCLAIM DEED

PARTIES TO DOCUMENT:

GRANTOR: MICHAEL RODGER, a married man

GRANTEE: BULA TREE HOUSE LLC, a Hawaii limited liability company  
P. O. Box 374  
Hanalei, Hawaii 96714

TAX MAP KEY FOR PROPERTY:

ITEM I:	(4) 5-5-004-023	CPR No. 0001	Unit No. A
ITEM II:	(4) 5-5-004-023	CPR No. 0002	Unit No. B

## QUITCLAIM DEED

KNOW ALL PEOPLE BY THESE PRESENTS:

MICHAEL RODGER, a married man, whose mailing address is P. O. Box 374, Hanalei, Hawaii 96714, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the Grantor paid by BULA TREE HOUSE LLC, a Hawaii limited liability company, whose mailing address is P. O. Box 374, Hanalei, Hawaii 96714, hereinafter called the "Grantee", the receipt of which is acknowledged, hereby remises, releases and quitclaims unto the Grantee, as a tenant in severalty, its successors and assigns, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues and profits and all of the estate, right, title and interest of the Grantor, both at law and in equity, in and to the property.

TO HAVE AND TO HOLD the property, including the improvements thereon, and all rights, easements, privileges and appurtenances belonging or appertaining to or held and enjoyed with the property, unto the Grantee, according to the tenancy herein set forth, forever.

This instrument and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

IN WITNESS WHEREOF, the Grantor has duly executed this instrument this 19<sup>th</sup> day of June, 2019.

  
MICHAEL RODGER

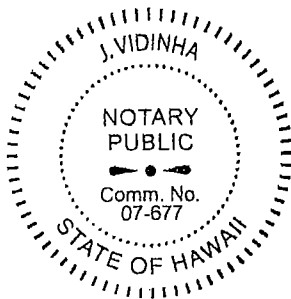
**Grantor**

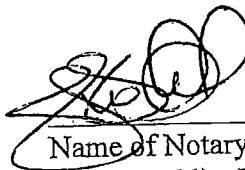
STATE OF HAWAII

COUNTY OF KAUAI

)  
) SS:  
)

On this 19<sup>th</sup> day of June, 20 19, before me appeared MICHAEL RODGER, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing QUITCLAIM DEED dated June 19, 20 19, which document consists of 6 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



  
Name of Notary J. VIDINHA  
Notary Public, Fifth Judicial Circuit,  
State of Hawaii.

My commission expires: 04/28/2021

## **EXHIBIT "A"**

### **ITEM I**

#### **-FIRST:-**

Unit No. A of the Condominium Project known as "HANALEI WATERFALLS" as established by Declaration of Condominium Property Regime dated July 31, 2009, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-095289, as amended, and as shown on Condominium Map No. 4912, recorded in said Bureau, and any amendments thereto.

Together with exclusive use of the limited common element appurtenant thereto, and appurtenant easements as described in said Declaration and nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of said Unit which are shown on the Condominium Map for the project or otherwise of record; in the other common elements for use according to their respective purposes, and in all other Units of said project.

#### **-SECOND:-**

An undivided 75% interest in all common elements of the Project, including the land described in said Declaration as established for said Unit by the Declaration, or such other percentage hereafter established for said Unit by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof, subject to all exclusive and nonexclusive easements appurtenant to the other units respectively of the project and reserving and subject to all easements required for drainage, sewer and any utility serving the project.

### **ITEM II**

#### **-FIRST:-**

Unit No. B of the Condominium Project known as "HANALEI WATERFALLS" as established by Declaration of Condominium Property Regime dated July 31, 2009, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-095289, as amended, and as shown on Condominium Map No. 4912, recorded in said Bureau, and any amendments thereto.

Together with exclusive use of the limited common element appurtenant thereto, and appurtenant easements as described in said Declaration and nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of said Unit which are shown on the Condominium Map for the

project or otherwise of record; in the other common elements for use according to their respective purposes, and in all other Units of said project.

-SECOND:-

An undivided 25% interest in all common elements of the Project, including the land described in said Declaration as established for said Unit by the Declaration, or such other percentage hereafter established for said Unit by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof, subject to all exclusive and nonexclusive easements appurtenant to the other units respectively of the project and reserving and subject to all easements required for drainage, sewer and any utility serving the project.

The land upon which said Condominium Project "HANALEI WATERFALLS" is located is described as follows:

All of that certain parcel of land situate at Waioli, District of Halelea, Island and County of Kauai, State of Hawaii, being LOT 7 of the "SANBORN SUBDIVISION", as shown on File Plan Number 336, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 7,914 square feet, more or less.

Being the same premises conveyed to MICHAEL RODGER, a married man, by APARTMENT DEED dated June 19, 2019, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-71140032.

TOGETHER WITH all built-in furniture, attached existing fixtures, built-in appliances, water heater, electrical and/or gas and plumbing fixtures, attached carpeting, if any, ceiling fan, dryer, range, refrigerator and washer.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. The terms and provisions contained in DEED dated July 3, 1934, recorded in Liber 1246 at Page 291.
3. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "HANALEI WATERFALLS" CONDOMINIUM PROJECT dated July 31, 2009, recorded as Document No. 2010-095289.

Condominium Map No. 4912 and any amendments thereto.



Said Declaration was amended by instrument dated October 19, 2010, recorded as Document No. 2010-162626.

-Note:- Any recorded amendments to the Declaration of Horizontal or Condominium Property Regime amending the assignment of parking stalls to and from apartments other than the specific apartment described herein, are not shown.

4. The terms and provisions contained in the BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS dated July 31, 2009, recorded as Document No. 2010-095290.

5. Any unrecorded leases and matters arising from or affecting the same.

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED June 24, 2019 8:01 AM  
Doc No A71140032  
CONVEYANCE TAX: \$5,550.00  
  
/s/ LESLIE T. KOBATA, Registrar  
KEO 9

LAND COURT SYSTEM	REGULAR SYSTEM
After Recordation, Return by: Mail ( ) Pickup ( )	
MICHAEL RODGER	TG: 201916236- <b>S RS 1</b>
P O BOX 374	TGE: 24219126323
HANALEI HI 96714	Glenda Matsushima

TYPE OF DOCUMENT:

APARTMENT DEED

PARTIES TO DOCUMENT:

GRANTOR: MARK DANIELLS and DIANE MARIE DANIELLS,  
husband and wife

GRANTEE: MICHAEL RODGER, a married man  
P. O. Box 374  
Hanalei, Hawaii 96714

TAX MAP KEY FOR PROPERTY:

ITEM I:	(4) 5-5-004-023	CPR No. 0001	Unit No. A
ITEM II:	(4) 5-5-004-023	CPR No. 0002	Unit No. B

### APARTMENT DEED

KNOW ALL PEOPLE BY THESE PRESENTS:

MARK DANIELLS and DIANE MARIE DANIELLS, husband and wife, whose mailing address is 05-5428 Kuhio Highway, Unit A, Hanalei, Hawaii 96714, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the Grantor paid by MICHAEL RODGER, a married man, whose mailing address is P. O. Box 374, Hanalei, Hawaii 96714, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, do hereby grant and convey unto the Grantee, as a tenant in severalty, his heirs and assigns, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues, and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, according to the tenancy herein set forth, forever.

The Grantor hereby covenants with the Grantee that the Grantor is lawfully seised in fee simple of the premises described herein and has good right to sell and convey the same; that the same are free and clear of all encumbrances except as set forth herein and except for the lien of real property taxes not yet required by law to be paid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The Grantee confirms that Grantee has inspected the property being conveyed and specifically attests that Grantee is purchasing the property on an "AS IS" basis, without any representations or warranties, express or implied, with a full understanding that only Grantee and not the Grantor will be responsible for any and all imperfections, defects, obsolescence, wear and tear, and all other conditions of said property and hereby waives any claim hereafter against the Grantor for breach of express or implied warranty as to the condition of the property, except claims which are based on the Grantor's concealment of material facts and defects which Grantor is required by law to disclose.

This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

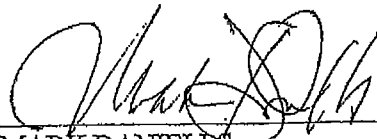
The Grantee hereby agrees and covenants with the Grantor that the Grantee will observe, perform, comply with and abide by the Declaration of Condominium Property Regime and the Bylaws described in Exhibit "A" hereto.

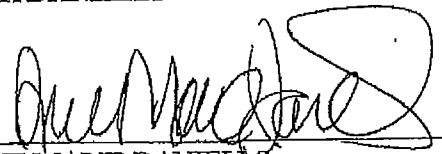
This Apartment Deed may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused these presents to be duly executed on this 19th day of June, 2019.

*(SIGNATURES CONTINUED ON NEXT PAGE)*

GRANTOR:

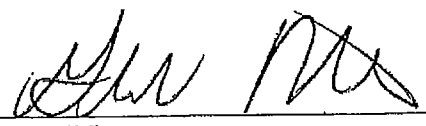
  
MARK DANIELLS

  
DIANE MARIE DANIELLS

STATE OF HAWAII                   )  
  ) SS:  
COUNTY OF KAUAI               )

On this 29<sup>th</sup> day of May, 20 19, before me appeared MARK DANIELLS, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing APARTMENT DEED dated Undated, 20\_\_\_\_, which document consists of 9 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



  
Name of Notary:  
Notary Public, Fifth Judicial Circuit,  
State of Hawaii.

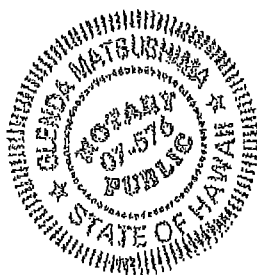
My commission expires: GLENDAMATSUSHIMA  
Expiration Date: November 18, 2019

STATE OF HAWAII

COUNTY OF KAUAI

)  
) SS:  
)

On this 29<sup>th</sup> day of May, 20 19, before me appeared  
DIANE MARIE DANIELLS, to me personally known, who, being by me duly sworn or affirmed,  
did say that such person(s) executed the foregoing APARTMENT DEED dated  
undated, 20\_\_\_\_, which document consists of 9 page(s), as the free act and  
deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to  
execute such instrument in such capacities.



[Signature]  
Name of Notary:  
Notary Public, Fifth Judicial Circuit,  
State of Hawaii.

My commission expires: GLENDAMATSUSHIMA  
Expiration Date: November 18, 2019

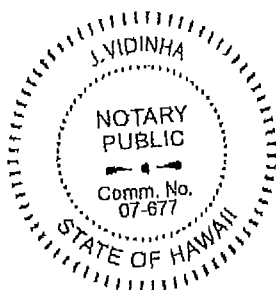



GRANTEE:

  
MICHAEL RODGER

STATE OF HAWAII                     )  
  ) SS:  
COUNTY OF KAUAI                 )

On this 19<sup>th</sup> day of June, 2019, before me appeared MICHAEL RODGER, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing APARTMENT DEED dated June 19, 2019, which document consists of 9 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



  
Name of Notary: J. VIDINHA  
Notary Public, Fifth Judicial Circuit,  
State of Hawaii.

My commission expires: 04/28/2021

EXHIBIT "A"

**ITEM I**

**-FIRST:-**

Unit No. A of the Condominium Project known as "HANAIEI WATERFALLS" as established by Declaration of Condominium Property Regime dated July 31, 2009, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-095289, as amended, and as shown on Condominium Map No. 4912, recorded in said Bureau, and any amendments thereto.

Together with exclusive use of the limited common element appurtenant thereto, and appurtenant easements as described in said Declaration and nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of said Unit which are shown on the Condominium Map for the project or otherwise of record; in the other common elements for use according to their respective purposes, and in all other Units of said project.

**-SECOND:-**

An undivided 75% interest in all common elements of the Project, including the land described in said Declaration as established for said Unit by the Declaration, or such other percentage hereafter established for said Unit by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof, subject to all exclusive and nonexclusive easements appurtenant to the other units respectively of the project and reserving and subject to all easements required for drainage, sewer and any utility serving the project.

**ITEM II**

**-FIRST:-**

Unit No. B of the Condominium Project known as "HANAIEI WATERFALLS" as established by Declaration of Condominium Property Regime dated July 31, 2009, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-095289, as amended, and as shown on Condominium Map No. 4912, recorded in said Bureau, and any amendments thereto.

Together with exclusive use of the limited common element appurtenant thereto, and appurtenant easements as described in said Declaration and nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of said Unit which are shown on the Condominium Map for the

project or otherwise of record; in the other common elements for use according to their respective purposes, and in all other Units of said project.

-SECOND:-

An undivided 25% interest in all common elements of the Project, including the land described in said Declaration as established for said Unit by the Declaration, or such other percentage hereafter established for said Unit by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof, subject to all exclusive and nonexclusive easements appurtenant to the other units respectively of the project and reserving and subject to all easements required for drainage, sewer and any utility serving the project.

The land upon which said Condominium Project "HANALEI WATERFALLS" is located is described as follows:

All of that certain parcel of land situate at Waioli, District of Halelea, Island and County of Kauai, State of Hawaii, being LOT 7 of the "SANBORN SUBDIVISION", as shown on File Plan Number 336, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 7,914 square feet, more or less.

Being the same premises conveyed to MARK DANIELLS and DIANE MARIE DANIELLS, husband and wife, as Tenants by the Entirety, by WARRANTY DEED dated December 29, 1986, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 20334 at Page 697.

TOGETHER WITH all built-in furniture, attached existing fixtures, built-in appliances, water heater, electrical and/or gas and plumbing fixtures, attached carpeting, if any, ceiling fan, dryer, range, refrigerator and washer.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. The terms and provisions contained in DEED dated July 3, 1934, recorded in Liber 1246 at Page 291.
3. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "HANALEI WATERFALLS" CONDOMINIUM PROJECT dated July 31, 2009, recorded as Document No. 2010-095289.

Condominium Map No. 4912 and any amendments thereto.

Said Declaration was amended by instrument dated October 19, 2010, recorded as Document No. 2010-162626.

-Note:- Any recorded amendments to the Declaration of Horizontal or Condominium Property Regime amending the assignment of parking stalls to and from apartments other than the specific apartment described herein, are not shown.

4. The terms and provisions contained in the BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS dated July 31, 2009, recorded as Document No. 2010-095290.

5. Any unrecorded leases and matters arising from or affecting the same.

**EXHIBIT "G"**



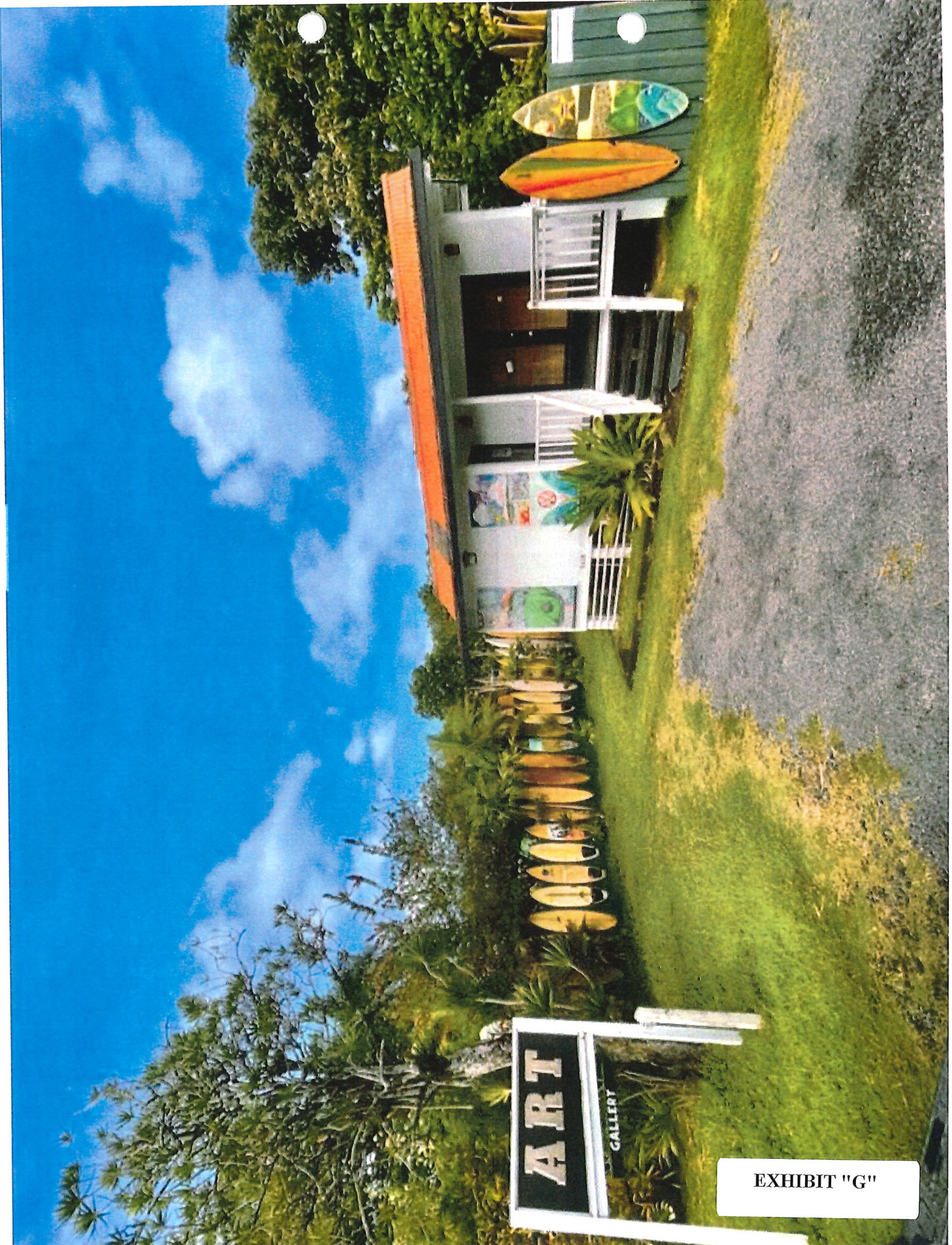


EXHIBIT "G"









KAAINA S. HULL  
Director of Planning  
County of Kaua'i  
4444 Rice Street Suite A473  
Līhu'e, Hawai'i 96766  
khull@kauai.gov  
808-241-4050

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI  
STATE OF HAWAII

In the matter of:

Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
(former Mark Daniells art gallery),

And

Use Permit U-19-78  
Class IV Zoning Permit Z-IV-78-28  
(former Diane Daniells pre-school)

Tax Map Key (TMK): (4) 5-5-004: 023,  
(Units A & B)

PLANNING DIRECTOR KAAINA S.  
HULL'S PETITION TO REVOKE  
APPLICANT BULA TREE HOUSE LLC  
PERMITS AND ISSUE AN ORDER TO  
SHOW CAUSE AND SET HEARING;  
MEMORANDUM IN SUPPORT OF  
PETITION; DECLARATION OF  
KAAINA S. HULL; NOTICE OF  
MEETING; CERTIFICATE OF  
SERVICE

MEETING:  
Tuesday, February 14, 2023 at 9:00  
a.m.

**PLANNING DIRECTOR KAAINA S. HULL'S PETITION TO REVOKE APPLICANT  
BULA TREE HOUSE LLC PERMITS AND ISSUE AN ORDER  
TO SHOW CAUSE AND SET HEARING**

Comes now Kaaina S. Hull, duly appointed Director of Planning of the County of  
Kaua'i (hereinafter referred to as "Director"), and hereby petitions this Honorable  
Commission to revoke two sets of permits originally issued to Mark and Diane Daniells,  
former owners of subject property from approximately 1978 to 2019: 1) Use Permit U-

**K.1.** <sup>1</sup> **K.1.** **N.1.**  
**May 9, 2023 April 11, 2023 Feb. 14, 2023**

19-78 and Class IV Zoning Permit Z-IV-78-28 approved by the Planning Commission on February 24, 1978 for the operation of a pre-school; and 2) Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 approved by the Planning Commission on June 14, 1990 for the operation of 288 sq. ft. art gallery, at Tax Map Key (TMK): (4) 5-5-004: 023. The Director requests the Commission issue an Order to Show Cause to Bula Tree House LLC and set a hearing with the Commission on **Tuesday, February 14, 2023** at 9:00 a.m at the Līhu'e Civic Center, Pi'ikoi Meeting Room, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i. This petition is filed pursuant to Chapter 12 of the Rules of Practice and Procedures of this Commission.

DATED: Līhu'e, Hawai'i, 11 / 18, 2022.



\_\_\_\_\_  
KAINA S. HULL  
Director of Planning  
County of Kaua'i

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

In the matter of:

Use Permit U-19-78  
Class IV Zoning Permit Z-IV-78-28,  
(former Diane Daniells pre-school,  
Unit B),

And

Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51,  
(former Mark Daniells art gallery,  
Unit A)

Tax Map Key (TMK): (4) 5-5-004: 023,  
(Units A & B)

MEMORANDUM IN SUPPORT OF  
PETITION

**MEMORANDUM IN SUPPORT OF PETITION**

WHEREAS, the Planning Commission of the County of Kaua'i approved Use Permit U-19-78 and Class IV Zoning Permit Z-IV- 78-28 for Diane Daniells operation of a pre-school on February 24, 1978; and Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 for Mark Daniells art gallery on June 14, 1990, Tax Map Key (TMK): (4) 5-5-044: 003; and

WHEREAS, Z-IV-90-51 included various conditions of approval to the use of a 288 sq.ft. structure for use as an art studio in portion of Waioli (makai), Hanalei, Kauai, at the site previously owned by Mark and Diane Daniells ("Applicants"); and

WHEREAS, the Use and Class IV Zoning Permit was approved by the Commission on June 14, 1990 (Exhibit "A"), and contained the following applicable conditions of approval:

1. The size of the art studio shall be limited that proposed (288) square feet. No expansion or further commercial use or development shall be allowed on this site.
3. The subject permits are specifically for a 288 sq.ft. art studio/gallery and shall be re-evaluated by the Planning Commission every three (3) years and be accompanied with a status report. However, the Applicant shall make every effort to relocate the retail portion of the use should commercially zoned retail space become available within Hanalei town. In the event of change of ownership, the new owner shall notify the Planning Commission.
6. All parking shall be accompanied on-site, and not on the Kuhio Highway shoulders or adjacent properties. If parking cannot be controlled, this shall be considered grounds for revocation of the permits.
8. Applicant shall submit for Planning Department review and approval, prior to building permit consideration, a revised parking and access plan. A minimum of five (5) parking spaces shall be reflected. The access point to Kuhio Highway shall be approved by the State Highways Division.
9. The hours of operation shall be limited to weekends, holidays, and when school is not in session.

WHEREAS, community complaints and concerns have been received relative to conditions of approval (required submittal of status report, days and hours of operation, parking, and to make every effort to relocate to the commercial district) have not been complied with, and has led the Department to re-examine said permits.



WHEREAS, present applicant Bula Tree House LLC purchased the property (it was not CPR'd at that time) in June 2019, and notified the Department of the change in ownership, in compliance with Condition #3. The Department performed a site visit to the property on 12/4/2019, wherein it was determined that status reports requirement had not been complied with. Applicant has been actively leasing the 288 sq.ft. gallery to local artists; however, it was vacated in January of 2022. Applicant has put the gallery back up for lease. Comments from the community state the most recent tenant/lessee relocated the gallery operations to Hanalei's commercial district. The pre-school operations ceased in 2018. Applicant has proposed to terminate the pre-school permits.

WHEREAS, the Department concurs that the art gallery use was to be minimal and temporary as it was intended to be operated only in conjunction with the pre-school; the art gallery use was secondary and to be operated only on the weekends, holidays and when school was out of session, and since they also lived on site. The relocation emphasis in Condition #3 reflected that the art gallery Use permits was temporary, and that it was never intended to be a *de-facto* commercial re-zoning for the property. Further Department and Planning Commission consideration in 2010 reinforced the temporary nature of the art gallery by denying applicant's request to delete condition #3.

WHEREAS, the Director, based on the foregoing, believes there is reasonable cause to determine a failure to perform according to the conditions imposed.

NOW THEREFORE, the Director prays upon this Honorable Commission that it take the following actions:

1. Pursuant to the Planning Commission Rules of Practice and Procedure Section 1-12-5 confirm the finding of the Director there is reasonable cause to believe that the Applicant has not met its obligation to satisfy conditions of approval of the permit.
2. Pursuant to Section 1-12-6 of the Rules of Practice and Procedures of this commission, order the issuance of an Order to Show Cause in a form compliant with Section 1-12-6(b).
3. Order the Clerk of the Commission to issue the Order to Show Cause to Bula Tree House LLC.
4. Set the hearing with the Commission on **Tuesday, February 14, 2023** at 9:00 a.m at the Lihue Civic Center, Pi'ikoi Meeting Room, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i.

Dated: Līhu'e, Hawai'i 11 / 17 /, 2022.

  
\_\_\_\_\_  
KAAINA S. HULL

Director of Planning  
County of Kaua'i

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI  
STATE OF HAWAII

In the matter of:

Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
(former Mark Daniells art gallery),

And

Use Permit U-19-78  
Class IV Zoning Permit Z-IV-78-28  
(former Diane Daniells pre-school)

Tax Map Key (TMK): (4) 5-5-004: 023  
(Units A & B)

DECLARATION OF KAAINA S. HULL

**DECLARATION OF KAAINA S. HULL**

I, KAAINA S. HULL, under the penalty of perjury, hereby state the following is true and accurate to the best of my knowledge and belief:

1. I am the duly appointed Director of Planning for the County of Kaua'i.
2. Attached as Exhibit "A", is true and correct copy of the April 14, 2010 approval letter and staff report memorializing the Planning Commission's April 13, 2010 amendment to Condition 3 of Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 for the art gallery.
3. Attached as Exhibit "B", is true and correct copy of the June 15, 1990, approval letter and staff report memorializing the Planning Commission's June 14, 1990 approval of the art gallery's Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 at Tax Map Key (TMK): (4) 5-5-004: 023.

4. Attached as Exhibit "C" is a true and correct copy of the Planning Commission's February 24, 1978 approval letter and staff report memorializing the Planning Commission's February 22, 1978 approval of the pre-school's Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 at Tax Map Key (TMK) (4) 5-5-004: 023.

Declarant further sayeth naught.

DATED: Līhu'e, Hawai'i, 11/18/0 2022.



\_\_\_\_\_  
KAAINA S. HULL

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

In the matter of:

Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
(former Mark Daniells art gallery),

And

Use Permit U-19-78  
Class IV Zoning Permit Z-IV-78-28  
(former Diane Daniells pre-school)

Tax Map Key (TMK): (4) 5-5-004: 023

NOTICE OF MEETING

**NOTICE OF MEETING**

TO: Bula Tree House LLC  
C/O Michael Rodger  
P.O. Box 374  
Hanalei, HI 96714

NOTICE IS HEREBY GIVEN that a meeting on PLANNING DIRECTOR KAAINA S. HULL'S PETITION TO REVOKE APPLICANT BULA TREE HOUSE LLC'S USE PERMITS AND CLASS IV ZONING PERMITS, ISSUE ORDER TO SHOW CAUSE, APPOINT HEARINGS OFFICER, AND SET HEARING will come before the Planning Commission on **Tuesday, February 14, 2023** at 9:00 a.m. Lihu'e Civic Center, Planning Commission Meeting Room, 4444 Rice Street, Lihu'e, Kaua'i, Hawai'i.

DATED: Lihu'e, Hawai'i, 11/18/, 2022.

  
KAAINA S. HULL

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

In the matter of:

Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
(Mark Daniells art gallery),

And

Use Permit U-19-78  
Class IV Zoning Permit Z-IV-78-28  
(Diane Daniells pre-school)

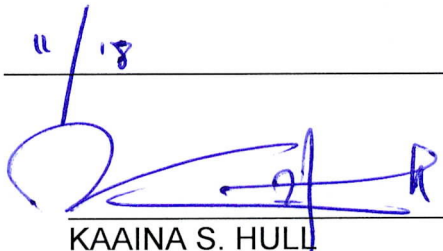
Tax Map Key (TMK): (4) 5-5-004: 023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was duly served on the following party by placing the same in the Certified United States mail with return receipt, postage prepaid, on the date specified below:

Bula Tree House LLC  
C/O Michael Rodger  
P.O. Box 374  
Hanalei, HI 96714

DATED: Līhu'e, Hawai'i, 11/18, 2022.

  
\_\_\_\_\_  
KAINA S. HULL



**BERNARD P. CARVALHO, JR.**  
MAYOR



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT

**IMAIKALANI P. AIU**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUAI  
PLANNING DEPARTMENT**

4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUAI, HAWAII 96766-1326

TEL (808) 241-4050 FAX (808) 241-6699

**COPY**

April 14, 2010


Mark & Diane Daniells  
PO Box 191  
Hanalei, Hawai'i 96714

**RE: Amendment to Condition No. 3  
Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
Tax Map Key: (4) 5-5-04:03  
Hanalei, Kaua'i**

The Planning Commission at its meeting held on April 13, 2010 approved an amendment to Condition No. 3 of the subject permits and it shall read as follows:

- "3. The subject permits are specifically for a 288 square feet art studio/gallery and shall be re-evaluated by the Planning Commission every three (3) years and be accompanied with a status report. However, the Applicant shall make every effort to relocate the retail portion of the use should commercially zoned retail space become available within Hanalei Town. In the event of change of ownership, the new owner shall notify the Planning Commission."**

Should you have further questions regarding this matter, please contact Dale A. Cua of my staff at (808) 241-4050. Aloha!

  
Ian K. Costa  
Director of Planning

ATTACH. A

**RE:** Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
TMK 5-5-4: 23, Hanalei, Kauai

**SUBJECT TO CHANGE**

**REQUEST:** Request to delete condition #3 relative to the operation of a 288 sq.ft. art studio/gallery in Hanalei

**APPLICANT:** Mark Daniells

**Background**

At its meeting of February 22, 1978 the Planning Commission approved Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 to Diane Striegel to relocate a licensed pre-school from the Waioli Mission Hall to the subject property. SEE Attachment 1.

At its meeting held on June 14, 1990 the Planning Commission approved the above referenced permits to operate a 288 sq.ft. art studio/galley on the property. This structure has no plumbing or kitchen facilities. SEE Attachment 2.

Prior to processing this request, staff requested that the applicant provide the Hanalei-Hā'ena Community Association an opportunity to review the request, and provide comments and recommendations. These comments and recommendations are included with the Applicant's request packet.

**Request**

Applicant is requesting to delete Conditions #3 which reads as follows:

3. Said permits shall be temporary in nature, for one (1) year, beginning from the date of occupancy. At the conclusion of one year, the Planning Department shall re-evaluate the subject permits. Applicant shall make every effort to relocate the retail portion of the use should commercial retail space become available within Hanalei Town prior to that date.

**Justification**

"Occupancy of the art studio took place in June of 1990 and for one year, no retail space in Hanalei Town became available. The nature of the Special Use Permits allows for termination of the permit at any time for cause. Mark is a licensed Director and Teacher at the Menehune School on the same property and is essential to the running of the school. In the twenty years the Mark Daniells Gallery has operated there have been no complaints."

Applicant's are proceeding with a Condominium Property Regime (CPR) of the property and need to resolve condition #3 in order to proceed.

### Comments submitted by Hanalei-Hā'ena Community Association on 3/9/2010

The Department acknowledges the comments and recommendations of the HHCA. Specifically, that rather than complete deletion of Condition #3, that it be modified to allow the continued use of the specific business operations (pre school and art studio), at its current scale, for as long as:

- the current owners continue to operate the specific businesses, *and*
- the current owners own the property. Upon discontinuing the business or upon the sale of the property, the commercial use of the property would be terminated, as was originally envisioned in the temporary nature of the 1990 permits.

### Evaluation

As to the comments submitted by the community association, it is noted that permits run with the land, not the applicants. Even if the CPR unit with the art studio use were sold, the art studio use can be continued. Any expansion of the structure or use, or a change in use would necessitate Planning Commission review and approval. As with all permits, if adverse impacts are created, the Commission can review the subject permits if resolution of the issue cannot be achieved.

The pre-school and art studio have co-existed within the surrounding residential community for approximately 20-30 years. Their longevity confirms the Use Permit process in considering potential impacts to that community – none have occurred. However, since a CPR is being sought for the property, we should ensure that no other commercial uses, or an expansion of the existing use, can or should occur unless:

- an update of the community development plan acknowledges such a commercialization of the residential zone along Kūhi'ō Highway, or
- the Planning Commission authorizes it.

Provided the specific pre-school use and art studio use remain, and are not expanded or their uses intensified in any manner (ie, increase in floor area, increase in the number of students, the addition of another education program, etc), staff believes the uses would not create impacts to the neighborhood based on the past 20 years. In this economical climate, the relocation of uses to the appropriate zoned areas could be possible and preferred, especially if the programs are intended to be expanded.

Rather than delete Condition #3, the following amendment would be considered appropriate in order to further clarify the nature and intent of the permits, utilizing the Ramseyer format:

3. Said permits are specifically for a 288 sq.ft. art studio/gallery, and shall [be temporary in nature, for one (1) year, beginning from the date of occupancy. At the conclusion of one year, the Planning Department shall re-evaluate the subject permits. Applicant shall make every effort to relocate the retail portion of the use should commercial retail space become available within Hanalei Town prior to that date.] not be altered or expanded unless approved by the Planning Commission.

### Conclusion

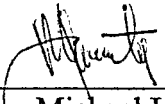
Based on the above, it is hereby concluded that deletion of Condition #3 would be inappropriate given the concerns that can be addressed with its refinement, as previously discussed.

### Recommendation

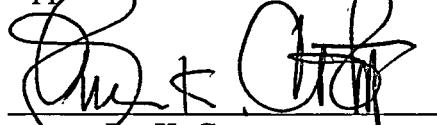
Based on the foregoing, it is recommended that the subject permits be amended as follows, utilizing the Ramseyer format (deletions are within [brackets], new language is underlined):

3. Said permits are specifically for a 288 sq.ft. art studio/gallery, and shall [be temporary in nature, for one (1) year, beginning from the date of occupancy. At the conclusion of one year, the Planning Department shall re-evaluate the subject permits. Applicant shall make every effort to relocate the retail portion of the use should commercial retail space become available within Hanalei Town prior to that date.] not be altered or expanded unless approved by the Planning Commission.

By

  
\_\_\_\_\_  
Michael L. Laureta  
Planner

Approved & Recommended to Commission:

  
\_\_\_\_\_  
Ian K. Costa  
Planning Director

Date: 3/29/10

JOANN A. YUKIMURA  
MAYOR



PETER A. NAKAMURA  
PLANNING DIRECTOR

ROLAND D. SAGUM, III  
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4280 RICE STREET  
LIHUE, KAUAI, HAWAII 96766

COPY

June 15, 1990

Mr. Mark Daniells  
P. O. Box 191  
Hanalei, Hawaii 96714

Subject: Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51  
TMK: 5-5-04:23 Hanalei, Kauai


The Planning Commission at its meeting held on June 14, 1990, approved the above permits to operate an art studio/gallery within a 288 square foot structure currently existing on your property, subject to the following conditions:

1. The size of the art studio shall be limited to that proposed (288 square feet). No expansion or further commercial use or development shall be allowed on this site.
2. In accordance with Ordinance No. 396, the applicant shall pay an Environmental Assessment Fee upon building permit review by the Planning Department.
3. Said permits shall be temporary in nature, for one (1) year, beginning from the date of occupancy. At the conclusion of one year, the Planning Department shall re-evaluate the subject permits. Applicant shall make every effort to relocate the retail portion of the use should commercial retail space become available within Hanalei Town prior to that date.
4. The Planning Commission reserves the right to impose additional conditions, revise existing conditions, or move for revocation of permits should unforeseen or unanticipated conditions be created that cannot be mitigated.

ATTACH. B

Mr. Mark Daniells  
Page 2  
June 15, 1990

5. Requirements of the State Health Department, County Water, Fire and Public Works Departments, and State Highways Division must be complied with and/or resolved with the respective agency(ies).
6. All parking shall be accommodated on-site, and not on the Kuhio Highway shoulders or adjacent properties. If parking cannot be controlled, this shall be considered grounds for revocation of the permits.
7. Applicant shall provide a suitable barrier (chain link or wooden fence) to separate the school and studio uses.
8. Applicant shall submit for Planning Department review and approval, prior to building permit consideration, a revised parking and access plan. A minimum of five (5) parking spaces shall be reflected. The access point to Kuhio Highway shall be approved by the State Highways Division.
9. The hours of operations shall be limited to weekends, holidays, and when school is not in session.
10. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

  
PETER A. NAKAMURA  
Planning Director

cc: Mayor  
Public Works Dept.  
Water Dept.  
Health Dept.  
Highways Div.  
Fire Dept.  
Real Property Div.  
H-PIAC



RE: Use Permit U-90-38  
Class IV Zoning Permit Z-IV-90-51

APPLICANT: Mark Daniells

EVALUATION:

Section 8-3.4 of the Comprehensive Zoning Ordinance permits retail shops and stores within the Residential District through the Use Permit process. Under normal circumstances, however, commercial-type uses within the Residential District has been discouraged due to traffic, noise, safety, etc., concerns preferring such activities to be properly located within the Commercial Districts. However, the following aspects were considered:

1. The temporary nature of the request. The applicant is cognizant of the commercial impacts of the project that may be created and, therefore, is requesting a temporary one (1) year period in which to assess these impacts. This time frame could be considered an appropriate time frame.
2. Existing use of property. The Menehune Montessori School facility was granted approval by the Planning Commission on June 8, 1988, on the subject property. The facility exists on the bottom floor of a two-story structure, with the applicant's residence on the top floor. Parking for three vehicles is available. To date, we have not received any complaints from the surrounding neighborhood in regards to the school operations. These school operations are limited to 24 children ranging in ages from 2-5 years; however, the school averages 10-20 children during any school day.
3. Access and Parking. Primary access is gained from Kuhio Highway. No new access/exit points will be created which could impact traffic flows. Based on the parking requirements of the CZO, seven (7) parking stalls are required. However, since the "employees" of the pre-school and art gallery are also the owner/occupants of the dwelling unit, five (5) parking stalls would be considered the minimum requirement, provided no additional employees are utilized. The plot plan should be revised prior to applying for the building permit reflecting five (5) parking stalls and one (1) access point approved by the State Highways Division.
4. Surroundings. Hanalei Elementary School is south of the subject site, directly across the highway. Abutting to the west and north are single-family dwelling units. To the east, vacant lots and commercial uses (Great Lengths Hair Salon and Fantasy Island Boat Tours).

The three shopping complexes within Hanalei Town are located approximately 2,000 ft. east of the subject site, and are the Ching Young Village, the Wilcox Hanalei Center, and the Kauhale Center. These complexes do not have any available space.

Based on the above-considerations, we would have no objections to the proposal provided:

- It remains temporary, until commercial retail space in Hanalei Town become available;
- All parking must be accommodated on-site, and not on the highway shoulders. If parking cannot be controlled, this shall be considered grounds for revocation of the permits. Said parking can remain unpaved, however, crushed coral or blue rock should be utilized;
- The studio design is compatible to the existing structure; and
- A suitable barrier or fence is provided between the studio and school to separate the activities of both.

The applicant should be advised that any commercial zoning or impetus for further commercial use of the property should be evaluated when the North Shore Development is updated again in the future. The Planning Commission should further reserve the authority to terminate and have the applicant relocate the use when Commercial zoned retail space becomes available in Hanalei Town.

#### CONCLUSION:

Based on the foregoing findings and evaluation, it is concluded that a temporary use permit can be considered at this time. Furthermore, the use should be limited as represented, and no other commercial use or development takes place on the property. In the event commercial retail space becomes available in Hanalei Town, the applicant should make every effort to relocate.

It is finally concluded that by the nature of the intended use and the limited size of the structure, no adverse impacts nor impacts to adjacent residential units should occur provided the considerations as outlined in the staff report are followed.

#### RECOMMENDATION:

Based on the foregoing reasons, it is hereby recommended that Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 be approved, subject to the following conditions:

1. The size of the art studio shall be limited to that proposed (288 square feet). No expansion or further commercial use or development shall be allowed on this site.
2. In accordance with Ordinance No. 396, the applicant shall pay an Environmental Assessment Fee upon building permit review by the Planning Department.

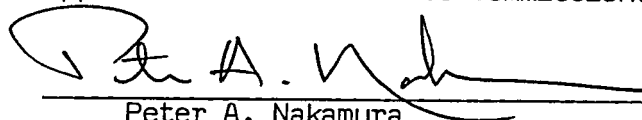
3. Said permits shall be temporary in nature, for one (1) year, beginning from the date of occupancy. At the conclusion of one year, the Planning Department shall re-evaluate the subject permits. Applicant shall make every effort to relocate the retail portion of the use should commercial retail space become available within Hanalei Town prior to that date.
4. The Planning Commission reserves the right to impose additional conditions, revise existing conditions, or move for revocation of permits should unforeseen or unanticipated conditions be created that cannot be mitigated.
5. Requirements of the State Health Department, County Water, Fire and Public Works Departments, and State Highways Division must be complied with and/or resolved with the respective agency(ies).
6. All parking shall be accommodated on-site, and not on the Kuhio Highway shoulders or adjacent properties. If parking cannot be controlled, this shall be considered grounds for revocation of the permits.
7. Applicant shall provide a suitable barrier (chain link or wooden fence) to separate the school and studio uses.
8. Applicant shall submit for Planning Department review and approval, prior to building permit consideration, a revised parking and access plan. A minimum of five (5) parking spaces shall be reflected. The access point to Kuhio Highway shall be approved by the State Highways Division.
9. The hours of operations shall be limited to weekends, holidays, and when school is not in session.
10. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

By



Michael Laureta  
Planner

Approved & Recommended to Commission:



Peter A. Nakamura  
Planning Director

EDUARDO E. MALAPIT  
MAYOR



BRIAN K. NISHIMOTO  
PLANNING DIRECTOR

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4280 RICE STREET  
LIHUE, KAUAI, HAWAII 96766

February 24, 1978

Ms. Diane M. Striegel  
P. O. Box 191  
Hanalei, Kauai 96714

Subject: Use Permit U-19-78  
Class IV Zoning Permit Z-IV-78-28  
TMK: 5-5-04:23

The Planning Commission at its meeting of February 22, 1978, approved the above permits, subject to the following conditions:

1. The applicant be advised the Use Permit is granted with the understanding there shall be no negative impacts on the neighborhood. Should problems arise subsequently, the Planning Commission may revoke the Use Permit.
2. As represented by the applicant, approval of Department of Social Services & Housing be secured prior to commencing operation. Additionally, all applicable State and County laws, codes, ordinances, rules and regulations be complied with.

A handwritten signature in dark ink, appearing to read "Brian Nishimoto", is written over the second condition of the list.

BRIAN NISHIMOTO  
Planning Director

cc: Mayor  
Pub. Works  
Water  
Health  
Taxation Br.

ATTACH. C

KAUAI PLANNING COMMISSION  
LIHUE, KAUAI

STAFF REPORT

TO: Planning Commission

RE: Use Permit U-19-78  
Class IV Zoning Permit Z-IV-78-28

APPLICANT: Diane M. Striegel

FINDINGS:

The subject property is located in Hanalei on the makai side of Kuhio Highway, approximately 750 feet West of the Hanalei Courthouse. It is further identified as Tax Map Key: 5-5-04:23, Lot 7, and contains an overall area of 7,914 square feet.

This Urban District property is designated Single Family Residential on the General Land Use Plan of the County and zoned Residential District (R-4). It is within the Special Management Area. It contains an existing residence of approximately 1,040 square feet. The property is partially surrounded by a chain link fence approximately 4 feet high; a wooden fence is proposed to complete the enclosure. The remainder of the property is vacant of structures, containing only trees and shrubs.

Under provisions of Ordinance No. 164 (CZO), as amended, the applicant is seeking a Use Permit and a Class IV Zoning Permit to operate a Pre-school within the existing house. Minor SMA Permit 78-6 was issued on January 23, 1978. The following letter was submitted in support of the application: (See attached letter.)

Additionally, Ms. Striegel submitted letters from residents of 3 of the 4 abutting properties indicating their respective approval of the Pre-school. A letter from the fourth abutting owner is expected shortly.

Agencies reviewing this request made the following comments:

STATE HIGHWAYS DIVISION: No comments.

PUBLIC WORKS DEPARTMENT:

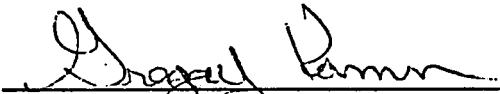
1. The subject parcel abuts Kuhio Highway which is under the jurisdiction of the State of Hawaii.
2. We have no comments to offer on the subject proposal.

WATER DEPARTMENT: We have no objections to this Zoning Permit and Use Permit application.

FIRE DEPARTMENT: We have no objections to the proposed use of the building provided that the structure complies with the 1967 Life Safety Code before occupancy. A fire extinguisher shall also be provided in accordance with NFPA 10.

STATE HEALTH DEPARTMENT: We have no objections to this request at this time.

By

  
\_\_\_\_\_  
Gregory Kamm  
Planner VI

2/15/78



Sirs;

I respectfully request that I be granted the permits required to operate my Day Care Center in the house my parents own in Hanalei.

There is a definite need for the school as at this time Hanalei has no Day Care or Pre-school facility in operation.

I have been operating the Menehune Montessori School at the Waioli Mission Hall for the past three years in Hanalei. I was told at the end of the Spring Semester 1977 that the Mission building which I rented was to undergo renovation construction. After sincere efforts to locate a building or room in Hanalei that would be appropriate for my school I had reached a dead end. My only alternative was to apply for a permit to operate the school in my parents house on Kuhio Highway.

Actually it is an excellent location for a Pre-school in that it is directly across from the Hanalei Elementary School. Also it is approximately 200 yards away from where the Pre-school has been held the past years.

My enrollment each semester has been 15 to 25 students ages 3 to 6, but during each school day only 8 to 12 children are in attendance. This is due to the fact that each child usually attends only three days a week. The school has been operated between the hours of 8:00 and 3:00 in the past which are the same hours of the Elementary School.

I have applied for my renewal of my license to operate the school from the Dept. of Social Services and so it will be in accordance with the Rules & Regulations governing Group Day Care Centers (see attached).

I understand that for a permit to be issued the school must be compatible with the standards in Sec. 8.05 of the County Zoning Ordinance. I do believe that my Pre-school will not be detrimental to the health, peace, safety or comfort of the neighborhood and it has been and can still be an asset to the community.

Thank you very much for your time.

Sincerely,

*Diane Striegel*

Include: Application for Certificate  
of approval to operate a  
Day Care Center - Dept. of S.S.  
(Renewal)

Rules & Regulations Governing  
Group Day Care Centers - State of Hawaii

Plot Plan

Tax Map

Planning Dept. Permit Application

Letters from community members

Statement of legal authority

Letter of authorization from owner of building

RE: Use Permit U-19-78  
Class IV Zoning Permit Z-IV-78-28

EVALUATION:

In reviewing this request, staff noted this application is basically a relocation of a pre-school previously licensed by the Department of Social Services and operated out of the Waioli Mission Hall. Other than the applicant's own statements, staff cannot specifically evaluate the need for such a facility. However, staff notes that Hawaii has an extremely high proportion of families where both spouses work and this creates a general need for pre-school or day care facilities. Further, that the school operated in the recent past is an indication of continuing need.

Regarding the standards for granting a Use Permit, staff was most concerned about the noise impact on neighboring properties. The letters of support from abutting residents minimize this concern. Further, the proposed use is not deemed to have other negative impacts and will, in fact, contribute to the resources available in the community. Staff does note the importance of receiving DSSH approval prior to commencing operation.

CONCLUSION:

Based on the foregoing findings and evaluation, it is concluded the proposed use meets the standards for granting a use permit and should not negatively impact the neighborhood.

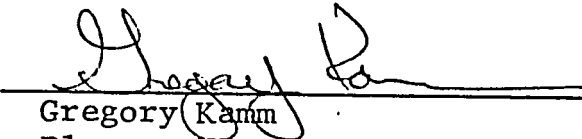
RECOMMENDATION:

Based on the foregoing findings, evaluation and conclusion, it is hereby recommended Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 be approved, subject to the following conditions:

- 1) The applicant be advised the Use Permit is granted with the understanding there shall be no negative impacts on the neighborhood. Should problems arise subsequently, the Planning Commission may revoke the Use Permit.

C-24

- 2) As represented by the applicant, approval of Department of Social Services & Housing be secured prior to commencing operation. Additionally, all applicable State and County laws, codes, ordinances, rules and regulations be complied with.

By   
Gregory Kamm  
Planner VI

Approved & Recommended to Commission:

  
Brian Nishimoto  
Planning Director