



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

GERALD AKO, CHAIR
DONNA APISA, VICE CHAIR
JERRY ORNELLAS, MEMBER

- 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

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'23 NOV -8 P1:08

- 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 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 ADAVIS@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.

SUBDIVISION COMMITTEE MEETING NOTICE AND AGENDA

**Tuesday, November 14, 2023
8:30 a.m. or shortly thereafter
Līhu'e Civic Center, Moikeha Building
Meeting Room 2A-2B
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i**

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A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

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

1. July 11, 2023

E. RECEIPT OF ITEMS FOR THE RECORD

F. UNFINISHED BUSINESS

G. NEW BUSINESS (For Action)

1. Preliminary Subdivision Map Approval

- a. Subdivision Application No. S-2024-2
Moloa'a Farms LLC. Et. Al.
Proposed 11-lot Subdivision
TMK: (4) 4-9-009: 001
Moloa'a and Papa'a, Kawaihau, Kaua'i

- 1) Subdivision Report pertaining to this matter.

2. Preliminary Subdivision Extension Request

- a. Subdivision Application No. S-2023-1
BBCP Kukui'ula Development, LLC.
Kukui'ula Parcel A2F2F3 Subdivision
Proposed 31-lot Subdivision
TMK: (4) 2-6-022: 020
Lāwa'i, Kōloa, Kona, Kaua'i

- 1) Subdivision Report pertaining to this matter.

H. 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:

- a. Subdivision Application No. S-2024-2
Moloa'a Farms LLC. Et. Al.
Proposed 11-lot Subdivision
TMK: (4) 4-9-009: 001
Moloa'a and Papa'a, Kawaihau, Kaua'i
- b. Subdivision Application No. S-2023-1
BBCP Kukui'ula Development, LLC.
Kukui'ula Parcel A2F2F3 Subdivision
Proposed 31-lot Subdivision
TMK: (4) 2-6-022: 020
Lāwa'i, Kōloa, Kona, Kaua'i

I. ADJOURNMENT

KAUA'I PLANNING COMMISSION
SUBDIVISION COMMITTEE MEETING
July 11, 2023
DRAFT

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Subdivision Committee Vice Chair Apisa at 8:30 a.m. - Webcast Link:
<https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Ms. Donna Apisa
Mr. Jerry Ornellas

Excused or Absent

Mr. Gerald Ako

The following staff members were present: Planning Department - Director Ka'aina Hull, Planning Department – Deputy Director Jodi Sayegusa, Staff Planners Dale Cua, Kenny Estes, Romio Idica, Shelea Koga, Planning Staff Duke Nakamatsu and Kristen Romuar-Cabico, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – County Deputy Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Subdivision Committee Vice Chair Donna Apisa: Call the meeting to order. Subdivision Committee for the Kaua'i Planning Commission. Roll call please.

Planning Director Ka'aina Hull: Roll call, Madam Chair. Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Ako is excused. Commissioner Apisa?

Commissioner Donna Apisa: Here.

Mr. Hull: You have a quorum, Madam Chair.

Vice Chair Apisa: At this time, we'll take a 10-minute recess because we do have some recent testimony that was submitted, and we just need 10-minutes to read the recently submitted testimony, and then we will resume.

Subdivision Committee went into recess at 8:58 a.m.
Subdivision Committee reconvened from recess at 9:05 a.m.

APPROVAL OF AGENDA

Mr. Hull: Next up we have Approval of the Agenda. The Department has no recommended changes to the agenda.

Vice Chair Apisa: Motion to approve the agenda.

Mr. Ornellas: Move to approve the agenda.

Vice Chair Apisa: Second. All those in favor, voice vote. Aye (unanimous voice vote). The agenda is approved. 2:0.

MINUTES of the meeting(s) of the Subdivision Committee

Mr. Hull: Next, we have minutes of the May 9th meeting.

Vice Chair Apisa: Motion to approve.

Mr. Ornellas: Move to approve minutes.

Vice Chair Apisa: Second. I'll call for a voice vote. All in favor. Aye (unanimous voice vote). Motion passes. 2:0.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Hull: Next, we have no Receipt of Items for the Record.

UNFINISHED BUSINESS

Preliminary Subdivision Extension Request

Subdivision Application No. S-2021-7

5425 Pa'u A Laka, LLC.

Proposed 2-lot Consolidation and Resubdivision into 4-lots

TMK: (4) 2-8-014: 032

Koloa, Kaua'i

Mr. Hull: Calling for public testimony at this time. So, this is on the first subdivision, again, Subdivision S-2021-7. If you'd like to sign up to testify on this agenda item, please do so at the front. First person we have signed up to testify, oh, I just want to say, there is a petition for intervention request, which will be handled after public testimony, so if you're an attorney for the petition, you'll be granted time during the petition, when I turn it over to the Chair. At this point in the agenda, we're just looking at public testimony for this agenda item. First person we have signed up is Bridget Hammerquist.

Ms. Bridget Hammerquist: Good morning, Commissioners of the Subdivision Committee. My name is Bridget Hammerquist and I live in Kōloa, and I'll be very brief. I'm here to ask that the county code be abided by and it be recognized that any approval in the subdivision process, the tentative approval granted August 10, 2021 had expired, lapsed, for lack of request for continuance and therefore it's now void and I believe the applicant has to start again, and I'm asking that that be enforced, and I thank you for your time. I also think it would be helpful for the public, if you can help us understand why the consolidation is needed, and then why the four lots are needed from that. That's an area of confusion that's never really been addressed by any of the paperwork that we were able to find. Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Thank you for your testimony. Next, we have Bianca Isaki.

Ms. Bianca Isaki: I'm going to wait.

Mr. Hull: Okay, you're with the petition. Next, we have signed up, Ryan Hunley.

Mr. Ryan Hunley: Hurley, I'm gonna have to wait (inaudible).

Mr. Hull: Next, we have signed up, Joe...excuse me, next, we have signed up is Joe Wiezgodzki.

Unknown Male from Audience: (Inaudible).

Mr. Hull: Wait? Okay. Next, we have signed up, Tristan Daniel.

Ms. Tristan Daniel: Aloha.

Mr. Hull: If you could approach the microphone, state your name for the record, and you have three minutes for testimony.

Ms. Daniel: Mahalo. Thank you for having us. Thank you for listening. I'm testifying in opposition. I don't know whether I'm too late with some of the information. I worked with Keith Ching and Allen Biel at Coldwell Banker commercial for years. Anybody that knows those two gentlemen, knows that they knew a lot about the property. I ended up meeting with several of the trust members to look at for 50 lots because they wanted me to help them find a developer for those 50 lots. All was put on hold because of some legal issues. And I think it was about a year later that they asked me to come work with them, so I have walked most of all their property, I lived at Kahili for a while. There was, I helped flag, put orange mesh fencing around lava tubes and some of the cultural sites. There was a cultural site plan with (inaudible) name on it showing the cultural sites, and I don't know whether that's part of what's already been blasted or not, but I felt like everybody should know that I walked the land, I marked a lot of these sites, and so it is real and it was there. So, thank you for your time.

Vice Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up, Randall Francisco.

Mr. Randall Francisco: I'll stand on my testimony.

Mr. Hull: Thank you. Next, we have signed up, Stephanie Iona.

Ms. Stephanie Iona: Good morning, Chair. Thank you for allowing us to come before you this morning. I am just speaking on behalf of Meridian Pacific and the effort that they have provided in Kaua'i as well as the times that I've known them in the past. I never mentioned it before because it didn't involve Kaua'i, but I think from what I have, shall I say, understood, and what people have been sharing about, the owners and the team of Meridian Pacific, it's important to provide some history. Mr. Pinkston and I over 22 years ago used to have a relationship with the Carpenter's Union. Mr. Pinkston was the finance advisor to Mr. Walter Kupau, and at the time we did a lot of good developments on the island of O'ahu. He at that time, 22 years ago, purchased the Waipahu Shopping Center, that for many years has been doing a lot of good community outreach for schools, Waipahu, the community, numerous support in making that community a better place to live for people. Fast forward to Kaua'i, same thing, same dynamics, same

aloha. When we were facing Covid issues, he stepped up to the plate immediately, with support to feed people, including the Kōloa community, that Hawai'i Food Bank and I and our Ag. groups all supported. We fed the children of that community; we also fed the hotel workers, and he had no time used at any kind of measurement of wanting anything back for what he was trying to create in this community. The Reverend of Kōloa church and I have talked about it with regard to what he has been trying and do, I worked with the late, Teddy Blake on the Hapa Trail, I was one of the communities that brought in equipment to clean that trail and it was at the request of Meridian Pacific that we continue that effort. So, all I wanna say is, there's always two sides to a story, and from what the community of Kōloa has experienced, and I cannot judge whatever anybody else feels, but all I can judge is what we have done and that has been to continue to support that community and be a part of it and all the testimony that we stand on what we show. Thank you very much.

Vice Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up, Rupert Rowe. If you can state your name for the record, and you have three minutes for testimony.

Mr. Rupert Rowe: My name is Rupert Rowe, and I'm the po'o of Kānei'olouma Heiau. I wanna get to this issue. I'm against what is taking place down in Po'ipū. The reason that I testified in front the Land Use Commission and the developer, four hundred acres was denied zoning changes because there was no Master Drainage Plan. Secondly, culturally we took the stone from Kānei'olouma and placed it in Kamehameha's heiau on the Big Island, thirty days later the National Park took the stone and put it in the office, and it was ordered from Washington DC to replace back the stone back in the heiau. The kānaka maoli is being violated and this violation is very critical. We must have a great look at the problem that exists down there. I don't care about the developer, he doesn't care about our culture, he's all about money. Money is the root to all evil. (Inaudible due to applause from public audience).

Mr. Hull: Excuse me, excuse me. If we could allow the testifier to speak. Any disruption will not be afforded this time to allow us to give the public testimony. Thank you.

Mr. Rowe: Ka'aina, for this time that was interrupted, I need it to be add on to my time. Secondly, there's a lot of damage that is going on down there. The Master Drainage Plan is involved for Grove Farm too. Everybody does not have a drainage plan, so, let's all get on the right page. Let's not talk about how great the developers are, that's a lot of nonsense. And when you have kānakas talking nonsense then you are not really who you are. So, me, as the po'o, I will voice my concern, and if the state denies the application from changing the plan down there, cause they don't have a drainage plan, it is not the kuleana of the kānaka maoli to worry about the problem that exists out there. So, be very akamai on the advice of counsel we will wait to see the outcome of this, and we will move this into the federal court and also to the United States Supreme Court that our religion rights is being violated by the process. That's all I get to say.

Vice Chair Apisa: Thank you.

Mr. Hull: Again, if you can hold the applause, there is people to testify publicly, as well as get through several agenda items, so please, in (inaudible) rules of the Chair, please hold any outbursts or applause. Thank you. Next, we have signed up is, Bator Bonia? Is there a Bator Bonia? Hearing none, seeing none, next up...

Unknown woman from public audience: What's the name?

Mr. Hull: I have a B-A-T-O-R or A-R.

Unknown woman from public audience: Yeah, it's Polish for hero, I mean Mongolian, e kalamai. Good morning.

Mr. Hull: If you can state your name for the record, you have three minutes for testimony.

Ms. Bonnie Bator: My name is Bonnie Bator. Can I have my reading glasses, please? I have been blessed to live in Hawai'i nei for over 50 years, and I can't see right now, I'm waiting for my glasses. E kalamai, being old is not easy. Dear Planning Commission members, please deny Gary Pinkston, Developer, and corporate entity, Meridian Pacific's request to modify comprehensive drainage requirement for the 280 condominiums unaffordable for any local people. Proposed at 280 Kiahuna Plantation Drive. The track record that Gary Pinkston has perpetuated upon Kōloa town is despicable. I know he gave food during Covid, but guess what, that's manini kine, it was free food from food bank, anyways. So, desecration of burials, violation of the endangered species act, evil disregard of a species found nowhere else on earth, but Kōloa, habitat of the blind cave spider, and the endangered blind amphipod, 8 months of detonating explosives, obliteration of 'aina with acts of destruction. Immediately, I ask for the County of Kaua'i Planning Commission, you outta file criminal misconduct charges against Gary Pinkston/Meridian Pacific and its misrepresentation of Kaua'i residents, local people of Kōloa and struggling taxpayers, struggling taxpayers to entertain this developer and the corporation, Meridian Pacific. Please fine them and all the corporate shareholders. Anybody else did what he did? They'd be sitting in the Wailua Hilton or in the federal detention center. It's not fair for him to get away with this criminal acts or his shareholders. It's beyond reason that the County of Kaua'i Planning Commission has not upheld the federal ESA to protect the Kōloa blind cave spider and blind cave amphipod species, endemic only to Kōloa. You don't find that shameful. The elite, wealthy are given free reign of destruction of Kōloa at the expense of the working class of Kaua'i. Morals cease to exist for money. Creatures which have evolved over the millennia. County of Kaua'i Planning Commission cares not for affordable housing, affordable housing, right, you guys don't care about that right, Kainoa, or whatever your name is. Or the struggling families of Kaua'i, yeah, throw them a peanut butter sandwich with some cookies or something, but give them a roof over their heads, auwē, a'ole. The Planning Commission should help the local folks. Not to worry, Planning Commission members have no accountability for their actions, decisions, they'll just segway into positions of money and power, or a job with whatever developer, you know, that's what happens after you leave this position, you go work for the developers. The developer has violated conditions, failed to meet conditions, and irreparably changed the 'aina. Mahalo for possible pono action, there's always hope, right. You could always make the right decision, what's righteous to hold Gary Pinkston...

Mr. Hull: Three minutes.

Ms. Bator: ...and Meridian Pacific accountable...

Mr. Hull: Please wrap up your testimony.

Ms. Bator: ... for the transgressions perpetuate on that parcel of 'aina, formerly known as Moana Corporation, the (inaudible) Companies, sports (inaudible) and their...

Mr. Hull: Ma'am, please wrap up your testimony.

Ms. Bator: Are you listening to me, I have like three more words.

Mr. Hull: You have three minutes and...

Ms. Bator: Yeah, I'm a taxpayer. Just hang on bruh. I got this. Three more words, okay. So, I'm gonna have to repeat myself since you interrupted me. Mahalo for possible pono action to hold Gary Pinkston/Meridian Pacific accountable for the transgressions perpetuated on that parcel of 'aina, formerly known as Moana Corporation, the (inaudible) Companies Sports Shinko and their Shinko Kiahuna master plan. Think aloha 'aina rather than (inaudible)...

Mr. Hull: That's it, that was three minutes for testimony.

Ms. Bator: ...thank you for (inaudible) the developers.

Mr. Hull: The rules have been established in order to get through public testimony and we're gonna take a ten-minute recess and to establish that time. Thank you.

Vice Chair Apisa: We're going to take a ten-minute recess.

Subdivision Committee went into recess at 8:58 a.m.
Subdivision Committee reconvened from recess at 9:05 a.m.

Vice Chair Apisa: Call the meeting back to order.

Mr. Hull: Next, we have signed up, not quite legible the first name, but last name, Keana'aina? Last name, I believe, it's not quite legible, but Keana'aina? No? Next, we have up is, Elizabeth Okinaka. If you could state your name for the record, and you have three minutes for testimony.

Ms. Elizabeth Okinaka: Elizabeth Okinaka for the record. I'd like to testify in opposition of this development and this developer. I think any community members that are coming to forward today, backing in this developer is obviously receiving money from this developer. I can tell you personally that I came forward years in advance of heavy machinery ever breaking ground on this property. Ka'aina, Jodi, I came forward, I notified them, there were burials, there were heiau. Cushnie Construction crushed a part of the walls, and they were fired, I was told personally by the developer that they were fired from this job because of all the destruction they caused. Now we have Earthworks Construction, which has micro blasted one of the ten most endangered cave systems in the entire world. I can tell you that I personally worked with these endangered species, and they are estimated to be less than 300 or about 300 in the entire world. A lot of that is because of this critical habitat is on these golf courses. They have denied U.S. Fish and Wildlife to even do surveys of these caves. I have been inside these caves, and they are being affected by this blasting. These caves are a continuous system. This developer after attempts of bribing community members failed, hired the Kaua'i Police Department. We had off duty officers who were down there in full uniform with guns on their hip. Hapa Trail was completely inaccessible up until a few days ago. There was an agreement with Teddy Blake that was in place, and we know that Teddy Blake was working for this developer, and he died after naming this project. There are three burial mounds on this property. These burials have been registered multiple times. The Kaua'i Island Burial Specialist's own mother manages this property. There is deep corruption. The Kaua'i development manager quit the county to work for this developer. We've got multiple ex-county attorneys who now represent this developer. There was an agreement that was made in 2003, Ian Costa, the head of the Planning Commission, Laurel Loo, the County Attorney, the head of Kiahuna, and the head of the Knudsen Trust made an agreement on Christmas Eve. This developer is using is using this agreement today as leverage against you folks, threatening you guys with lawsuits using this agreement. That county attorney that signed that agreement now works for this developer. We have to stop letting these billionaires and developers come in and take advantage of these loopholes while they are prostituting our community, they're desecrating sacred sites. Kiahuna is part of the Kōloa cave ecosystem. There were caves that have been destroyed, but you guys still have the chance to save this property. He has bypassed

his tentative approval, he's lapsed. How did you guys approve a traffic amendment or a bypassing his traffic plan in February, when you already knew that he had passed that tentative approval. Since, 2021, he can't meet the conditions because there is no drainage plan, there's no traffic plan, there's no archaeological, and there's no biological study. Mahalo.

Mr. Hull: Again, if we can refrain from the outburst to get through public testimony. Thank you. Next, we have signed up is, Terrie Hayes. Please state your name for the record, and you have three minutes for testimony.

Ms. Terrie Hayes: I will. Aloha, good morning. Terrie Hayes for the record. Thank you for having us. Lot of emotion connected with this. It's going on for so long. The applicant is advised, I'm quoting, the applicant is advised that the property is subject to the condition of land use decision and order A76-418 and the County Ordinances No. PM-31-79, PM-148-87, and PM-334-97, which shall run with the land, subject land. Ordinances that are established. All conditions of the ordinance are enforceable against any part of any party, any party, we don't care who they are, any party, all these people coming at you, from all sides, to divide, already been decided, 9-15-2006, signed by Ian Costa, Planning Director, 2006. So, we are way down the road. Nothing has been complied with. Land Use 7 was before any actual work, that's what's upsetting. We're talking about all these things, but this should have been taken care of prior to any actual work being started. People have dropped the ball; we can point fingers all over the place. That's not gonna get us anywhere. We have to, you have to help us stop this from continually coming to your plate. There's been decisions. Nothing has changed, the archaeology hasn't changed in 15 years, it hasn't changed for hundreds of years. Things that were found...Dr. Hammett, who they utilize to do this Pa Ka'aina, Ka Pa Ka'aina, I have a hard time with that one. He did not give them a clearance, he gave them an assessment of what was there. The investigation does not fulfill the requirements of an archeological survey. HAR 13-276, if it's not complete, it's not complete. It's been presented, it's been.... That's why nothing's been developed there so far, until he came in, unfortunately, started blasting without having the proper documents. It's destroyed cultural habitat, it's destroyed plant, animal habitat, it's devastated our community, and the people that say, oh, I want to come here and talk about it, just, okay, somebody, there was a hit and run right on Po'ipū Road, that's the entrance to where this is, so, we have issues with the traffic already, the roundabout has issues, one person runs into a rock, the whole road is stopped up, there's no access, Dr. Hammett will tell you, you can call him up. Hapa Trail is not an access road. You cannot use that in the event of an emergency. I'll speak later. Thank you.

Mr. Hull: Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Next up we have, can't quite read the last name, Andrew Cabebe?

Mr. Andrew Cabebe: Excuse me. Thank you.

Mr. Hull: If you could state your name for the record, and you have three minutes for testimony.

Mr. Cabebe: Whatever it is, you hold the keys to everything, and that's why we here today. You tell us what to do. All my life, when you took my garden, my garden, my beautiful garden out of my schools and told me I going in the laboratory now for build my garden, yeah, yeah, right, that's where I come from. You know, stole everything, stole everything, our histories tells us tells about what you are, who you are in the world today. (Inaudible) culture everywhere around the world calling you to accountability. You wanna hit your gavel, go ahead anytime. You guys know the main gist of what I talking about right now, you know, our lives that you blame us for, because of what's happening in Hawai'i today, and especially on Kaua'i, our fault. You look at us, all the people you work for, look at us, point their fingers at us and

pay you all what you need to keep us where we are today. That's why we do what we do today. In every department. Every department we come into you. For me, I neva like be here, but you talking about my everything, you talking about today. My church, my church, my graveyards. Nice, yeah. Nive what you do. You know, who are we? Nothing, nobody, we are the problem, we are the problem. The problem is speaking to you today, we want to fill all your departments with our people. Enough already of you guys bringing you people in for what? For what? For all these disease. From first contact, you guys been feeding us all this stuff, right. All this poison stuff. Every pill you guys put out into, out of your hospitals, when we can grow our own medicine, we can grow our own food, like we did, right? Right? No, not right? I'm wrong, yeah, I'm wrong. That's what I'm talking to you guys about, you blame me. I gotta talk to your governor, and what he do, point his finger at me, your fault, you the one spreading all the disease. Nobody answer. You neva pound your gavel. Look at this light.

Mr. Hull: Three minutes.

Mr. Cabebe: I am the light.

Mr. Hull: If you can wrap up the testimony.

Mr. Cabebe: Thank you.

Mr. Hull: Thank you.

Mr. Cabebe: I am the light.

Mr. Hull: Thank you.

Vice Chair Apisa: Thank you.

Mr. Cabebe: For my people. This is who I am. This is what I am. That's my graveyards, my heiaus, my church.

Mr. Hull: Thank you. Thank you, Sir. Moving on to the next testifier. Thank you.

Mr. Cabebe: We get a lot to talk about, brah.

Mr. Hull: Next, we have signed up, Puanani Rogers.

Ms. Puanani Rogers: That's me.

Mr. Hull: If you can state your name for the record, and you have three minutes for testimony.

Ms. Rogers: I sure will, Ka'aina. Thank you. For the record, my name is Puanani Rogers, I was born and raised in the ahupua'a of Kealia. I am a kūpuna of 83 years old. I claim this 'aina because I was born here. I am indigenous to this 'aina, and I stand to protect it anytime I can, especially our cultural values. Which is not being done by you people, at all. I don't see any justification of why you cannot stop this development. Give me a good reason. Because there's so many reasons why you should. If Mr. Pinkston was here right now, I think a sheriff should go and arrest him for his criminal acts against our 'aina, our iwi kūpuna, our endangered species, all the things that was listed many, in the past two years they've been telling you this and nothing has been done. I'm so disappointed in you, Ka'aina, Dale Cua. I don't even know any of you people on this commission. I never see you out in our community trying to protect our 'aina. Who put you in this place to make rules for us? That are on the grounds and protecting. Who are

you people? I don't see you showing any respect for our 'aina, for our cultural values for our na iwi kūpuna. So, I speak in strong opposition to any permitting or any further development happening in Kōloa right now. Stop it now! Time is of the essence. You're destroying things over there. We're outraged, our community is outraged. Stop! Stop now. You don't even have the authority to sell any of our lands. Nobody's got clear title to sell our lands. Go and check Knudsens land titles. None! (Inaudible). Broken chain of title. And you guys don't even care. Dig deep into your na'au. You people live here too, you have the kuleana to protect this place, just as much as anybody. I don't care if you're Hawaiian, Filipino, or Portuguese, all of you that live here, it's your kuleana. Protect this 'aina! Especially all our cultural values because this is kānaka maoli lands. And your government is illegal. So, stop it! Stop it now, please! I pray deeply for all of you to dig deep into your hearts and, you know, go talk to your kūpuna, like how we can. Get the right messages! Stop this development, period, or any other development...

Mr. Hull: Three minutes.

Ms. Rogers: ...on Kaua'i...

Mr. Hull: If you can wrap up your testimony.

Ms. Rogers: ...that disturbs our culture and our na iwi kūpuna. Can you please give me a justification...

Mr. Hull: Three minutes. Please.

Ms. Rogers: ...of why you cannot stop it? Why aren't you stopping it? Okay, I'm done! Ka'aina, you are a disappointment!

Vice Chair Apisa: Thank you. We'll, call another recess if we have to. We appreciate and respect everyone's opinion, but please refrain from personal attacks. The subject here is an extension of time. And let's get, keep to the agenda subject matter, and refrain from personal attacks. That's not the order of business here.

Mr. Hull: Next, we have signed up, Moana McAdams. If you can state your name for the record, and you have three minutes for testimony.

Ms. Moana McAdams: Aloha, mai kākou, my name is Moana McAdams, my maiden name is Viado. Mahalo for allowing me to speak today. Today I'm speaking on behalf of the kānaka maoli community. My ohana has been here for hundreds of years. You know, I wanna really talk about cost of living. Not just for this developer, but just with large on our island, and in the state. I recently read a report earlier in 2023. The average housing price is on Kaua'i is 900,000 to 1 million dollars. In order for someone to afford to live in that, we talking about like a \$8,000 mortgage, when you incorporate taxes and all the other things that come with home ownership. So, I asked with this community, who is this community for, because the locals here cannot afford that. The average household income here on the island of Kaua'i is 80,000, and that does not give you the money that you can afford the types of buildings, apartment complexes, condominiums, that are accessible to our community. So, who are we inviting here, and who are we really serving? 50% of the native Hawaiians no longer live in Hawai'i because of this problem. How are we serving them, when this is their 'aina, this is our native lands. As our kūpuna have spoken, you know, we are talking about our sacred spaces right now. Our sacred spaces, our kūpuna, our ancestors that are buried in the caves, that we are destroying their bones. So, I ask you to think about where are your kūpuna, where do they lay, and how would you feel if someone went in there and blasted where they lived? You know, I now live on the continent, in the DC area. Their most sacred space is Arlington Cemetery. How do you think anyone would react if we went in there with dynamite and blew

up our veterans who have served our country. That is an act of war. That is not what you do to a place that you say that you consider, you know, that you respect the community. I mahalo Aunty Stephanie for talking about what he did for the community, to provide food, but that is not long-lasting solutions. That is like a band aid on a wound that has been gushing for hundreds of years and then it is not a sustainable solution. So, I really ask all of you, to you know, really think about this things, right, like this is not just an issue to be upset about, there are a lot of people that are affected by the decisions that are being made year over year. So, at what point do you even consider the native Hawaiians...

Mr. Hull: Three minutes. Please wrap up your testimony.

Vice Chair Apisa: If you could wrap up your testimony.

Ms. McAdams: Mahalo, and I leave you with one quote, "He ali'i ka 'āina, he kauwā ke kanaka."

Vice Chair Apisa: Thank you. Again, I respect each and every one's opinion, but the agenda item here today is a request for an extension of time. If we could just stick to the agenda item for all future testimony, please. Thank you.

Mr. Hull: Next, we have signed up, I can't read the last name, but Leilani?

Ms. Leilani Kaleiohi: Aloha.

Mr. Hull: If you can state your name for the record, and you have three minutes for testimony.

Ms. Kaleiohi: Leilani Kalilimoku Kaleiohi. I am a descendant of Kaua'i, my kūpuna come from the Kalalau Valley, and they taught us many ways of how to take care of our land, our people and we still follow it till today. We offer oli for healing, for many different things. As I do now, (speaking in Hawaiian). I am a high-risk, homeless elder here on the island of Kaua'i and this is a crime. I'm watching this development, and I've gone to that place, and I've talked to kūpuna who are broken, crying. How much time you need for continue to bus' up and break us up, break our culture. I go there to oli, and everything is in tears maybe you don't understand that but those of us who are deeply connected with this place here, cries. We hear the cries every day, (inaudible) was pounding that that time was given to this man and to continue to dissipate, and desecrate, and desecrate, while many of us, I am going to be homeless on August 2nd, because the place, the condo I live in is up for sale, and this is the world we live in here on Kaua'i. I have DHHL land lot, I cannot stay on it. Why? Because of all the rules and regulations. We like time too. We like be given the time to take care of our homes at DHHL even, or anywhere along Kaua'i, but here we got this guy, bussin' up, taking up, taking our culture, destroying our culture, and you want time, for what, continue the breaking of our culture. We have a whole lot, a whole ahupua'a, a home lot that is being damaged, and hurt, and killed. And it's breaking us up because it's filtering onto people like me and others who are kūpuna here, who cannot afford to be here, this is our home, where else are we going to go. I'm going to go camp or whatever I gotta! But this is my emotional testimony, and I am pleading to you, please, help us. In your capacity that you that you can with the rules that you got, that we gotta follow. Please make these other people follow too. I pau.

Vice Chair Apisa: Thank you.

Mr. Hull: For this agenda, we don't have anybody else signed, but if you haven't signed up and would like to testify on this agenda item, and again, this for an extension of time for Subdivision Application No. S-2021-7. Please approach the microphone, and if you can state your name and you have three minutes for testimony. If you intend to speak on this, you don't need to sign up, you can just...just state your name for the record and you have three minutes for testimony.

Ms. Malia Chun: Aloha nui kākou, I'm Malia Chun, addressing the committee of desecrating 'aina. It's a privilege to be here, actually it's a workday and most people can't afford to sit to give testimony. Kalamai, I'm a little emotional listening to these kūpuna. And as far as this extension goes You guys have been giving a 200-year extension to desecrate 'aina, and that extension is over. I sat in front of this committee many times sharing testimony from the perspective of kānaka and I can see that a few of you guys actually get koko running through you. And it hurts my na'au, that our people, our kūpuna who are houseless in their own land have to come here and state the obvious. Our 200-year extension is over. Our people, need viable solution to stay in Hawai'i. Our keiki can no longer see a future in their own 'aina kūpuna. That's infuriating! That's wrong! And I hope each of you guys can dig deep as aunty said, into your na'au and see where we're coming from. The audacity, to ask for an extension. To continue to desecrate churches, continue to desecrate the resting places of our kūpuna. For what? To build? Housing for people who have no connection to this 'aina. When I invested in our culture and our people, in seeing this place flourish for everyone. You think our kids will ever be able to turn the key to any of these homes that you guys have projected? A'ole. There's no way! So, I come to you as not just as a kānaka, but as a mother and as an educator. And I can see with my two eyes, that the decisions you guys are making on behalf of our children are not allowing them to call their own place, their own home, home, it's impossible. Mahalo.

Vice Chair Apisa: Thank you.

Mr. Hull: Again, if there's anybody else that hasn't signed up and previously spoken, but would like to testify on this agenda item, please approach the microphone, and state your name for record. You have three minutes for testimony.

Ms. Robin Yost: Good morning, my name is Robin Yost, and I'm here to ask you to deny this developer any extended time. Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Again, last call. If there's anybody who hasn't spoken.

Unknown woman from public audience: Can I go again?

Mr. Hull: Not if you've previously spoken on this agenda item. Is there anybody else who hasn't spoken on this agenda item, please approach the microphone. Please state your name for the record, and you have three minutes for testimony.

Ms. Kelly Chow: Hi there, my name is Kelly Hi'ilani Chow, and I just wanna come up here, as an unhoused Hawaiian. I'm not gonna sit here and just ask you guys for your support because obviously you're not gonna give it to us, otherwise we wouldn't be having this conversation. So, what I'm, I'm just here to say my situation about this and how I'm very grateful for you guys. Listening to us and I'm very grateful for you guys opening this base for us but at the end of the day what's actually going to happen from this. What's actually going to happen? Are you guys actually going to stop the development, I don't think so, but that's fine. You know, I'd rather dirt poor, homeless, as a kānaka living on this land then move away, cause that's what they want. They want us to be displaced from our 'aina, so, I'd rather live here struggling, than ever live anywhere else and take up space because it is important for us kānaka to stay here, and to take up as much space as possible. And to the developer in the back, I really think that if you're going to continue this desecration, I'd start praying. Mahalo.

Vice Chair Apisa: Thank you.

Mr. Hull: Is there anyone else who has not previously spoken on this agenda item but would like to speak. If so, please approach the microphone. Seeing none, I'll turn this over to Chair for the Petition for Intervention.

Vice Chair Apisa: Thank you, Ka'aina. I will now read the remainder of the notice so we can proceed. The Subdivision Report pertaining to this matter. Supplement #1, to Subdivision Report.

In the Matter of the Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 PA'U A LAKA, LLC for proposed 2-lot consolidation and resubdivision into 4-lots; and, (2) Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for modification to Condition No. 26 relating to drainage requirement for a development situated at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres. **Petitioners Friends of Māhā'ulepū and Save Koloa's Petition to Intervene and, Alternatively for Denial of Applications.**

Vice Chair Apisa: We have here a petition to intervene and a request for a referral, for a deferral, regarding Friends of Māhā'ulepū and Save Kōloa Petition to Intervene, pursuant to Commission Rule 1-2-13 C-E. This petition is referred to the full Planning Commission for consideration and decision. In lieu of substantive discussion regarding the Departments request to defer this item, pending a legal opinion from the Office of the County Attorney, I recommend that this agenda item be deferred, contingent upon consideration today by the full commission, pursuant to this report of this committee at today's commission meeting. I will now take a motion to defer, contingent upon full commission approval.

Mr. Ornellas: I move to defer the request for extension of time for Subdivision Application No. S-2021-7, pending full commission ratification.

Vice Chair Apisa: Second. Any discussion on this matter?

County Deputy Attorney Laura Barzilai: I can take a roll call vote. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 2:0. We can proceed to Item D. So, the petition for intervention will be handled by the full commission.

Mr. Hull: Next, we have up Agenda Item.

Subdivision Application No. S-2022-6
Kukui'ula Development Company, LLC./
MP Kaua'i HH Development Fund, LLC.
Kukui'ula Parcel HH Subdivision
Proposed 3-lot Consolidation and Resubdivision into 51-lots
TMK: (4) 2-6-019: 026, 029, 031
Koloa, Kaua'i

Mr. Hull: We'll take public testimony. We have anybody signed up. No one signed up for this agenda item. If anybody would like to speak on this item and state your name.

Unknown woman from public audience: Can you repeat the agenda item?

Mr. Hull: What was that?

Unknown woman from public audience: Can you repeat the agenda item?

Mr. Hull: This is for Subdivision Application No. S-2022-6.

Unknown woman from public audience: For the 51-lots?

Mr. Hull: For the 51-lots.

Unknown woman from public audience: Okay.

Mr. Hull: Approach the microphone.

Ms. Elizabeth Okinaka: Aloha Commission, my name is Elizabeth Okinaka. Again, I'd like to testify in opposition of this development. This is the same developer, correct? In Kukui'ula like I stated in the past, I think is a huge risk, there's one road in one road out. This continued development in these areas are going to be a continued death trap. Waita Reservoir has 3.2 billion gallons of water that are a direct threat to the population of Kōloa and Po'ipū. There's other reservoirs that are connected to these and if one of them fail it will be a collective fail, all of them will go. There's no evacuation plan. There's no monitoring plan and all of these developments are planned directly below the flood zone. I think this is a huge, huge issue that the county and the Planning Commission really needs to start paying attention to. Just a year ago we had a huge flood and Kukui'ula and this entire area was basically inaccessible. Waikomo Stream easily can go over the road and block these areas near the round-about. Again, this area is a huge open area, it's one of the last open spaces. The density will be greatly affected by the Kōloa Boat Harbor. This is one of the last few beaches that the local community can access. Po'ipū Beach to the local community is inaccessible. We have seen that down here, locals can't even go there anymore, there's no parking, and I think we continue again to make extensions and keep giving these guys loopholes, but you guys have really gotta start standing up to these developers and stop letting them extort our natural resources. These areas are all set back zones and we have proof that in '92 and the hurricanes in the past this entire area it was completely wiped out. It's well documented. So, this developer again, is coming in, worsening the housing crisis and I'm sorry but for the locals that are here backing him because they're getting paid off of these developments, you guys really, really need to start thinking about the future of our community. Zuckerberg, all these people, Knudsens, these major landholders that are continuing to extort, they're not building local homes. You guys really need to look at the backstory. There's no EIS for these. These developers should not be allowed to come in and get permits to build with EIS reports that are 30 or 40 years old. We need to start setting better standards for our community. Let's have expiration dates on these, let's hold these guys accountable. There was no Ka Pa'akai Analysis for this development, again I was consulted for a Ka Pa'akai Analysis, and never once did they tell me that it would be for 3 completely different areas that Ka Pa'akai Analysis is completely invalid and again we have a developer and the same area where they have no drainage, no traffic, no archaeological, and no biological study. So, please, I ask you guys, these again, Kukui'ula is a cave system and I want to know what's the difference between our side of prayer...

Mr. Hull: Three minutes, Madam Chair.

Ms. Okinaka: ...and visiting these burials and these sites being our churches versus places like the Kōloa Church.

Vice Chair Apisa: Thank you. In pursuant to Rule 1-2-21, we cannot take repetitious testimony so please address the request for extension on this particular application. Thank you.

Unknown woman from public audience: I'm addressing this particular application.

Vice Chair Apisa: Thank you.

Mr. Hull: If could state your name for the record.

Ms. Elizabeth Scamahorn: Oh, Elizabeth Scamahorn, and I was here when the general plan over 4 years ago designed, Kōloa. I'm a Kalaheo resident, I go to Kōloa many times a week. I think it's time that you put a stop to any further development because the general plan was made at a time when we had 32,000 people on the island, we have more than doubled that now. And if you don't put a stop now, there won't be a stop ever. It is your kuleana to do the right thing, and work within the confines of a general plan that was made too long and has been adjusted, but only adjusted not in the right areas, in my opinion. Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Anyone else that would like to testify on this agenda item, please approach the microphone.

Ms. Bridget Hammerquist: Thank you. My name is Bridget Hammerquist, and just briefly, if this is a request for extension, and the one year has the lapsed, I would object to it being extended for the same reasons, and the same county code, Planning Code section that applies to the Kiahuna property. In addition, I think that I would just request that before anything further go on with these developments, I do echo the community's concern. There does need to be a drainage plan. The boat harbor is a special place for many people, many locals, many little children swim and play there, and I looked up from the boat harbor and saw where these units were supposed to go, and the drainage from construction is going to be handled by that bay, and it could be (inaudible) contaminating and very dangerous for the community. And I think too often we plan the develop and then we worry about what it's gonna do to the infrastructure after the fact. Please, if you have an opportunity, let's look at what's happening to the infrastructure before the building. What's gonna happen to the traffic on the little road there that goes by Lawai Beach and the harbor? What's gonna happen to the wastewater? What's gonna happen to the solid waste? What's gonna happen to the construction waste? And try to iron out those things before we give any extensions or before we give any building permits. Please put the cart behind the horse, not in front of it. Thank you, thank you for your time.

Vice Chair Apisa: Thank you.

Mr. Hull: Okay, we still have no one signed up for this agenda item, but if anyone would like to testify on this agenda item, please approach the microphone. If you could state your name for the record and you have three minutes for testimony.

Ms. Bonnie Bator: My name is Bonnie Bator, I'm blessed to be here in Hawai'i nei for over 50 years and I would like to the lack of infrastructure, the wastewater treatment is non-existent and archaic. It's not all, you can go from Leho Road all the way to the houselots and smell the feces, or the whatever you call it, the archaic wastewater treatment, so there's no place to put another 51 people, and they're pooping and all of that stuff, and Mount Kekaha is now, it had an extension for a 120 feet above sea level, it's now 200

feet above sea level, there's no liner in that municipal waste dump, and here we are, you guys are still rubber stamping stuff for more people to come here and bring all more rubbish. Don't we feel for the people of Kekaha, and isn't it like 2023, shouldn't we have infrastructure that can handle the solid waste that's just piling up 200 feet above sea level, and there's no plan, the EIS. They spent a couple of million dollars you guys for the one at Ma'alo for the proposal over there to put the dump, and that's got shot down. We're in a crisis situation with our rubbish, we're in a crisis situation with the feces, there's no infrastructure. It's a major, Hawai'i has the most cesspools in the whole, whatever world or something. Not the world but its, raw sewage is going into the ocean that everyone loves the ocean, here we are, our kids are swimming in it, eating the fish, the subsistence people, so I think you should put everything on hold until that's addressed. Mahalo for your valuable time and I speak, I back up everything everybody else said, especially Bridget, and all the kūpuna, auwe no ho'i e, it's shameful the Hawaiians are homeless and houseless in their 'aina. Mahalo.

Vice Chair Apisa: Thank you.

Mr. Hull: Again, anybody else would like to testify on this agenda item that hasn't previously spoken?

Ms. Terrie Hayes: Aloha, Terrie Hayes for the record. In order to not be redundant, I would like to bring to your attention something we just recently discovered in one of the developers' projects, Po'ipū Estates, there's a house being built. Now this is an area that has protected caves, registered heiau, and developers or personal people still intrude upon it, encroach upon it, there's no buffer zone. The trouble is that no matter what's been done, it's still not being protected. This house is being built, my understanding by the same gentleman that cut down the 75 palm trees on state land by Coco Palms, so, they do one thing on one side of the island, then they come to the other side of the, something else.

Vice Chair Apisa: If we could just stick to (inaudible).

Ms. Hayes: ...we're opposed to this being extended. I thought this was about the road. last time was about the road. I hope, I hope this has not gone before Public Works, the road, because they don't have the pay grade to even make a decision like that without proper engineering. So, I've been a bit confused, and I'll admit that there's so much going on. We do not, they should not have an extension. Extension could have been granted my understanding, was one year. They should have had the maps. This is more than a year, therefore, it's out. They shouldn't...it's like asking if I have a warranty for my stove. Oh wait, I forgot to buy the warranty, but now I'd like to buy it after it's been a year. You know what they tell you? Good luck. It should not happen. Kukui'ula does not need any further development. It's a bowl, people have been washed out, homes have been destroyed, high water, king tides hit the whole harbor last time took out our road. We have to do something. If we keep ignoring climate change and what's going on, we're gonna have a much bigger disaster here then what's going on? It's only a matter of time. Please, please do the right thing. Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Anyone else that has not spoken on this agenda item and would like to speak, please approach the microphone. Seeing none, I'll turn it over to staff for the staff report pertaining to this matter.

Staff Planner Kenny Estes: I'll just give a brief overview of this subdivision.

Mr. Estes read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Mr. Hull: So, in a nutshell, the Department is recommending that concerns have definitely been raised about the deadline having lapsed on the extension request, recommending a deferral on this item to be referred to the County Attorney's Office for review and (inaudible). Before any discussion, is there any representative from the applicant that would like to make any statements? No, (inaudible).

Vice Chair Apisa: Any questions or discussions? Okay, hearing none.

Ms. Barzilai: We're ready for a motion.

Mr. Ornellas: I move to defer the request for extension of time for Subdivision Application S-2022-6.

Vice Chair Apisa: To the county...

Mr. Ornellas: Yeah, pending the full commissions ratification.

Vice Chair Apisa: To the County Attorney?

Ms. Barzilai: I think at this time we are deferring so that the Office of the County Attorney can render an opinion. If you'd like to amend your motion.

Mr. Ornellas: To defer until such time as the County Attorney can render an opinion.

Vice Chair Apisa: Thank you. We have a motion on the floor. I second that. All in favor? Aye (unanimous voice vote). Motion passes. 2:0. It is deferred to the Office of the County Attorney for legal opinion.

Mr. Hull: Next, we have Agenda Item G.

NEW BUSINESS (For Action)

Preliminary Subdivision Map Approval

Subdivision Application No. S-2023-4
BBCP Kukui'ula Development, LLC.
Kukui'ula Parcel JI-A Subdivision
Proposed 18-lot Subdivision
TMK: (4) 2-6-023: 040
Koloa (Makai), Koloa, Kaua'i

Mr. Hull: We don't anyone signed up on this agenda item. If anyone would like to testify on this agenda item, please approach the microphone and state your name.

Ms. Okinaka: Aloha. Elizabeth Okinaka for the record. Again, I'd like to testify in opposition of Kukui'ula. This is a different developer, but again, the same greater area. I think again, roadways in and out are a huge concern for this development, and in general, this entire community has blocked access to cultural sites. I've gone in with cultural practitioners and tried to visit sacred sites. I know of burials that have been disturbed. I know of burials inside of wa'as and canoes that have been found during the construction of Kukui'ula. The last mummified body ever found in the State of Hawai'i was inside of a cave in Kukui'ula Golf Course. The largest reinternment on the south side of Kaua'i and probably all of Kaua'i exist in Kukui'ula. This is a huge concern. Why do these developers get to own a burial cave and whenever iwi and bones are discovered it's taken onto their property? Then nobody's ever allowed to

access these sites. They have security that when culture practitioners try to access these sites, security will immediately follow them, get down their license plates, try to find their name, and it's illegal. We've been completely blocked from the resources here and it's a huge concern of what this development is planning. Kukui'ula, pitched when I was a kid, I remember sitting in Pa'anau as a kid in the low-income housing and watching these million-dollar houses start to be built on the hills. I think you guys need to realize what it feels like for those kids down there in Kōloa, living paycheck or barely even surviving off of that and looking at more and more of these million-dollar homes being built on the hills, knowing that they'll never be able to afford that, they'll be lucky if they get to get a job cleaning those people's houses. Our children should not be servants to the rich and the elite flocking here building their billion-dollar homes. This entire community is gentrified and it's a gated community. They thrive on trying to plan to have their own hotels and their own schools and their own hospitals because they don't even want their children to be in school with the local children. This is not what Kaua'i needs. Kukui'ula has greatly, greatly affected more than anything I can tell you as a kid growing up in Kōloa, Kukui'ula is the worst thing that's ever happened to the southside community. And I know you guys view Po'ipū in general as just a vacation destination, but it's not. It's more than that. There's a lot of heiau, there's a lot of cultural sites, and yes, these hotels and condos may have been planned in the 70's, but now it's 2023 and we know right from wrong, so I ask you guys to please stop following these plans and these developments that were pitched in the 70's. We know right from now and it's time for you guys to use your kuleana and your power to do right from wrong. Think about the future generations, think about your children because your children are going to be affected by this. Whether you live in north shore, west side, east side, developments like this are going to continue popping up if you allow these developers and continue to grant them extensions. Mahalo.

Vice Chair Apisa: Thank you. Thank you for being respectful of the meeting.

Mr. Hull: Please state your name and you have three minutes for testimony.

Ms. Scamahorn: Elizabeth Scamahorn. I would like to introduce a word. The word is moratorium. Because I turned off my phone, I can't look at the precise definition, but I have never my life of living on this 'aina, heard a moratorium being proposed. We need to take a break, cool off, take a couple years off. Do the infrastructure and then reassess the general plan and our visitor destinations. Thank you.

Mr. Hull: Is there anyone else who would like to testify on this agenda item who not previously spoken on this agenda item? If so, please approach the microphone.

Ms. Terrie Hayes: Aloha. Terrie Hayes for the record. I just want to remind you about the wastewater treatment issue in Kukui'ula, which is now, it's coming over, it has been. They don't want it over there. Now you wanna add more to it. My dear friend, engineer Joel Canzeneri(sp.), who came back in 2006, explained to the then Planning Commission that they ultimately have to plan for the big flush. What if everybody comes to visit and they all flush at the same time? We're gonna have a huge problem, and we do have a huge problem, and as long as every day we drive up and down Po'ipū Road and you can smell, not just on the hot days of summer, but you can smell the wastewater treatment plant that's overloaded that is...it needs to repair. We should not be doing...this is totally cart before the horse. I've heard this at the Planning Commission. We put the cart before the horse. You need to have infrastructure. You have to plan for these developments. It can't just keep going into the ocean. You're ruining the resource, which is what we need to live. You can't destroy the marine environment, our environment. We received a letter about a potential wastewater treatment plant in Wailua. It comes addressed to Billy, po'o for Ahamoku, registered mail, that's the way this is supposed to happen. It's been a long time getting to this point, but when we finally have made law. Why aren't we following it? Why are you allowing whoever it is? And it doesn't matter to me who it is because if it's not them, there will be more people doing this again. Money doesn't care who has it. This has been going on for years. Knudsens, Cayman, Kam, I think he's even in

the audience. This has been going on for a long time and it's been allowed to happen. Cigarette smoking used to be legal too. People used to think it was glamorous. We've changed their minds about that. It's time to change your mind about this obsessive inappropriate development and think about the people that live here first. Thank you.

Mr. Hull: Thank you for your testimony. Is there anyone else who would like to testify on this agenda item? If so, please approach the microphone.

Ms. Bonnie Bator: It's me again, Bonnie Bator, Anahola. Almost 50 years blessed to be in Hawai'i nei. On this agenda item, are you guys paying attention?

Vice Chair Apisa: Yes. Thank you.

Ms. Bator: Thank you. Well, lack of mental health services. The young lady, who came up here and testified about how it feels to be a local person. A young kid growing up down yonder in Po'ipū area and have all this multi-billion-dollar homes and people moving in. The Boys and Girls Club in Kapa'a just got a flush toilet, in 2023. They've been spending a grand a month on porta pottys. Our children of this beautiful Kaua'i are suffering. We have the largest, the national data of youth suicide...

Vice Chair Apisa: Could we stick to the agenda item please?

Ms. Bator: ...yeah, because...

Vice Chair Apisa: ...if this is grounds...

Ms. Bator: ...of this proposal, it is relevant...

Vice Chair Apisa: Preliminary Subdivision.

Ms. Bator: ...it's relevant because of what you perpetuate by...you're supposed to be a Planning Commission and you're not planning, and our kids are taking a jerk, they're taking their lives. There's no mental health services. The one up there, Ma'alo, that was proposed, 30 years ago, it finally got built and they housed tourists there during the pandemic. Our children are crying out. Most people aren't coming up here to the mic because they're scared, you know, public speaking is like number one of scary trips, so people have them that's why they're here, they're here in opposition of all those last three agenda items and any other proposals that are on this agenda, okay. Are kids are suffering. Can you do the right thing for once? Mahalo.

Vice Chair Apisa: Thank you.

Mr. Hull: Anyone else like to testify on this agenda item? Please approach the microphone. Please state your name for the record, and you have three minutes for testimony.

Mr. Andrew Cabebe: Thank you for this time. I've been sitting here listening. And whenever I come to these meetings, we learn what we need to do, what we can do, how to do it. Most of us in Hawai'i today, know the truth of what is happening around the world. It's not easy cause the people in control are not of us, they not of who we are, here especially on Kaua'i. I moved here for a reason. I wanted to be in a place where it didn't look like O'ahu. I've watched O'ahu grow to what it is today, from what was, pineapple fields, cane fields, now nothing, nothing, except for what you guys bring to the land for your people, and our people suffer. Till today, from first contact, like I said, and as you guys know, everywhere around the world the indigenous people are seeking, accountability. Accountability for us, here on You're

on Kaua'i, for me where I live, well, where I call my home. I'm a O'ahu guy and coming to Kaua'i was not easy. I not even from Kaua'i, but I am a kānaka. My last name tells me who I am, where my family came from, to this Kaua'i. Yeah, I'm part Filipino, I'm half Filipino. My family going serve the host culture here. That's all I'm saying. I know how to help my host culture, I hope you guys (inaudible) after all these years. You heard everything for years, you guys been listening to this, and I'm sorry that I have to take you guys time, to speak from my heart. I'm not a (profanity). Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Is there anyone else that would like to testify on this agenda item? If so, please approach the microphone. Seeing none, I'll turn it over to the staff for the staff report pertaining to this matter.

Mr. Estes: I'll give a brief description of the subdivision.

Mr. Estes read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Mr. Estes: Madam Chair, we have received agency comments from the County of Water and the State Department of Health. Comments are still pending from the County Public Works Engineering Division and the State Historic Preservation Division. At this time the Planning Department is recommending preliminary subdivision map approval.

Vice Chair Apisa: Can I ask you to address the comments about the cultural sites and infrastructure? There were comments.

Mr. Hull: You may want to direct that to the applicant.

Vice Chair Apisa: To the applicant. Okay. Thank you.

Ms. Rogers (from back of room): Please speak up, we can't hear you.

Mr. Hull: So, if you guys don't have any other questions for Kenny, we can bring the applicant up.

Vice Chair Apisa: No questions for Kenny, thank you.

Mr. Hull: If the applicant is here.

Mr. Mauna Kea Trask: Aloha kākou, 'o Mauna Kea Trask ko'u inoa. Kānaka 'ōiwi, Ko'olau, Kaua'i. I'm here on behalf of BBCP Kukui'ula Development, LLC., for Subdivision Application No. S-2023-4, like Kenny said, concerning the subdivision of Parcel of J1-A, a proposed subdivision of a small 7.96-acre portion of TML Parcel No. 40. The subdivision is located within the long permitted entitled Kukui'ula Development project. The property's within the State Land Use Urban District. It's zoned residential R 4, and open special treatment open. The subdivision of this property will result, like Kenny said, in 14 residential lots, 2 roadway lots, and a common (inaudible) for landscaping. The BBCP is not here to circumvent the law. Obviously, we're not here to destroy historical or archaeological sites, we're not here to take endangered or threatened species, and we're definitely not here to desecrate burials. BBCP is simply here to subdivide a small portion of the parcel for the development and sale of houses. BBCP is compiled with all the requirements of the subdivision ordinance, and today's hearing like the Subdivision Committee Chair said, is (inaudible) to address committee's concerns and your duty with regard conducting a Ka Pa'akai Analysis for the project. Now, in order to facilitate your analysis, BBCP

commissioned Cultural Surveys Hawai'i to conducted 118-page Ka Pa'akai Analysis for your view and consideration. Additionally, BBCP has also reviewed the guidance provided by the Planning Department, and by the Native Hawaiian Legal Corporation, and Ka Huli Ao Center for Excellence in Native Hawaiian Law contained in Part 4, Chapters 14-17 of the Hawaiian Law Treatise and Hoola Aku; a legal primer for traditional and customary rights in Hawai'i. Now Ka Pa'akai Analysis is not the tool to stop development. It's a part of the development process. Ka Pa'akai Analysis and analytical framework, the Planning Commission must follow as part of its legal responsibility, in order to ensure that proposed developments feasibly and reasonably protect traditional customary native Hawaiian rights. The Ka Pa'akai Analysis requires you to make findings during the following, one, the identity and scope of value, cultural, historical, or natural resources within this project area, not within the entire Kōloa ahupua'a, not within Lawa'i, not within Kalaheo, not within the whole island. Within this project area. Including the extent to which any traditional customary native Hawaiian rights are exercised in the project area, if any. Second, the Ka Pa'akai Analysis requires you to make findings regarding the extent to which those resources, including traditional customary native Hawaiian rights will be affected or impaired by the proposed action, and finally, the feasible action, if any, to be taken by Planning Commission to reasonably protect native foreign rights if they are found to exist. Pursuant to and consistent with the guidance provided by the Planning Department and the law, the Ka Pa'akai Analysis contains the detailed maps of the project site, the results of cultural consultation, summary of community outreach, a recitation summary of 30 years of archeological impact surveys, and other historical and archaeological studies, cultural impact assessments and environmental studies, and for the record it's approximately 59 total. Further the Ka Pa'akai Analysis contains information for meetings within consultation with native Hawaiians. Now based upon all the information that I've just mentioned, which is contained in the Ka Pa'akai Analysis, no value, cultural, historical, or natural resources were identified within the 7.96-acre project area. The project area is entirely mowed guinea grass and the outer portion, which is covered by haole koa. There are no kuleana lots within the project area, and no owners (inaudible) any kuleana lots within the ahupua'a of Kōloa, have asserted that any firewood, house timber, aho (cord), or ti leaf is present in the project area, nor are there any drinking water resources located in the project areas, such rivers, streams or springs, and further there are no traditional historical trails in the project area, so no access or right away problems exist, therefore, none of the kuleana land owner rights are affected as protected by Hawai'i Revised Statutes 7-1. There have been no assertions or claims concerning the range of practices associated with the ancient way of life of native Hawaiians, which required the utilization of the undeveloped property of others, and which were not found within HRS 7-1, and protected thereby. The continuation of which is protected by HRS 1-1, as provided in *Kalipi vs. Hawaiian Trust Co.* 6 Hawai'i 1 656 Pacific 2nd 745, 1982. There are no hunting resources on the project area, there are no fishing resources within the project area. Like, I stated previously there's no floral resources for subsistence, medical, and or ceremonial purposes or uses, including but not limited to 'olena, 'ohe, olonā, wauke, awa, 'ōhi'a lehua, or awapuhi. Finally, there have been no (inaudible) assertions or claims made that any rights or practices were traditionally, and customarily exercised within this project area for subsistence, cultural and religious purposes, and possess by the native Hawaiian ahupua'a tenants of Kōloa prior to 1892. There has been testimony from others who are outside of from the ahupua'a from other places on this island, however none of them have proffered any evidence that any ahupua'a outside of Kōloa was afforded traditional customary, (inaudible), I'm sorry, of any ahupua'a outside of Kōloa, we're afforded any traditional customary rights to gather within Kōloa as required by *Pele Defense Fund vs. Paty or Pele* (inaudible), 73 Hawai'i 578 837 Pacific 2nd 1247, 1992. There are no burial caves or burial sites within the project area. Nor are there any archaeological or historic resources within the project. Now as far as the land use tenure history of this project site, as some know, the bulk of the Kōloa ahupua'a was awarded to someone was not from Kaua'i, he was a Kamehameha chief from the Big Island, and like all konohiki lands on this island, they were taken by non Kaua'i chiefs after the rebellion of 1824. The bulk of Kōloa was awarded to Moses Kekūāiwa, Land Commission Award 7714-B. Kekūāiwa was the son of Kekūānaō'a and Kīna'u, and the brother of Alexander Liholiho, Kamehameha IV, Lot Kapuāiwa, Kamehameha V, and Victoria Kamāmalu. He died at 19 years old, unmarried, no kids.

Kamāmalu, his sister, inherited the unclaimed lands at Wahiawa and within this area following the untimely death of Kekūāiwa in 1848. In the mid-19th century, Duncan McBryde acquired a lease for the lands at Wahiawa from Victoria Kamāmalu, sister to Moses Kekūāiwa. McBryde acquired the land in Wahiawa later owned in fee simple and leased land in Kalaheo from the crown directly. Eventually, he developed a plantation that's covered most of the western Kōloa district, including Wahiawa, Kalaheo, Lawa'i, and the western section of the Kōloa ahupua'a, west of Waikomo Stream, within the general area vicinity of Kukui'ula. Now in 1886 after Queen Emma's death, Mrs. Elizabeth McBryde bought the entire ahupua'a of Lawa'i for 50,000 dollars. The upper lands are planted as sugar cane and the valley was leased to Chinese rice growers and taro planters. I'm not saying any of this is good or bad, there should be not value to it, whatsoever, this is just the facts of the (inaudible) history. Now beyond the Ka Pa'akai Analysis, BBCP has moved into the community recently, but obviously there's no intent to displace anyone or anger anyone or fight anyone. The objections that we've heard today and that we've heard in the past, are objections against development in general, and that's understandable. As a native Hawaiian, I feel the same way, however the right to possess, acquire and develop one's property is not only protected in the state and federal constitutions, it was also protected in the Constitution of the Hawaiian kingdom of 1840, 1852 and 1864. I'm gonna stop because I don't count the (inaudible) Constitution of 1887, or the Constitution of 1892. The most pressing objection that we've heard, is that these houses will not be for locals, but wealthy kōleā that fly here part of the year, however, this objection ignores the hundreds of units of affordable housing, from Kōloa to 'Ele'ele that have already been provided as part of the land use and entitlement process for the Kukui'ula development going back to the 90's. You know, again, I don't work for Kukui'ula Development Company Hawai'i, I don't work for A&B, I work for BBCP, but if you look at the record, the undisputed facts and the documents contained in the Land Use Commission files and the Planning Departments files, you'll know that from 1990's till today, the Kukui'ula project has directly resulted in approximately 300 affordable housing units from 'Ele'ele to Kōloa, including 'Ele'ele Nani Phase II, Pa'anau Phases I and II, and Kaua'i Makana. There's been allegations today that the cart was put before the horse, with regard to Kukui'ula. The facts don't pair that out, the horse was put well before the cart. Another objection is to the strain on existing infrastructure this development will bring, however, again, this argument ignores the millions of dollars spent on the development improvement and maintenance on Kōloa's regional infrastructure by Kukui'ula, and the results thereof, including development of new regional roadways and support of the improvement of existing roadways, like (inaudible) and Kaumaka, and a \$600,000, I guess, was it a assessment or a payment? To fund improvements, the roadway systems throughout Kōloa. As part of the Kuhio Development Project, potable water system and improvements have been made, including two ground water wells, four water tanks and several miles of transmission lines, a portion of which directly serves Pa'anau Phases I and II. There's been land donation for Civil Defense sirens, public parking improvements for beach and recreational use across of (inaudible) pond, and the provision of land for park and recreational use around the Lawa'i Boat Harbor. Additionally, there's been 16-acre donation of land to the Royal Order of Kamehameha, which contains the burial reinternment site, and it includes addition to the Prince Kuhio Park. Further, wastewater management was mentioned, and as a result at Kukui'ula, the development has result in the construction of wastewater treatment plant that serves the entire Kukui'ula area, the capacity of 1.2 million gallons per day. Now mahalo for your time and attention to this request. The area we're talking about, right now, is mauka of a little portion of the golf course or part of the golf course, mauka of the clubhouse, kinda more up, and again, it's covered entirely in (inaudible). Prior to that it was extensively cultivated by sugar cane, up to '96 when it closed. There are other cultural sites in the area, and there's a lot of concerns being mentioned about, for example the burial reinternment site, but again, as you know, the treatment of and the protection of burial sites is the jurisdiction and kuleana of the Kaua'i/Ni'ihau Island Burial Council if there are any objections to the current barrel treatment plan of which there is, then that's the body to complain to. Lot of this is a matter of jurisdiction.

Mr. Hull: Excuse me, Mauna Kea. There's a lot of disruption coming from the audience. If the testifier cannot be given (inaudible) of that respective to make their statements, we're going to take a recess until the audience can afford that respect So, please keep it down. Thank you.

Mr. Trask: Thank you. I'll wrap it up. So again, according to 30 years of studies, 30 years of consultation, this subdivision will not adversely impact any traditional customary rights, any natural resources or any endangered species, all necessary plans have been done and whether for better or worse, Kaua'i's entire housing development project for affordable housing is predicated upon entitling large developments. Land is expensive, infrastructure is expensive for the County of Kaua'i itself, and so this is where the rubber meets the road, I suppose. Whether for better or worse. So, again, mahalo for your time and attention to this request. BBCCP submits that it's fulfilled its legal obligations to any native Hawaiian (inaudible) customary rights, resources, and practices that's protected by the Hawai'i State Constitution, HRS 7-1, HRS 1-1, and any encumbrances upon it's (inaudible). I'm happy to answer any questions that you may have, but if not, we humbly ask that you grant us tentative approval of the subject subdivision as recommended by the Department's Subdivision Report, and to anyone who would wish ill on my client or myself, I say, "ho'i no ai i ko ka." Mahalo.

Vice Chair Apisa: Thank you. Earlier, I had asked for more comments about cultural sites and infrastructure, but I think you've definitely, adequately explained that it was an excellent report. Thank you.

Mr. Trask: Mahalo, Chair.

Vice Chair Apisa: Any further questions or comments from the Committee?

Mr. Hull: Kenny, gave the recommendation. The recommendation from the Department is tentative approval.

Ms. Barzilai: So, you're ready for a motion, Chair.

Vice Chair Apisa: Ready for a motion. Thank you.

Mr. Ornellas: I move for tentative subdivision approval for Subdivision Application No. S-2023-4.

Vice Chair Apisa: I will second that. Any other discussion on it?

Ms. Rogers (from back of room): Hewa! A'ole!

Mr. Hull: We're gonna take a 10-minute recess. Thank you.

Subdivision Committee went into recess at 10:24 a.m.
Subdivision Committee reconvened from recess at 10:32 a.m.

Vice Chair Apisa: Call the meeting back to order, and when we took recess we had a motion on the floor for Preliminary Subdivision Approval of Subdivision application No. S-2023-4, BBCCP Kukui'ula Development LLC., and I believe there was no further discussion on this. Is there any further discussion at this time? Hearing none, I'm ready for a motion. I'm sorry, ready for the vote. Roll call.

Mr. Hull: Roll call, Madam Chair. Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair. 2:0.

Mr. Trask: Mahalo.

Mr. Hull: There are no further agenda items on the Subdivision Meeting Agenda, so, we'll reconvene, say in 10-minutes for the full Planning Commission meeting.

Vice Chair Apisa: Motion for adjournment.

Mr. Ornellas: So moved.

Vice Chair Apisa: Second. All in favor. Aye (unanimous voice vote). Meeting is adjourned.

Vice Chair Apisa adjourned the meeting at 10:33 a.m.

Respectfully submitted by:

Lisa Oyama
Lisa Oyama,
Commission Support Clerk

() Approved as circulated (add date of meeting approval).

() Approved as amended. See minutes of _____meeting.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

SUBDIVISION REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of Subdivision Application No. S-2024-2 that involves an eleven (11) lot subdivision.

Subdivision Permit No. Application No. S-2024-2

Name of Applicant(s) MOLOA'A FARMS, LLC. ET. AL.

II. PROJECT INFORMATION

Map Title	Subdivision of Lot 2-A Being Portions of Allotment 24-A, Moloa'a Hui Lands and Allotment M-1, Ka'apuni Hui Lands into Lots 2-A-1 through 2-A-11 and Designation of Easement AU-1 Moloa'a and Papa'a, Kawaihau, Kaua'i, Hawai'i.				
Tax Map Key(s):	4-9-009:001	Area:	133.427 Acres		
Zoning:	Agriculture (Ag) / Open (O)				
State Land Use District(s):	Agricultural / Conservation	General Plan Designation:	Agricultural / Natural		
AGENCY COMMENTS					
<input checked="" type="checkbox"/> COK Public Works	10.11.2023	<input type="checkbox"/> State DOT-Highways:			
<input checked="" type="checkbox"/> COK Water:	10.27.2023	<input checked="" type="checkbox"/> State Health:	09.27.2023		
<input checked="" type="checkbox"/> COK Fire:	09.25.2023	<input checked="" type="checkbox"/> DLNR – SHPD:	pending		
<input checked="" type="checkbox"/> COK Wastewater:	09.19.2023	<input checked="" type="checkbox"/> DLNR – OCCL	09.27.2023		
		<input checked="" type="checkbox"/> DLNR – DOFAW	10.27.2023		
EXISTING ROAD RIGHT-OF-WAY(S)					
Road Name	Existing Width	Required Width	Pavement YES	NO	Reserve
Ko'olau Road	50 feet	56 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3 feet
			<input checked="" type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
APPLICABLE FEES					
Environmental Impact Assessment (EIA)	\$3,500				
Park Dedication	TBD. Appraisal required				
Appraisal Report Required	Yes				

A.I.A.I.
NOV 14 2023

III. EVALUATION

Project Description

The proposed development subdivides Lot 2-A into ten (10) lots and a roadway lot. The project involves a total area of approximately 133.427 acres and is situated within the County Agriculture (Ag) and Open (O) zoning districts. The subject property is primarily within the State Land Use Agricultural District, however, there are sections within the project area (Proposed Lots 2-A-6, 2-A-7, 2-A-8, and 2-A-9) that are situated within the State Land Use Conservation District.

Roadway Lot 2-A-11 will serve as the primary access for the lots within the subdivision. As such, it should be designed and constructed to meet County roadway standards subject to the specifications of the Department of Public Works, Engineering Division. Furthermore, access to the subject property will be obtained through a vehicular access point connection from Ko'olau Road, an existing roadway with a current right-of-way width of fifty (50) feet.

The property is bounded by Papa'a Valley to the east and Moloa'a Valley to the west, and abuts land to the north that's owned by the State of Hawai'i. This area includes a rocky coastline within the State Land Use Conservation District. South of the subject property is Lot 1 of the Moloa'a Hui Subdivision that was created through Subdivision Application No. S-97-23. Presently, this parcel contains two Condominium Property Regime (CPR) projects known as Moloa'a Hui I and Moloa'a Hui II. Lot 1 is situated within the County Agriculture and Open zoning districts, and is within the State Land Use Agricultural District.

It should be noted that the subdivision proposal is in accordance with a Stipulated Settlement Agreement related to the case of *Molooa Farms LLC et al. v. Kaua'i Planning Commission et al.*, Civil No. 20-CV-00020 HG-KM (enclosed as Exhibit 'A'). Per the provisions of this agreement, Lot 2 is permitted under the CZO to be subdivided into ten (10) agricultural lots and a remainder lot for roadways and utilities. Moreover, Lot 2 is permitted to have an overall density of up to thirty-four (34) farm dwelling units consistent with the CZO.

Existing Land Use Permits

The subsequent subdivisions noted below illustrate the sequence of subdivision approvals that have shaped Lot 2-A into its current lot configuration:

- Subdivision Application No. S-77-5 (Molooa'a Agricultural Park Subdivision) — This application received final approval by the Planning Commission on August 11, 1976, and involved a 22-lot agricultural subdivision, pursuant to Chapter 9A (Agricultural Park Subdivision) of the Kaua'i County Code (1987).
- Subdivision Application No. S-97-23 — This application received final approval by the Planning Commission on July 9, 1998, and involved the consolidation of the Molooa'a Agricultural Park Lots (601.974 acres) and the Remnant of Parcel 1 (122.812 acres), and re-subdivision into Lots 1 and 2.

- Subdivision Application No. S-2000-4 — This application received final approval by the Planning Commission on July 27, 2000, and involved a three-lot boundary adjustment, which subsequently led to the creation of Lot 2-A.

The following are land use approvals and permits that have been granted for the subject property:

- Class IV Zoning Permit Z-IV-97-29 and Variance Permit V-97-6 — This application received approval by the Planning Commission on April 23, 1998, and it granted deviation from the “one-time” subdivision limitation for parcels within the Agriculture District, as outlined in Section 8-8.3(C) of the Comprehensive Zoning Ordinance (CZO), Kaua’i County Code (1987), as amended.
- Class III Zoning Permit Z-III-97-6 — This application received approval by the Planning Commission on April 23, 1998, and it authorized the construction of fifteen (15) farm dwelling units and a guest house on Lot 2 of Subdivision Application No. S-97-23.

It is important to note that Class IV Zoning Permit Z-IV-97-29 and Variance Permit V-97-6, granted an exemption to Subdivision Application No. S-97-23 from the one-time subdivision limitation provision specified in Section 8-8.3(c) of the CZO. Consequently, this exemption allowed for further subdivision of Lots 1 and 2 within Subdivision No. S-97-23, and as a result, Subdivision Application No. S-2024-2 is permitted for subdivision under the provisions of the variance permit. However, the Applicant is made aware that the current subdivision proposal remains subject to the “one-time” subdivision limitation provision, and any further subdivision of the resultant lots will be subject to the provisions outlined in Section 8-8.3(c) of the CZO.

Special Management Area (SMA)

Upon reviewing the proposal, it has been identified that portions of proposed Lots 2-A-6 through 2-A-10 have sections of the property that are within the Special Management Area (SMA). As such, the subdivision proposal is considered “development” as defined in Section 1.4 of the County of Kaua’i Special Management Area Rules and Regulations, given that the subdivision involves five (5) lots that are situated within the SMA. Consequently, the subdivision proposal will require a Special Management Area Use Permit necessitating review and action from the County of Kaua’i Planning Commission.

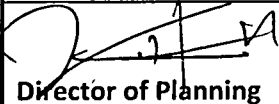
The Applicant is made aware that final subdivision approval should not be granted until such time the SMA Use Permit is approved by the Planning Commission. Additionally, should the SMA Use Permit be granted, all conditions of the SMA Use Permit must be fulfilled prior to final subdivision approval.

Native Hawaiian Traditional and Cultural Rights

The Applicant is also made aware that the proposal is subject to the requirements associated with the Ka Pa’akai O’ Ka’aina Analysis in order to ensure that traditional customary Native Hawaiian rights and resources are preserved and protected. Typically, it has been the department’s practice to mandate the submittal of a Ka Pa’akai Analysis prior to officially accepting a subdivision application. However, given the unique circumstance where this subdivision application is a result of court litigation and is proceeding under the provisions of

the above-mentioned Settlement Agreement, the requirement of a Ka Pa‘akai Analysis will be included as a condition of tentative approval. This condition must be addressed before final subdivision map approval can be granted.

IV. RECOMMENDATION

TENTATIVE APPROVAL	FINAL APPROVAL
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denied	<input type="checkbox"/> Approval <input type="checkbox"/> Denied
Tentative Approval subject to all requirements as noted on the follow pages:	All conditions have been complied with
 Director of Planning	11/3/2023 Date
	Director of Planning <div style="float: right;">Date</div>

V. AGENCY REQUIREMENTS

1. Requirements of the County Planning Department:

- a. The Applicant is made cognizant that Final Subdivision Map Approval shall not be granted until a Special Management Area (SMA) Use Permit for the subject subdivision is reviewed and approved by the County of Kaua‘i Planning Commission. Should the SMA Use Permit be granted, the Applicant shall fulfill all conditions of the permit prior to final subdivision map approval.
- b. An updated preliminary title report for the existing lot shall be submitted to the Planning Department for review.
- c. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- d. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua‘i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.
- e. Prior to final subdivision approval, the Applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kaua‘i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the County Real Property Tax Division to assist in calculating the fee amount.

- f. The applicant shall pay an Environmental Impact Assessment (EIA) Fee pursuant to Section 11A-2.2 of the Kaua'i County Code (1987), as amended. As proposed, the EIA Fee is assessed at Three Thousand Five Hundred Dollars (\$3,500.00) and shall be paid to the County of Kaua'i prior to final subdivision map approval.
- g. As shown on the preliminary subdivision map, Lot 2-A-11 is an interior roadway lot that serves as the primary vehicular access for the lots within the subdivision. Lot 2-A-11 shall be designed and constructed to meet County roadway standards as determined by the County Department of Public Works.
- h. Relative to Condition 1.g., the Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
- i. The applicant is made aware that the streets designated within the subdivision must be officially named before the Department approves the construction plans. Street names should be in Hawaiian and be submitted to our Department for review and approval, along with a request letter and 12 maps (on 8½" x 14" paper). The maps should be detailed such that emergency vehicles, police services, postal deliveries, etc., are able to locate the street. References to roadway, such as the highway and other surrounding roads, should be shown on the street-naming map.
- j. The Applicant shall show on the final subdivision map a three (3) foot future road widening reserve along the frontage of Ko'olau Road for proposed Lots 2-A-1 and 2-A-11 as depicted on the final subdivision map of Subdivision No. S-97-23.
- k. In accordance with Condition 1.e. of Subdivision Application No. S-97-23, there shall be no direct access permitted onto Moloa'a Road from proposed Lots 2-A-1 and 2-A-2. This provision shall be incorporated as a restrictive covenant for the subject lots, draft copies of which shall be submitted to the Planning Department for review and approval. Semi-circles denoting no direct access permitted shall be shown on the final subdivision map.
- l. There shall be no encroachment of the subdivision into the Conservation District unless a Conservation District Use Application (CDUA) is obtained.
- m. Relative to Condition No. 1.l., residential development shall be prohibited in the Conservation District. This condition shall be incorporated as a restrictive covenant of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- n. The Applicant is advised that uses on the newly-created lots shall be limited to those listed as permissible uses within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Dwellings on the lot shall mean a single-family

dwelling located on and used in connection with a farm where agriculture activity provides income to the family occupying the dwelling. These restrictions shall be included in the covenants for the proposed lots, draft copies of which shall be submitted to the Planning Department for review and approval.

- o. In order to ensure that the subdivision and development of property complies with the land use requirements contained in Chapter 205 of the Hawai'i Revised Statutes ("HRS"), the following matter shall be resolved prior to final subdivision approval:
 - 1) The Applicant shall provide the following documents to the Subdivision Committee of the Planning Commission ("Subdivision Committee") for its review and approval:
 - (A) An Agriculture Master Plan shall describe the proposed agricultural uses of the property, the marketing and business plans associated with such activities, and the manner in which the agricultural and related uses on the property will comply with HRS Chapter 205.
 - (B) A map of the property showing the proposed location of: Agricultural Activities; Building Areas; and Agricultural Easements.
 - (C) A Declaration of Conditions, Covenants and Restrictions ("Restrictive Covenants") which will be recorded in the Bureau of Conveyances of the State of Hawai'i ("Bureau"), which will encumber and run with the property, and which will provide and require: that the owners of the lots in the subdivision ("Subdivision Lots") shall comply with the Agricultural Plan and the provisions of HRS Chapter 205; that the owners of all of the Subdivision Lots shall be members in an association ("Association") which will have the power and duty to enforce the Restrictive Covenants; that the Association shall file periodic reports (as determined by the Planning Department) with the Planning Department verifying compliance with the Agricultural Master Plan; and that the Agricultural Master Plan shall not be amended without prior approval of the Planning Department.
 - (D) An Agricultural Subdivision Agreement which will be recorded in the Bureau, run with and encumber the property, and which will provide and require: that each Subdivision Lot owner shall indemnify, defend and hold the County harmless from any claims arising out of the failure of the Subdivision Lot owner to comply with the Agricultural Master Plan and/or HRS Chapter 205; and that in the event of a Subdivision Lot owner's noncompliance with the Agricultural Master Plan and/or HRS Chapter 205 as determined by the Planning Department, the County and

the State of Hawai'i shall have the right to refuse to grant any permits or approvals for uses or development on any Subdivision Lot affected by such noncompliance unless and until the noncompliance is cured, as determined by the Planning Department.

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

If public access is required, the applicant shall propose an access plan identifying the access location(s) for the review and approval of the Planning and Public Works Departments. Furthermore, proper documents shall be prepared and ready for execution prior to final subdivision approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

- q. In *Ka Pa'akai O Ka'aina v. Land Use Commission*, the Hawai'i Supreme Court established a three-part analytical framework to fulfill the constitutional duty to preserve and protect traditional and customary native Hawaiian rights and resources while reasonably accommodating competing private interests. Prior to final subdivision approval the Applicant shall describe the actions taken and examination conducted to analyze the following:

- 1) Identify whether any valued cultural, historical, or natural resources are present within the project area, and identify the extent to which traditional and customary Native Hawaiian rights are exercised. This part may include but not be limited to the following analyses:
 - Describe the project area in relation to traditional and customary practices that occurred in the region or district.
 - Describe the extent that traditional and customary practices were practiced in the ahupua'a and project area.
 - Describe the community members you consulted with including their genealogical ties, long-standing residency, and relationship to region, ahupua'a and project area.
 - Describe the Land Commission Awards provided on the property?
 - Describe the prior archaeological studies that were conducted for the property.
 - Are you aware of any resources that found any evidence of subsurface habitation or excavation on the property?

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

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

- a. The minimum street right-of way width and right-of-way corner radii shall conform to the County of Kaua'i design standards.
- b. Driveway approaches shall normally be limited to one (1) per residential lot and shall conform to County of Kaua'i design standards.
- c. Drainage and/or detention basin facilities need to be provided to account for any increase in storm water runoff that could cause damage to the natural environment, property, or persons within the subdivision, or to adjoining areas.
- d. The applicant shall comply with all provisions of the "Sediment and Erosion Control Ordinance No. 808" to safeguard the public, health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. This shall include, but not be limited to, a grading and/or grubbing permit in compliance with the County's Sediment and Erosion Control Ordinance, which is required if any of the following conditions apply:
 - The work area exceeds one (1) acre.
 - Grading involving excavation or embankment, or combination thereof exceeds 100 cubic yards.
 - Grading exceeds five (5) feet in vertical height or depth at its deepest point.
 - The work area unreasonably alters the general drainage pattern to the detriment of abutting properties.

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

- a. Clearly letter the following on the final subdivision map and deeds:

"Domestic water service is not available from the Department of Water, County of Kauai."

"Prior to building permit approvals, the applicant shall either complete a Waiver and Release Agreement with the Department of Water, County of Kauai or submit a copy of the deeds of the lot to the Department of Water that state that domestic water service is not available from the Department of Water, County of Kauai."

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.

4. Requirements of the County Fire Department (KFD):

- a. Will have to conform to WFPA and State and County amendments.

5. Requirements of the County Housing Agency:

- a. Moloa'a Farms LLC. et al. has applied to subdivide Lot 2-A, being a portion of Allotment 24-A, Moloa'a Hui Lands and Allotment M-1, Kaapuna Hui Lands into Lot 2-A-1 through 2-A-11 along with designated easements.

Under the Kauai County Housing Policy, Kauai County Code Section 7A-1.4.1(c) any project involving "the subdivision or consolidation of land...in any zoning district in which the overall project density would allow more than ten (10) residential dwelling units," must comply with the County's workforce housing requirements.

On its face, the application in question appears to create 11 separate agricultural lots with a "density of more than ten (10) residential dwelling units."

Accordingly, the applicant is required to consult with the Housing Agency to resolve the project's workforce housing obligations prior to subdivision approval.

6. Requirements of the State Department of Health (DOH):

General summary comments have been included for your convenience. However, these comments are not all-inclusive and do not substitute for review of and compliance with all applicable standard comments for the various DOH individual programs.

Clean Air Branch

- 1. All project activities shall comply with the Hawaii Administrative Rules (HAR), Chapters 11-59 and 11-60.1.

2. Control of Fugitive Dust: You must reasonably control the generation of all airborne, visible fugitive dust and comply with the fugitive dust provisions of HAR §11-60.1-33. Note that activities that occur near existing residences, businesses, public areas, and major thoroughfares exacerbate potential dust concerns. It is recommended that a dust control management plan be developed which identifies and mitigates all activities that may generate airborne and visible fugitive dust and that buffer zones be established wherever possible.
3. Standard comments for the Clean Air Branch are at:
<https://health.hawaii.gov/epo/landuse/>.

Clean Water Branch

1. All project activities shall comply with the HAR, Chapters 11-53, 11-54, and 11-55. The following Clean Water Branch website contains information for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with HAR, Chapters 11-53, 11-54, and 11-55:
<https://health.hawaii.gov/cwb/clean-water-branch-home-page/cwb-standard-comments/>.

Hazard Evaluation & Emergency Response Office

1. A Phase I Environmental Site Assessment (ESA) and Phase II Site Investigation should be conducted for projects wherever current or former activities on site may have resulted in releases of hazardous substances, including oil or chemicals. Areas of concern include current and former industrial areas, harbors, airports, and formerly and currently zoned agricultural lands used for growing sugar, pineapple or other agricultural products.
2. Standard comments for the Hazard Evaluation & Emergency Response Office are at: <https://health.hawaii.gov/epo/landuse/>.

Indoor and Radiological Health Branch

1. Project activities shall comply with HAR Chapters 11-39, 11-45, 11-46, 11-501, 11-502, 11-503, 11-504.
2. Construction/Demolition Involving Asbestos: If the proposed project includes renovation/demolition activities that may involve asbestos, the applicant should contact the Asbestos and Lead Section of the Branch at <https://health.hawaii.gov/irhb/asbestos/>.

Safe Drinking Water Branch

1. Agencies and/or project owners are responsible for ensuring environmental compliance for their projects in the areas of: 1) Public Water Systems; 2) Underground Injection Control; and 3) Groundwater and Source Water

Protection in accordance with HAR Chapters 11-19, 11-20, 11-21, 11-23, 11-23A, and 11-25. They may be responsible for fulfilling additional requirements related the Safe Drinking Water program: <https://health.hawaii.gov/sdwb/>.

2. Standard comments for the Safe Drinking Water Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

Solid & Hazardous Waste Branch

1. Hazardous Waste Program - The state regulations for hazardous waste and used oil are in HAR Chapters 11-260.1 to 11-279.1. These rules apply to the identification, handling, transportation, storage, and disposal of regulated hazardous waste and used oil.
2. Solid Waste Programs - The laws and regulations are contained in HRS Chapters 339D, 342G, 342H and 342I, and HAR Chapters 11-58.1, and 11-282. Generators and handlers of solid waste shall ensure proper recycling or disposal at DOH-permitted solid waste management facilities. If possible, waste prevention, reuse and recycling are preferred options over disposal. The Office of Solid Waste Management also oversees the electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.
3. Underground Storage Tank Program - The state regulations for underground storage tanks are in HAR Chapter 11-280.1. These rules apply to the design, operation, closure, and release response requirements for underground storage tank systems, including unknown underground tanks identified during construction.
4. Standard comments for the Solid & Hazardous Waste Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

Wastewater Branch

By Revised Statute 11-62-31.1, if the parcel is less than 10,000 square feet, an individual onsite waste-water unit may be possible for future construction. Please see Sina Pruder at DOH Waste-Water Branch at 808-586-4288 for further information. For comments, please email the Wastewater Branch at doh.wwb@doh.hawaii.gov.

Sanitation/ Local DOH Comments:

1. Noise may be generated during demolition and/or construction. The applicable maximum permissible sound levels, as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control," shall not be exceeded unless a noise permit is obtained from the Department of Health.
2. According to HAR §11-26-35, No person, firm, or corporation shall demolish

or clear any structure, place, or vacant lot without first ascertaining the presence or absence of rodents that may endanger public health by dispersal from such premises. Should any such inspection reveal the presence of rodents, the rodents shall be eradicated before demolishing or clearing the structure, site, or vacant lot. A demolition or land clearing permit is required prior to demolition or clearing.

Other

1. CDC–Healthy Places–Healthy Community Design Checklist Toolkit recommends that state and county planning departments, developers, planners, engineers, and other interested parties apply these principles when planning or reviewing new developments or redevelopment projects.
 2. If new information is found or changes are made to your submittal, DOH reserves the right to implement appropriate environmental health restrictions as required. Should there be any questions on this matter, please contact the Department of Health, Kauai District Health Office at 808-241-3495.
7. Requirements of the State DLNR, Division of Forestry and Wildlife (DOFAW):
- a. The DLNR requests to consult with the County of Kaua'i's Planning Department in providing for public access locations across the subject property to the unencumbered State Parcel.
 - b. The DLNR requests that the public access points to the unencumbered land be clearly identified and that sufficient public parking areas be made available for public access and use.
 - c. The DLNR requests that the responsibilities for improving and maintaining any public access points be clearly expressed in any grant of easement or deed for the Subject Property.
 - d. The DLNR requests access to the Subject Property and adjacent State Parcel, for a thorough botanical survey of the known rare Kauai-endemic plant species *Wikstroemia uva-ursi* var. *Kauaiensis* which may be present on both parcels.
 - e. This area is known for wedge-tail shearwater habitat and birds and/or burrows may be present on both parcels. We suggest requiring the Applicant:
 - 1) Conduct a thorough seabird survey during the wedge-tail shearwater nesting season (May-June). Surveys done outside of this period will be unreliable and inconclusive;
 - 2) Provide a mitigation plan for future potential nesting under homes and structures within this seabird habitat; and

- 3) Address and mitigate the artificial lighting concerns regarding their proximity to the coastline, and the chance that artificial lighting may attract seabirds.
 - f. Restrictions on construction within the State Land Use "Conservation" zoned portions of the Subject Property may exist and it is recommended the Applicant consult with the Office of Coastal and Conservation Lands.
 - g. All building structures should have at least a 150-foot setback from the State Parcel.
8. Requirements of the State DLNR, Office of Conservation and Coastal Lands (OCCL):
 - a. Subdivision of land must be consistent with Section 13-5-22, Hawaii Administrative Rules (HAR), (P-10) SUBDIVISION OR CONSOLIDATION OF PROPERTY (D-1), *Subdivision of property into two or more legal lots of record that serves a public purpose and is consistent with the objectives of the subzone.* The proposal is not consistent with the HAR 13-5.
9. Requirements of the State Historic Preservation Division (SHPD):
 - a. The subdivider shall comply with the requirements of the State Historic Preservation Division, if any, prior to final subdivision approval.
10. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
11. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for NOVEMBER 14, 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 
KENNETH A. ESTES
Planner

Exhibit 'A'

(Stipulated Settlement Agreement)

STIPULATED SETTLEMENT AGREEMENT

MOLOAA FARMS LLC, EL PASO INVESTMENTS LIMITED LIABILITY COMPANY, BOCA HOLDINGS, LLC and ROBERT B. LINDNER, JR., TRUSTEE OF THE ABL FAMILY LEGACY TRUST U/A/D DECEMBER 20, 2012 ("Plaintiffs") and the KAUA'I PLANNING COMMISSION and COUNTY OF KAUA'I ("County") (collectively, the "parties") have reached this Stipulated Settlement Agreement (the "Agreement"), effective February 28, 2023 ("Effective Date") in the matter of *Molooa Farms LLC et al. v. Kaua'i Planning Commission et al.*, Civil No. 20-CV-00020 HG-KM (the "Action"). In consideration of the mutual promises made below, all parties agree as follows:

1. Settlement Provisions.

- A. County Variance Permit V-97-6 ("Variance") and Class IV Zoning Permit Z-IV-97-29 granted both Lot 1, identified as TMK Nos. (4) 9-009-009 and (4) 9-009-012 (hereafter "Lot 1") and Lot 2, identified as TMK No. (4) 9-000-001 (hereafter "Lot 2") an exemption from the one-time subdivision restriction of the Kaua'i County Comprehensive Zoning Ordinance ("CZO");**
- B. In processing any future subdivision of Lot 1 or Lot 2, the County shall not require the owners of the lots to file a joint subdivision application or otherwise require the consent or approval of the owners of the lot that is not being subdivided;**
- C. The lot densities for any future subdivision of Lot 1 or Lot 2 shall be based on the combined 724 acres of Lots 1 and 2;**
- D. Lot 2 is permitted under the CZO to be subdivided into ten (10) agricultural lots and a remainder lot for roadways and utilities;**
- E. Lot 2 is permitted density of up to thirty four (34) farm dwellings consistent with the CZO and consideration of the combined 724 acres (the "Permitted Density");**
- F. If requested, County shall grant a utility easement over, under and across Koolau Road in favor of Lot 2 and/or Molooa Water Company, Inc. to extend the existing Public Water System No. 436 to Lot 2;**

US_ACTIVE\122947589V-1

EXHIBIT A

- G. County shall permit limited access off of Moloaa Road to two dwellings located adjacent to Moloaa Road with no access to any other lots or dwellings in the Lot 2 subdivision;
- H. County shall impose only conditions permissible under Subdivision Ordinance (Chapter 9 of the Kauai County Code) on any zoning permits approved for the Permitted Density, consistent with this Agreement and County-approved agricultural subdivisions of similar size, zoning and density;
- I. Plaintiffs shall file a subdivision application and preliminary map within ninety (90) days of the Effective Date of this Agreement by all parties (the "Application") and the County shall preliminarily accept the map if consistent with the terms of this Agreement and the form and content requirements for preliminary maps set forth in Chapter 9, Section 9-3.3 of the CZO;
- J. The County shall process the Application and grant tentative subdivision map approval of the Application for the subdivision of Lot 2 within six (6) months of receipt, consistent with the terms of this Agreement;
- K. Within ten (10) business days of the Kauai Planning Commission Chair's execution of this Agreement and the Federal District Court's approval of the Agreement, whichever occurs later, the parties shall stipulate to the dismissal with prejudice of the Action. The Stipulation For Dismissal As To All Claims And All Parties is attached hereto as Exhibit "A";
- L. Plaintiffs agree not to intervene, contest the application, or require that a joint application be submitted for any future subdivision of Lot 1; and
- M. The terms of this Agreement are conditioned on the United States District Court's approval of this Agreement in the Action and shall be incorporated into the District Court's dismissal order.

2. **Severability.** If any word, phrase, term, or other part of this Agreement is found to be unenforceable, that unenforceable part will be severed from the Agreement,

and the remainder of the Agreement will remain in full force and effect.

3. **Binding Effect and Modifications.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and personal representatives. This Agreement cannot be modified or amended except by a written instrument signed by the parties.

4. **Governing Law.** This Agreement and the rights of the parties shall be governed by and construed and enforced in accordance with the laws of Hawai'i, and any claims to enforce the terms of this Agreement may be brought in any court of competent jurisdiction in the State of Hawai'i and that venue is proper exclusively in the United States District Court of the District of Hawai'i for any action arising out of this Agreement.

5. **Joint Participation in Preparation of Agreement.** The parties hereto participated jointly in the negotiation and preparation of this Agreement, and each party has had the opportunity to obtain the advice of legal counsel and to review and comment upon this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party. This Agreement shall be construed as if the parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

6. **Authority.** Each person signing this Agreement hereby represents and warrants that he or she is duly authorized and empowered, and has the requisite authority to bind the respective parties hereto on whose behalf they are signing.

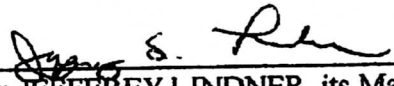
7. **Signature.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Copies, including facsimile or e-mail copies, of this Agreement signed by all parties will be deemed originals for all purposes.

8. **Attorney's Fees.** The parties covenant and agree that, upon dismissal of the Action as set forth in paragraph 1(K), each party will bear its own costs and attorneys' fees incurred in connection with the Action and the settlement of the matters set forth in this Agreement, and that no party will seek reimbursement from another party of any such costs or fees; provided, however, that in the event that there is a breach of this Agreement and/or it is necessary for either party to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, costs and expenses associated therewith.

between the parties.


[SIGNATURES ON FOLLOWING PAGE]

MOLOAA FARMS LLC,
For itself and as attorney-in-fact for EL PASO
INVESTMENTS LIMITED LIABILITY
COMPANY, BOCA HOLDINGS, LLC AND
ROBERT B. LINDNER, JR., TRUSTEE OF
THE ABL FAMILY LEGACY TRUST U/A/D
DECEMBER 20, 2012


By: JEFFEREY LINDNER, its Manager


2/7/2023
Date

APPROVED AS TO FORM AND CONTENT:


TIMOTHY IRONS, ESQ.
Attorney for Plaintiffs
MOLOAA FARMS LLC,

2/7/2023
Date

COUNTY OF KAUAI



KA'AINA HULL,
Director Of Planning Department
COUNTY OF KAUAI

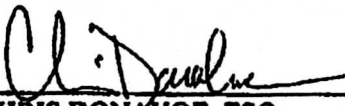
2/6/2023
Date



FRANCIS DEGRACIA
Chair of KAUAI PLANNING COMMISSION
Defendant

2/28/2023
Date

APPROVED AS TO FORM AND CONTENT:



CHRIS DONAHOE, ESQ.
MATHEW M. BRACKEN
COUNTY ATTORNEY
Attorney for Defendants KAUAI
PLANNING COMMISSION and
COUNTY OF KAUAI

2/6/2023
Date

APPROVED AND SO ORDERED:



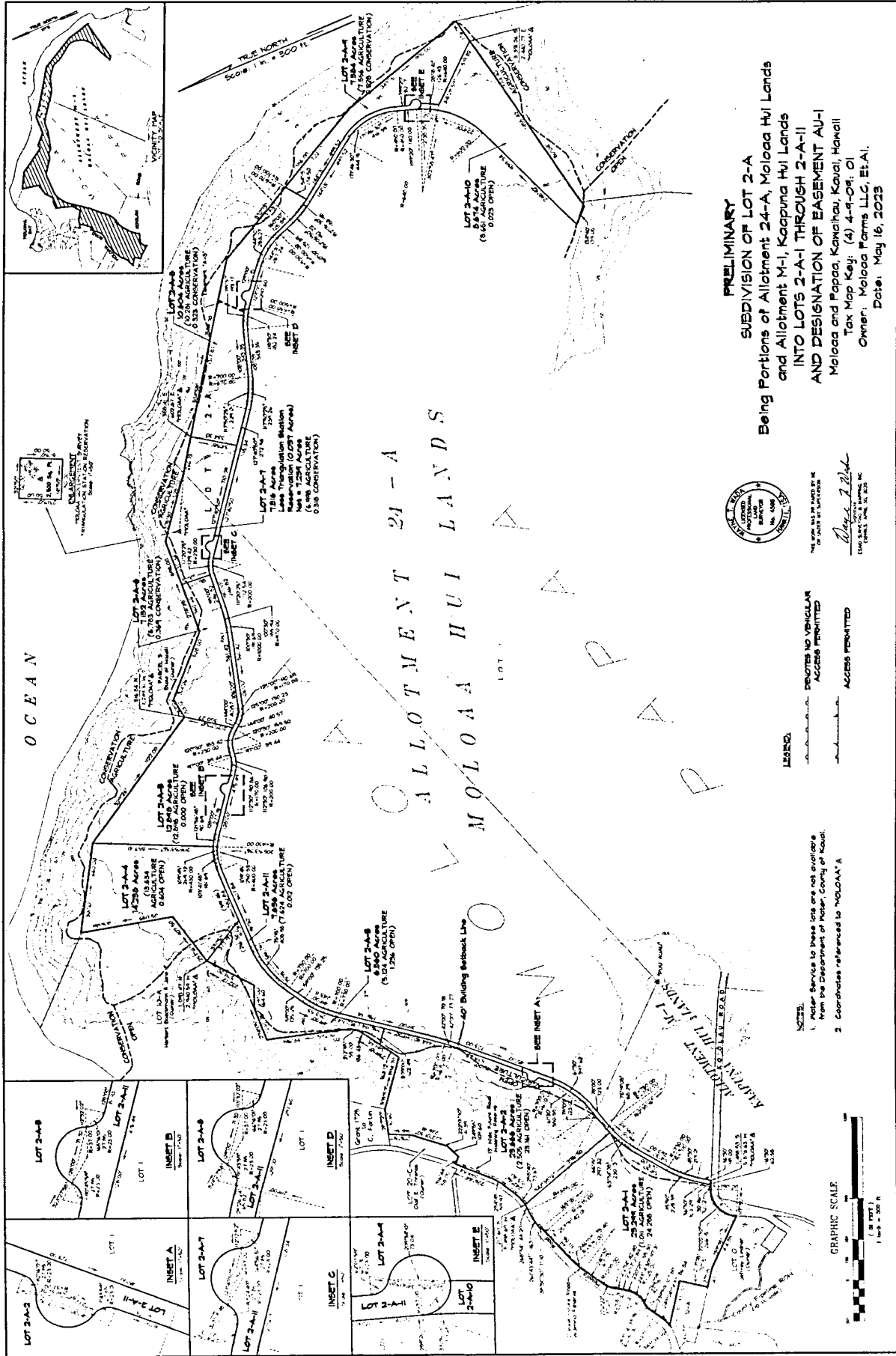
THE HONORABLE HELEN GILLMOR
United States District Court Judge

3/2/2023
Date



Exhibit 'B'

(Preliminary Subdivision Map and Location Map)



Location Map
Subdivision Application No. S-2024-2
Lot 2-A, TMK: 4-9-009:001



10/07/2021 - 03/15/2022

Exhibit 'C'

(Agency Comments)



County of Kaua'i
Planning Department
4444 Rice St., Suite A473 Lihue, HI 96766
(808) 241-4050

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

9/15/2023

SUBJECT: Subdivision S-2024-2
Tax Map Key: 490090010000
Applicant: Moloa'a Farms LLC Et. Al.
Preliminary Subdivision of Lot 2-A

TO:

- | | |
|--|---|
| <input type="checkbox"/> State Department of Transportation - STP | <input checked="" type="checkbox"/> County DPW - Engineering |
| <input type="checkbox"/> State DOT - Highways, Kauai (info only) | <input checked="" type="checkbox"/> County DPW - Wastewater |
| <input type="checkbox"/> State DOT - Airports, Kauai (info only) | <input type="checkbox"/> County DPW - Building |
| <input type="checkbox"/> State DOT - Harbors, Kauai (info only) | <input type="checkbox"/> County DPW - Solid Waste |
| <input checked="" type="checkbox"/> State Department of Health | <input type="checkbox"/> County Department of Parks & Recreation |
| <input type="checkbox"/> State Department of Agriculture | <input checked="" type="checkbox"/> County Fire Department |
| <input type="checkbox"/> State Office of Planning | <input checked="" type="checkbox"/> County Housing Agency |
| <input type="checkbox"/> State Dept. of Bus. & Econ. Dev. Tourism | <input type="checkbox"/> County Economic Development |
| <input type="checkbox"/> State Land Use Commission | <input checked="" type="checkbox"/> County Water Department |
| <input checked="" type="checkbox"/> State Historic Preservation Division | <input type="checkbox"/> County Civil Defense |
| <input type="checkbox"/> State DLNR - Land Management | <input checked="" type="checkbox"/> County Transportation Agency |
| <input checked="" type="checkbox"/> State DLNR - Forestry & Wildlife | <input type="checkbox"/> KHPRC |
| <input type="checkbox"/> State DLNR - Aquatic Resources | <input checked="" type="checkbox"/> U.S. Postal Department |
| <input type="checkbox"/> State DLNR - Conservation & Coastal Lands | <input type="checkbox"/> UH Sea Grant |
| <input type="checkbox"/> Office of Hawaiian Affairs | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

COMMENTS from **DPW Engineering** (10/11/2023):

We have completed our review and offer the following comments:

1. The minimum street right-of-way width and right-of-way corner radii shall conform to County of Kaua'i design standards.
2. Driveway approaches shall normally be limited to one (1) per residential lot and shall conform to County of Kaua'i design standards.
3. Drainage and/or detention facilities need to be provided to account for any increase in storm water runoff that could cause damage to the natural environment, property or persons within the subdivision, or to adjoining areas.
4. The applicant shall comply with all provisions of the "Sediment and Erosion Control Ordinance No. 808" to safeguard the public health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. This shall include, but not be limited to, a grading and/or grubbing permit in compliance with the County's Sediment and Erosion Control Ordinance, which is required if any of the following conditions apply:
 - The work area exceeds one (1) acre.
 - Grading involving excavation or embankment, or combination thereof exceeds 100 cubic yards.
 - Grading exceeds five (5) feet in vertical height or depth at its deepest point.
 - The work area unreasonably alters the general drainage pattern to the detriment of abutting properties.

Sincerely,

Digitally signed by Michael Moule
Date: 2023.10.11 09:30:46 -10'00'

Michael Moule, P.E.
Chief, Engineering Division



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

Water has no substitute.....Conserve it!

SUBDIVISION REPORT

TO: PLANNING DEPARTMENT
FROM: DEPARTMENT OF WATER

October 27, 2023

TMK: 4-9-009:001 NAME: Molooa Farms LLC Et. AL. SURVEYOR: Wayne Wada REPORT NO: S-2024-2

1. Tentative approval is recommended. ☒
Water Requirements are not affected. Tentative approval is recommended. ☐
2. All requirements have been fully met and; therefore, Final approval is recommended. ☐
3. Before final approval can be recommended, the subdivider must: ☐
 - A. Pay the Department of Water the following charges in effect at the time of receipt. At the present time, these charges include: ☐
 - 1) The Facilities Reserve Charge (FRC):
_____ 5/8-inch = \$ _____ ☐
 - 2) Payment to install one, service connections(s) at the fixed cost of \$ 2,850 . If the subdivider causes a delay in the service connection installation after one year since final map approval, the subdivider shall be charged the increase in the fixed cost, if any. ☐
 - 3) Deposit (the subdivider will either be billed or returned the difference between this deposit and the actual cost of construction of \$ _____ for construction by the Department of Water. ☐
 - B. Submit to the Department of Water a copy of the subdivider's permit to perform work upon a State highway from the State Highways Division ☐
 - C. Prepare and receive Department of Water's approval of construction drawings for the necessary water system facilities and either construct said facilities or post a performance bond for construction. These facilities shall also include: ☐
 - 1) The domestic service connection.
 - 2) The fire service connection, if applicable. ☐
 - 3) The interior plumbing with appropriate backflow prevention device, if applicable. ☐
 - D. Prepare and convey to the Department of Water a Right-of-Entry and Temporary Grant of Easement for the purpose of construction, repair, maintenance and operation of the subdivision water system improvements installed in other than County-owned property. ☐
 - E. If a bond is filed, to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map, and deeds: ☐

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

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.
4. Installation of service connections will not be required until a request for water service is made. The applicant for service will be charged the applicable service connection charges at that time. ☐
5. Other (or remarks): ☒
 - a. Clearly letter the following on the final subdivision map and deeds

"Domestic water service is not available from the Department of Water, County of Kauai."

"Prior to building permit approvals, the applicant shall either complete a Waiver and Release Agreement with the Department of Water, County of Kaua'i or submit a copy of the deeds of the lot to the Department of Water that state that domestic water service is not available from the Department of Water, County of Kaua'i."

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.

Regina Reyes-Flores
Regina Reyes-Flores (Oct 27, 2023 11:32 HST)
Regina Reyes-Flores, P.E.
Water Resources and Planning Section

Oct 27, 2023

Date

SUBDIVISION REPORT NO. S-2024-2



County of Kauai
Planning Department
4444 Rice St., Suite A473 Lihue, HI 96766
(808) 241-4050

COUNTY OF KAUAI

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

23 SEP 25 P2:27 9/15/2023

SUBJECT: Subdivision S-2024-2
Tax Map Key: 490090010000
Applicant: Moloa'a Farms LLC Et. Al.
Preliminary Subdivision of Lot 2-A

PLANNING DEPT.

TO:

- | | |
|--|---|
| <input type="checkbox"/> State Department of Transportation - STP | <input checked="" type="checkbox"/> County DPW - Engineering |
| <input type="checkbox"/> State DOT - Highways, Kauai (info only) | <input checked="" type="checkbox"/> County DPW - Wastewater |
| <input type="checkbox"/> State DOT - Airports, Kauai (info only) | <input type="checkbox"/> County DPW - Building |
| <input type="checkbox"/> State DOT - Harbors, Kauai (info only) | <input type="checkbox"/> County DPW - Solid Waste |
| <input checked="" type="checkbox"/> State Department of Health | <input type="checkbox"/> County Department of Parks & Recreation |
| <input type="checkbox"/> State Department of Agriculture | <input checked="" type="checkbox"/> County Fire Department |
| <input type="checkbox"/> State Office of Planning | <input checked="" type="checkbox"/> County Housing Agency |
| <input type="checkbox"/> State Dept. of Bus. & Econ. Dev. Tourism | <input type="checkbox"/> County Economic Development |
| <input type="checkbox"/> State Land Use Commission | <input checked="" type="checkbox"/> County Water Department |
| <input checked="" type="checkbox"/> State Historic Preservation Division | <input type="checkbox"/> County Civil Defense |
| <input type="checkbox"/> State DLNR - Land Management | <input checked="" type="checkbox"/> County Transportation Agency |
| <input checked="" type="checkbox"/> State DLNR - Forestry & Wildlife | <input type="checkbox"/> KHPRC |
| <input type="checkbox"/> State DLNR - Aquatic Resources | <input checked="" type="checkbox"/> U.S. Postal Department |
| <input type="checkbox"/> State DLNR - Conservation & Coastal Lands | <input type="checkbox"/> UH Sea Grant |
| <input type="checkbox"/> Office of Hawaiian Affairs | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

FOR YOUR COMMENTS (pertaining to your department) (Due Date 10/29/2023)

Will have to conform to NFPA and state
& county amendments

KAUA'I COUNTY HOUSING AGENCY

ADAM ROVERSI, DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

September 19, 2023

To: Kaaina S. Hull, Planning Director

From: Adam P. Roversi, Housing Director

RE: Housing Agency Comments on Preliminary Subdivision of Lot 2-A, TMK (4) 9-8-009:001,
Moloa'a Farms LLC, et al., Applicant

Moloa'a Farms LLC, et al. has applied to subdivide Lot 2-A, being a portion of Allotment 24-A, Moloa'a Hui Lands and Allotment M-1, Kaapuna Hui Lands into Lots 2-A-1 through 2-A-11 along with designated easements.

Under the Kaua'i County Housing Policy, Kaua'i County Code Section 7A-1.4.1(c), any project involving "the subdivision or consolidation of land... in any zoning district in which the overall project density would allow more than ten (10) residential dwelling units," must comply with the County's workforce housing requirements.

On its face, the application in question appears to create 11 separate agricultural lots with a "density of more than ten (10) residential dwelling units."

Accordingly, the applicant is required to consult with the Housing Agency to resolve the project's workforce housing obligations prior to subdivision approval.

Thank you for the opportunity to provide comments.



JOSH GREEN M.D.
GOVERNOR OF HAWAII

KENNETH S. FINK, M.D., M.G.A., M.P.H
DIRECTOR OF HEALTH



**STATE OF HAWAII
DEPARTMENT OF HEALTH**
3040 Umi St. Lihue
Hawaii 96766

DATE: Sept 27, 2023

TO: To whom it may concern

FROM: Ellis Jones
District Environmental Health Program Chief

SUBJECT: RESPONSE_Moloaa Farms LLC_S-2024-2

In most cases, the District Health Office will no longer provide individual comments to agencies or project owners to expedite the land use review and process.

Agencies, project owners, and their agents should apply Department of Health "Standard Comments" regarding land use to their standard project comments in their submittal. Standard comments can be found on the Land Use Planning Review section of the Department of Health website: <https://health.hawaii.gov/epo/landuse/>. Contact information for each Branch/Office is available on that website.

Note: Agencies and project owners are responsible for adhering to all applicable standard comments and obtaining proper and necessary permits before the commencement of any work.

General summary comments have been included for your convenience. However, these comments are not all-inclusive and do not substitute for review of and compliance with all applicable standard comments for the various DOH individual programs.

Clean Air Branch

1. All project activities shall comply with the Hawaii Administrative Rules (HAR), Chapters 11-59 and 11-60.1.
2. Control of Fugitive Dust: You must reasonably control the generation of all airborne, visible fugitive dust and comply with the fugitive dust provisions of HAR §11-60.1-33. Note that activities that occur near existing residences, businesses, public areas, and major thoroughfares exacerbate potential dust concerns. It is recommended that a dust control management plan be developed which identifies and mitigates all activities that may generate airborne and visible fugitive dust and that buffer zones be established wherever possible.

3. Standard comments for the Clean Air Branch are at:
<https://health.hawaii.gov/epo/landuse/>

Clean Water Branch

1. All project activities shall comply with the HAR, Chapters 11-53, 11-54, and 11-55. The following Clean Water Branch website contains information for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with HAR, Chapters 11-53, 11-54, and 11-55:
<https://health.hawaii.gov/cwb/clean-water-branch-home-page/cwb-standardcomments/>.

Hazard Evaluation & Emergency Response Office

1. A Phase I Environmental Site Assessment (ESA) and Phase II Site Investigation should be conducted for projects wherever current or former activities on site may have resulted in releases of hazardous substances, including oil or chemicals. Areas of concern include current and former industrial areas, harbors, airports, and formerly and currently zoned agricultural lands used for growing sugar, pineapple or other agricultural products.
2. Standard comments for the Hazard Evaluation & Emergency Response Office are at:
<https://health.hawaii.gov/epo/landuse/>.

Indoor and Radiological Health Branch

1. Project activities shall comply with HAR Chapters 11-39, 11-45, 11-46, 11-501, 11-502, 11-503, 11-504.
2. Construction/Demolition Involving Asbestos: If the proposed project includes renovation/demolition activities that may involve asbestos, the applicant should contact the Asbestos and Lead Section of the Branch at <https://health.hawaii.gov/irhb/asbestos/>.

Safe Drinking Water Branch

1. Agencies and/or project owners are responsible for ensuring environmental compliance for their projects in the areas of: 1) Public Water Systems; 2) Underground Injection Control; and 3) Groundwater and Source Water Protection in accordance with HAR Chapters 11-19, 11-20, 11-21, 11-23, 11-23A, and 11-25. They may be responsible for fulfilling additional requirements related the Safe Drinking Water program:
<https://health.hawaii.gov/sdwb/>.
2. Standard comments for the Safe Drinking Water Branch can be found at:
<https://health.hawaii.gov/epo/landuse/>.

Solid & Hazardous Waste Branch

1. Hazardous Waste Program - The state regulations for hazardous waste and used oil are in HAR Chapters 11-260.1 to 11-279.1. These rules apply to the identification, handling, transportation, storage, and disposal of regulated hazardous waste and used oil.
2. Solid Waste Programs - The laws and regulations are contained in HRS Chapters 339D, 342G, 342H and 342I, and HAR Chapters 11-58.1, and 11-282. Generators and handlers of solid waste shall ensure proper recycling or disposal at DOH-permitted solid waste management facilities. If possible, waste prevention, reuse and recycling are preferred options over disposal. The Office of Solid Waste Management also oversees the

electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.

3. Underground Storage Tank Program – The state regulations for underground storage tanks are in HAR Chapter 11-280.1. These rules apply to the design, operation, closure, and release response requirements for underground storage tank systems, including unknown underground tanks identified during construction.
4. Standard comments for the Solid & Hazardous Waste Branch can be found at:
<https://health.hawaii.gov/epo/landuse/>.

Wastewater Branch

All structures and wastewater disposal systems are not shown on the subdivision map. Wastewater Branch will not recommend approval of the subdivision application until we have information on existing wastewater systems. The applicant must have his/her engineer or contractor submit a completed existing cesspool information card for each cesspool, identifying the location of all wastewater systems with associated structures and their relationship to existing and proposed property lines.

Sanitation / Local DOH Comments:

1. Noise may be generated during demolition and/or construction. The applicable maximum permissible sound levels, as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control," shall not be exceeded unless a noise permit is obtained from the Department of Health.
2. According to HAR §11-26-35, No person, firm, or corporation shall demolish or clear any structure, place, or vacant lot without first ascertaining the presence or absence of rodents that may endanger public health by dispersal from such premises. Should any such inspection reveal the presence of rodents, the rodents shall be eradicated before demolishing or clearing the structure, site, or vacant lot. A demolition or land clearing permit is required prior to demolition or clearing.

Other

1. [CDC - Healthy Places - Healthy Community Design Checklist Toolkit](#) recommends that state and county planning departments, developers, planners, engineers, and other interested parties apply these principles when planning or reviewing new developments or redevelopment projects.
2. If new information is found or changes are made to your submittal, DOH reserves the right to implement appropriate environmental health restrictions as required. Should there be any questions on this matter, please contact the Department of Health, Kauai District Health Office at 808-241-3492.

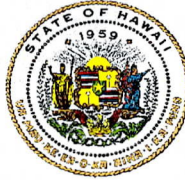
Ellis Jones

Ellis Jones

District Environmental Health Program Chief
Office Phone: (808) 241-3326

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

DAWN N.S. CHANG
CHAIRPERSON—
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
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

October 27, 2023

Ka'aina Hull
Director of Planning
Kaua'i County Planning Department
4444 Rice Street, Suite A473
Lihue, HI 96766

Subject: Subdivision Application S-2024-2 for the Subdivision of Tax Map Key (4) 4-9-009:001 into Eleven Parcels in Moloa'a and Papa'a, Kawaihau, Kaua'i by Moloaa Farms LLC., et. al.

Dear Mr. Hull,

The Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife is writing in response to Moloaa Farms LLC., et. al. ("Applicant") request to subdivide Tax Map Key (TMK) (4) 4-9-009:001 ("Subject Property"), located in Moloa'a and Papa'a, Kawaihau, Kaua'i on the island of Kaua'i, into eleven (11) parcels (S-4024-2 Subdivision Application; S-2024-2 Preliminary Subdivision Map). The DLNR has reviewed the application and has concerns regarding the public's access across the Subject Property to adjacent unencumbered State land identified as Tax Map Key (4) 4-9-009:003 ("State Parcel") as well as wildlife that is located on both the subject fee simple land as well as the State-owned properties.

Public Access Issues

The DLNR requests to consult with the County of Kaua'i's Planning Department in providing for public access locations across the subject property to the unencumbered State Parcel. Kauai County Code Section 9-2.9 requires the Planning Commission to:

"Require a subdivider or developer, as a condition precedent to final approval of a subdivision, in cases where public access is not already provided, to dedicate land for

public access by right-of-way or easement for pedestrian travel from a public highway or public streets to the land below the high-water mark on any coastal shoreline.”¹

This ordinance applies when land is to be subdivided into six (6) or more lots, parcels, units, or interests.² According to the proposed subdivision map, the applicant proposes to subdivide one parcel into 11 lots which are adjacent to the State Parcel (Map of Subject Property and State Parcel). The State Parcel runs along the coastline. The DLNR requests that the public access points to the unencumbered land be clearly identified and that sufficient public parking areas be made available for public access and use.

Section 9-2.9(d) clarifies that after the dedication of public access across a subdivided property, the County of Kaua’i assumes the cost of additional improvements and maintenance to the public access points.³ The DLNR requests that the responsibilities for improving and maintaining any public access points be clearly expressed in any grant of easement or deed for the Subject Property.

Wildlife Issues

The DLNR requests that the applicant also reviews the following wildlife concerns on the Subject Property:

1. The DLNR requests access to the Subject Property and adjacent the State Parcel, for a thorough botanical survey of the known rare Kauai-endemic plant species *Wikstroemia uva-ursi* var. *kauaiensis* which may be present on both parcels.
2. This area is known wedge-tail shearwater habitat and birds and/or burrows may be present on both parcels. We suggest requiring the Applicant:
 - a. Conduct a thorough seabird survey during the wedge-tail shearwater nesting season (May-June). Surveys done outside of this period will be unreliable and inconclusive;
 - b. Provide a mitigation plan for future potential nesting under homes and structures within this seabird habitat; and
 - c. Address and mitigate the artificial lighting concerns regarding their proximity to the coastline, and the chance that artificial lighting may attract seabirds.
3. Restrictions on construction within the State Land Use “Conservation” zoned portions of the Subject Property may exist and it is recommended the Applicant consult with the Office of Coastal and Conservation Lands.
4. All building structures should have at least a 150-foot set back from the State Parcel.

¹ Kaua’i County Code Section 9-2.9(a) (2003), https://library.qcode.us/lib/kauai_county_hi/pub/county_code/item/title_iv-chapter_9-article_2-sec_9_2_9.

² See Kaua’i County Code Section 9-2.9(f) (2003).

³ See Kaua’i County Code Section 9-2.9(d) (2003).

5. Prior to and/or during construction no trees taller than 15 feet should be cut during the bat-pupping season (June 1- September 15).
6. Prior to and/or during construction, additional conditions may be imposed by the DLNR.

Please contact Sheri Mann, Kaua'i Forestry and Wildlife Program Manager, at (808) 274-3436 or sheri.s.mann@hawaii.gov regarding this issue.

Sincerely,



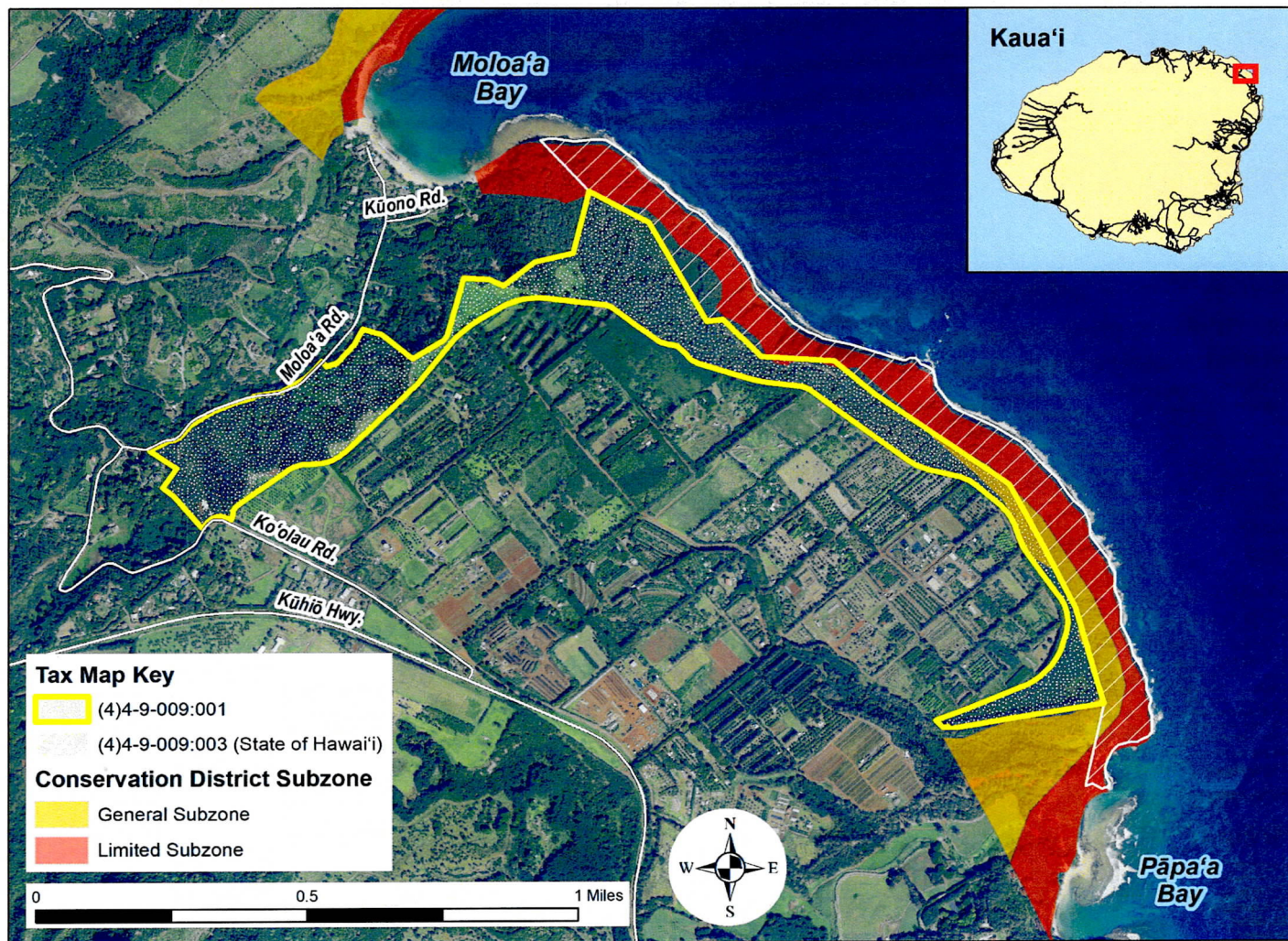
Dawn N.S. Chang
Chairperson
Department of Land and Natural Resources

Cc: Allison Neustein, Kauai Land Agent, DLNR Lands Division

Attachment I: S-2024-2 Subdivision Application

Attachment II: S-2024-2 Preliminary Subdivision Map

Attachment III: Map of Subject Property, TMK (4) 4-9-009:001, and State Parcel, TMK (4) 4-9-009:003.



JOSH GREEN, M.D.
GOVERNOR | KE KIA ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA ĀINA



KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
OFFICE OF CONSERVATION AND COASTAL LANDS
P.O. BOX 621
HONOLULU, HAWAII 96809

OCT 2 '23 PM 1:37
PLANNING DEPT

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:CM

Correspondence: KA 24-41

Sep 27, 2023

Kaaina S. Hull, Director
County of Kauai, Planning Department
4444 Rice Street, Suite A473
Lihue, HI 96766

SUBJECT: Subdivision of Lot 2-A Being Portions of Allotment 24-A, Moloaa Hui Lands and Allotment M-1, Kaapuna Hui Lands Into Lots 2-A-1 Through 2-A-11 and Designation of Easement AU-1 Moloaa and Papaa; Kawaihau, Kauai; Tax Map Key: (4) 4--009:001

Dear Mr. Hull,

The Office of Conservation and Coastal Lands (OCCL) has reviewed your correspondence and survey map for the proposed parcel subdivision project at the subject location. According to the information you provided, the property owner (Moloaa Farms LLC, Et. Al.) is proposing to subdivide the subject parcel of land to create 11 smaller parcels. A review of the survey map shows that the current parcel contains areas of Conservation land, and the proposed subdivision will result in the division the Conservation land area into 4 of the smaller parcels.

Subdivision of land must be consistent with Section 13-5-22, Hawaii Administrative Rules (HAR), (P-10) SUBDIVISION OR CONSOLIDATION OF PROPERTY (D-1), *Subdivision of property into two or more legal lots of record that serves a public purpose and is consistent with the objectives of the subzone.*

This proposal is not consistent with the HAR 13-5.

Should you have any questions regarding this correspondence, contact Cal Miyahara of the Office of Conservation and Coastal Lands at (808) 798-6147 or calen.miyahara@hawaii.gov.

Sincerely,

S. Michael Cain

Michael Cain, Administrator
Office of Conservation and Coastal Lands

C: KDLO

Kenneth Estes

From: Kaaina Hull
Sent: Tuesday, September 19, 2023 3:05 PM
To: Kenneth Estes
Subject: FW: Subdivision S-2024-2 TMK 19009001 Preliminary Subdivision of Lot 2-a

From: Donald Fujimoto <dfujimoto@kauai.gov>
Sent: Tuesday, September 19, 2023 3:03 PM
To: Kaaina Hull <khull@kauai.gov>
Cc: Donn Kakuda <dkakuda@kauai.gov>
Subject: Subdivision S-2024-2 TMK 19009001 Preliminary Subdivision of Lot 2-a

Kaaina,
County does not provide wastewater service in this area and has no comments.
Mahalo,

Donald M. Fujimoto PE, MBA
Chief, Wastewater Management Division
Department of Public Works, County of Kauai
4444 Rice Street, Suite 500
Lihue, HI 96766
(808) 241-4803

COUNTY OF KAUAI
PLANNING DEPARTMENT

TO: Subdivision Committee, Planning Commission

SUBJECT: Extension Request

PURPOSE: ☒ File Final Subdivision Maps
☐ Complete Subdivision Improvements
☐ Other: _____

Subdivision Application No.		Applicant(s)	
S-2023-1		BBCP Kukui'ula Development, LLC.	
Location:	Kōloa	Tax Map Key:	(4) 2-6-022:020
Extension Request No. (1 st , 2 nd , etc.)		Tentative Approval Granted On:	Previous Ext. Expired On:
1st		November 15, 2022	N/A
Subdivision Bonded: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Deadline to Complete Improvements: Not Applicable	

APPLICANT'S REASONS: Additional time is being requested to comply with the conditions/requirements of tentative approval. The Applicant is currently with the various reviewing agencies in resolving the required infrastructure improvements for the subdivision.

**PLANNING DEPARTMENT
EVALUATION & RECOMMENDATION**

EVALUATION: Please refer to next page...

RECOMMENDATION: Please refer to next page...


Staff Planner

11-03-2023

Date

☒ Approved and Recommended
to Planning Commission

☐ Denied

Comments:


Planning Director

11/3/2023
Date

G.2.a.1.
NOV 14 2023

COUNTY OF KAUAI PLANNING DEPARTMENT

Extension requests are primarily processed for the purpose of continuing a tentative approval for a subdivision application. An extension approval allows an applicant additional time to comply with the requirements in order to obtain final subdivision approval.

In determining whether additional time should be granted, an evaluation is made of the project's progress as well as compliance with the requirements of tentative approval. The evaluation is primarily based on determining whether the applicant is **progressively working** towards obtaining final subdivision approval with the various reviewing agencies. The **tentative approval conditions** are then re-evaluated to determine whether the conditions/requirements are adequate to address the impacts of the proposed development in consideration of the time that has lapsed.

Pending evaluation of an extension request, one of the following can occur:

1. The extension is approved without changes to the tentative approval requirements;
2. The extension is approved with modified time frames but no modifications or additions to the tentative approval requirements;
3. The extension is approved with modifications and/or additions to the requirements; and
4. The extension is denied.

EXTENSION REQUEST:

The Applicant is requesting an extension of time to file the final subdivision map with the Planning Department pursuant to Section 9-3.8(c)(1) of the Subdivision Ordinance, Kauai County Code (1987), as amended. The Applicant's extension request is the **first** extension of the tentative approval. Please refer to the Applicant's request letter dated September 15, 2023, enclosed as Exhibit 'A'.

FINDINGS/BACKGROUND:

The proposed development involves the subdivision of Lot 13 of the Kukui'ula Parcel E Subdivision into a total of twenty-four (24) residential lots, four (4) remnant parcels, and three (3) roadway lots. On November 15, 2022, the Kauai Planning Commission granted preliminary subdivision map approval for the application and, in addition, approved the Applicant's request for a Modification of Requirement. This modification allowed the use of drainage swales on both sides of the residential street in accordance with the specifications of the Department of Public Works, Engineering Division, and granted a deviation from the requirement to construct curbs, gutters, and sidewalks as specified in Section 9-2.3(e) of the Subdivision Ordinance, Kauai County Code (1987), as amended.

The subject property is located on the western side of the Kukui'ula master planned area involving a total area of approximately 136.378 acres. The subject property is County zoned Residential District

(R-4), Open (O) District, Special Treatment District – Open Space (ST-O), and Special Treatment District – Cultural/Historic (ST-C).

It should be noted that the Applicant has reorganized the lot numbers within the subdivision, as indicated on the revised preliminary subdivision map dated *rev. October 23, 2023* (refer to Exhibit 'B'). As represented in their correspondence dated October 26, 2023 (refer to Exhibit 'C'), the lot numbers were changed to continue the numbering from the last lot in Parcel F, providing continuity throughout the Kula Makai Neighborhood. In addition, the lot area for proposed Lot 17 (previously Lot 5) has been revised from 34,283 sq. ft. to 33,978 sq. ft. due to a conflict with a landscaping path, while the lot areas for proposed Lots 18 and 19 (previously Lots 6 and 7) have been modified from 24,288 sq. ft. and 28,442 sq. ft. to 25,007 sq. ft. and 27,577 sq. ft. respectively, in order to accommodate the updated lot configuration.

While assessing the revised preliminary subdivision map, the department has no concerns regarding the revisions. Additionally, the revised lot sizes of proposed Lots 17, 18, and 19, are consistent with the requirements outlined in the Comprehensive Zoning Ordinance. The Applicant should be made aware that the construction plans must incorporate the revised lot numbers and lot areas as indicated on the updated preliminary subdivision map.

PROGRESS OF THE SUBDIVISION:

The Applicant has been working to resolve the various conditions of tentative approval. Although the construction plans for the subdivision improvements have been prepared, they are currently in the process of awaiting review and approvals from various agencies, which has contributed to the time delay. Since it is uncertain as to when all the agency comments will be met, the Applicant is requesting additional time to complete the subdivision. The additional time allows the Applicant to meet all the requirements of the government agencies.

Based on the foregoing circumstances, the Applicant's reasons are justifiable, and no problems are foreseen in granting the extension request. The Departments of Public Works and Water have no objections to the request.

Additionally, the Applicant should demonstrate further progress with the subdivision within one (1) year from the approval of this extension request. As such, the Applicant shall be made aware that in further considering extension requests involving the proposed development, the Applicant shall continue to submit to the Planning Department an updated status report on the subdivision with a detailed time chronology on the progress of the tentative approval requirements. The status report shall be submitted to the Planning Department no later than sixty (60) days prior to the expiration date in order to allow sufficient time to evaluate whether progress has been made and conditions satisfied.

RECOMMENDATION:

It is recommended that an extension until **NOVEMBER 15, 2024**, be granted to obtain final subdivision approval. However, the Applicant is made aware that an updated status report on the subdivision with a detailed time chronology on the progress of the tentative approval requirements shall be submitted to the Planning Department for review for further extensions requests. The status report shall be submitted to the Planning Department no later than sixty (60) days prior to the expiration date.

Exhibit 'A'

(Applicant's Extension Request Letter dated September 15, 2023)



VIA EMAIL

September 15, 2023

Mr. Kenny Estes
Department of Planning
County of Kauai
4444 Rice Street, Suite A-473
Lihue, Hawaii 96756

Subject: Subdivision S-2023-1
Kukui'ula Parcel A2/F2/F3 Subdivision

Dear Kenny,

Kukui'ula received Tentative Map approval for the above referenced map on November 15, 2022. This Tentative Map is set to expire on November 15, 2023.

We respectfully request a one-year extension for this tentative map due to the following reasons:

- Subdivision Improvement Plans are currently in the 4th review with the Department of Water.
- Subdivision Improvement Plans are currently in the 3rd review with the Department of Public Works.
- The electrical plans have not yet been reviewed by KIUC.

We anticipate being able to complete these tasks within one year and likely sooner pending agency reviews. Once we work through these final steps and can submit the required additional documents, we look forward to engaging with the Planning Department and the Planning Commission and obtaining Final Subdivision Map approval.

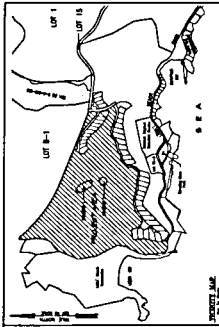
Thank you for your continued assistance.

Sincerely,
Chris Rivera
Vice President of Development

Cc: Erik Kaneshiro, DeAna Hayashi – Austin Tsutsumi & Associates

Exhibit 'B'

(Revised Preliminary Subdivision Map *Rev. October 23, 2023* and Location Map)



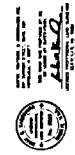
KUKUI'U'UA PARCEL A27273 SUBDIVISION SUBDIVISION OF LOT 13 OF KUKUI'U'UA PARCEL E SUBDIVISION REGULATION OF LANDS ACTS, 1967 MAP-1, AU-2, AU-3, AND SO-1 AND DESIGNATION OF VEHICULAR ACCESS RESTRICTIONS AFFECTING LOTS 1 AND 8

Map prepared by: HAWAIIAN LAND CO., LTD.
 1000 KALANIAN'OLE HWY., SUITE 1000
 HONOLULU, HAWAII 96813
 DATE: 10/1/2010
 TOTAL AREA: 10.00 ACRES
 OWNER: HAWAIIAN LAND CO., LTD.
 ADDRESS: 1000 KALANIAN'OLE HWY., SUITE 1000
 HONOLULU, HAWAII 96813

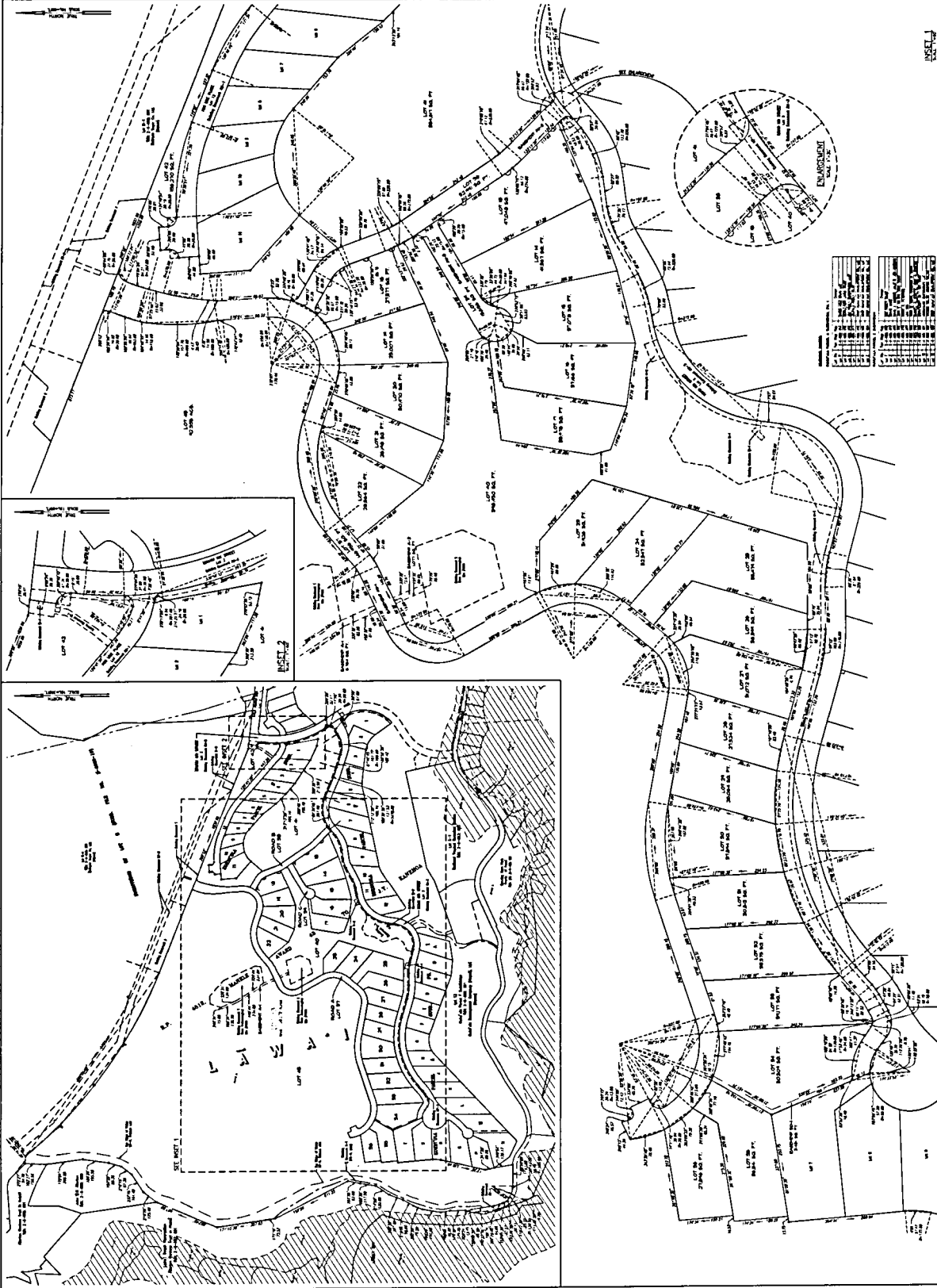
1. The purpose of this map is to show the location and boundaries of the lots and parcels of land within the subdivision, and to show the location and boundaries of the easements and other interests in the land.

2. The map is based on the following information:

- a. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- b. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- c. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- d. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- e. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- f. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- g. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- h. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- i. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- j. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- k. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- l. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- m. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- n. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- o. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- p. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- q. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- r. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- s. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- t. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- u. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- v. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- w. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- x. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- y. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.
- z. The official survey map of the subdivision, as recorded in the Office of the County Clerk, Honolulu, Hawaii.



Lot	Area (Acres)	Owner
1	0.10	HAWAIIAN LAND CO., LTD.
2	0.10	HAWAIIAN LAND CO., LTD.
3	0.10	HAWAIIAN LAND CO., LTD.
4	0.10	HAWAIIAN LAND CO., LTD.
5	0.10	HAWAIIAN LAND CO., LTD.
6	0.10	HAWAIIAN LAND CO., LTD.
7	0.10	HAWAIIAN LAND CO., LTD.
8	0.10	HAWAIIAN LAND CO., LTD.
9	0.10	HAWAIIAN LAND CO., LTD.
10	0.10	HAWAIIAN LAND CO., LTD.
11	0.10	HAWAIIAN LAND CO., LTD.
12	0.10	HAWAIIAN LAND CO., LTD.
13	0.10	HAWAIIAN LAND CO., LTD.
14	0.10	HAWAIIAN LAND CO., LTD.
15	0.10	HAWAIIAN LAND CO., LTD.
16	0.10	HAWAIIAN LAND CO., LTD.
17	0.10	HAWAIIAN LAND CO., LTD.
18	0.10	HAWAIIAN LAND CO., LTD.
19	0.10	HAWAIIAN LAND CO., LTD.
20	0.10	HAWAIIAN LAND CO., LTD.
21	0.10	HAWAIIAN LAND CO., LTD.
22	0.10	HAWAIIAN LAND CO., LTD.
23	0.10	HAWAIIAN LAND CO., LTD.
24	0.10	HAWAIIAN LAND CO., LTD.
25	0.10	HAWAIIAN LAND CO., LTD.
26	0.10	HAWAIIAN LAND CO., LTD.
27	0.10	HAWAIIAN LAND CO., LTD.
28	0.10	HAWAIIAN LAND CO., LTD.
29	0.10	HAWAIIAN LAND CO., LTD.
30	0.10	HAWAIIAN LAND CO., LTD.
31	0.10	HAWAIIAN LAND CO., LTD.
32	0.10	HAWAIIAN LAND CO., LTD.
33	0.10	HAWAIIAN LAND CO., LTD.
34	0.10	HAWAIIAN LAND CO., LTD.
35	0.10	HAWAIIAN LAND CO., LTD.
36	0.10	HAWAIIAN LAND CO., LTD.
37	0.10	HAWAIIAN LAND CO., LTD.
38	0.10	HAWAIIAN LAND CO., LTD.
39	0.10	HAWAIIAN LAND CO., LTD.
40	0.10	HAWAIIAN LAND CO., LTD.
41	0.10	HAWAIIAN LAND CO., LTD.
42	0.10	HAWAIIAN LAND CO., LTD.
43	0.10	HAWAIIAN LAND CO., LTD.
44	0.10	HAWAIIAN LAND CO., LTD.
45	0.10	HAWAIIAN LAND CO., LTD.
46	0.10	HAWAIIAN LAND CO., LTD.
47	0.10	HAWAIIAN LAND CO., LTD.
48	0.10	HAWAIIAN LAND CO., LTD.
49	0.10	HAWAIIAN LAND CO., LTD.
50	0.10	HAWAIIAN LAND CO., LTD.
51	0.10	HAWAIIAN LAND CO., LTD.
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66	0.10	HAWAIIAN LAND CO., LTD.
67	0.10	HAWAIIAN LAND CO., LTD.
68	0.10	HAWAIIAN LAND CO., LTD.
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71	0.10	HAWAIIAN LAND CO., LTD.
72	0.10	HAWAIIAN LAND CO., LTD.
73	0.10	HAWAIIAN LAND CO., LTD.
74	0.10	HAWAIIAN LAND CO., LTD.
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79	0.10	HAWAIIAN LAND CO., LTD.
80	0.10	HAWAIIAN LAND CO., LTD.
81	0.10	HAWAIIAN LAND CO., LTD.
82	0.10	HAWAIIAN LAND CO., LTD.
83	0.10	HAWAIIAN LAND CO., LTD.
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85	0.10	HAWAIIAN LAND CO., LTD.
86	0.10	HAWAIIAN LAND CO., LTD.
87	0.10	HAWAIIAN LAND CO., LTD.
88	0.10	HAWAIIAN LAND CO., LTD.
89	0.10	HAWAIIAN LAND CO., LTD.
90	0.10	HAWAIIAN LAND CO., LTD.
91	0.10	HAWAIIAN LAND CO., LTD.
92	0.10	HAWAIIAN LAND CO., LTD.
93	0.10	HAWAIIAN LAND CO., LTD.
94	0.10	HAWAIIAN LAND CO., LTD.
95	0.10	HAWAIIAN LAND CO., LTD.
96	0.10	HAWAIIAN LAND CO., LTD.
97	0.10	HAWAIIAN LAND CO., LTD.
98	0.10	HAWAIIAN LAND CO., LTD.
99	0.10	HAWAIIAN LAND CO., LTD.
100	0.10	HAWAIIAN LAND CO., LTD.



Location Map
 Subdivision Application No. S-2023-1
 Kukui'ula Parcel A2F2F3 Subdivision



10/07/2021 - 03/15/2022

Exhibit 'C'

(Applicant's Correspondence dated October 26, 2023)



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS

CONTINUING THE ENGINEERING PRACTICE FOUNDED BY H. A. R. AUSTIN IN 1934

TERRANCE S. ARASHIRO, P.E.
ADRIENNE W.L.H. WONG, P.E., LEED AP
DEANNA M.R. HAYASHI, P.E.
PAUL K. ARITA, P.E.
ERIK S. KANESHIRO, L.P.L.S., LEED AP
MATT K. NAKAMOTO, P.E.
GARRETT K. TOKUOKA, P.E.

#01-107.103

October 26, 2023

Mr. Kenneth Estes
Kauai County Planning Department
4444 Rice Street, Suite A473
Lihue, HI 96766

Dear Mr. Estes:

**Subject: Review of Subdivision Map
Parcel A2F2F3
TMK: (4) 2-6-022: 020
Kōloa, Kauaʻi, Hawaiʻi**

The subdivision map for Parcel A2F2F3 (original date April 20, 2022) has been updated on October 23, 2023 to incorporate the following changes:

- Lot numbering change: from 1 to 31, to 13 to 43
- Lot area change: Lot 5 (34,282 sf) to Lot 17 (33,978 sf)

The lot numbers were changed to continue the numbering from the last lot in Parcel F, providing continuity throughout the Kula Makai neighborhood. The lot area for lot 15 (previously lot 5) was adjusted due to a conflict with a landscaping path.

If you have any questions or require additional information, please contact me at 808-533-3646.

Very truly yours,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

DEANNA HAYASHI, P.E.
Vice President & Chief Engineer

DH:jak

X:\2001\01-107.103 Kukuiaua Parcel A2F2F3\ENGINEERING\Correspondence\BBCP Kukuiaua\To BBCP Kukuiaua\2023-10-26 Map Change