



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

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

RECEIVED

- The Planning Commission Meeting will be at:

'23 JUL -5 P4:23

**KAUAI COUNTY COUNCIL CHAMBERS
HISTORIC COUNTY BUILDING
4396 RICE STREET, SUITE 201
LĪHU'E, KAUA'I, HAWAI'I 96766**

- 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, July 11, 2023

8:30 a.m. or shortly thereafter

**KAUAI COUNTY COUNCIL CHAMBERS, HISTORIC COUNTY BUILDING
4396 RICE STREET, SUITE 201, LĪHU'E, KAUA'I, HAWAI'I 96766**

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

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

1. May 09, 2023

E. RECEIPT OF ITEMS FOR THE RECORD

F. UNFINISHED BUSINESS

1. Preliminary Subdivision Extension Request

- a. 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

Kōloa, Kaua'i

- 1) Subdivision Report pertaining to this matter.
 - 2) Supplement #1 to Subdivision Report.
 - 3) In the Matter of 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 requirements for a development situation 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 27.886 acres, **Petitioners Friends of Mahaulepu and Save Kōloa's Petition to Intervene and, Alternatively for Denial of Applications.**

- b. 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
Kōloa, Kauaʻi

- 1) Subdivision Report pertaining to this matter.
- 2) Supplement #1 to Subdivision Report

G. NEW BUSINESS (For Action)

1. Preliminary Subdivision Map Approval

- a. Subdivision Application No. S-2023-4
BBCP Kukuiʻula Development, LLC.
Kukuiʻula Parcel J1-A Subdivision
Proposed 18-lot Subdivision
TMK: (4) 2-6-023: 040
Kōloa (Makai), Kōloa, Kauaʻi

- 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-2021-7
5425 Paʻu A Laka, LLC.
Proposed 2-lot Consolidation and Resubdivision into 4-lots
TMK: (4) 2-8-014: 032
Kōloa, Kauaʻi
 - 1) In the Matter of Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 Paʻu 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 requirements for a development situation 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 27.886 acres, **Petitioners Friends of Mahaulepu and Save Kōloa's Petition to Intervene and, Alternatively for Denial of Applications.**
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Kōloa, Kauaʻi

- c. Subdivision Application No. S-2023-4
BBCP Kukuiʻula Development, LLC.
Kukuiʻula Parcel J1-A Subdivision
Proposed 18-lot Subdivision
TMK: (4) 2-6-023: 040
Kōloa (Makai), Kōloa, Kauaʻi

I. ADJOURNMENT

KAUA'I PLANNING COMMISSION
SUBDIVISION COMMITTEE MEETING
May 09, 2023
DRAFT

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Subdivision Committee Chair Ako at 8:31 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako
Mr. Jerry Ornellas

Excused or Absent
Ms. Donna Apisa

The following staff members were present: Planning Department – Director Ka'aina Hull, Deputy Director Jodi Higuchi Sayegusa, Staff Planner Dale Cua, Kenny Estes, and Planning Commission Support Clerk Duke Nakamatsu; Office of the County Attorney – County Deputy Attorney Chris Donahoe, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Subdivision Committee Chair Gerald Ako: Good morning.

Planning Director Ka'aina Hull: Good morning, Mr. Chair.

Chair Ako: Today is Tuesday May 9, 2023, and I'd like to call to order the Subdivision Committee Meeting of the Kaua'i County Planning Commission. Mr. Clerk, can we have a roll call?

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

Commissioner Ornellas: Here.

Mr. Hull: Chair Ako?

Chair Ako: Here.

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

APPROVAL OF AGENDA

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

Mr. Ornellas: Move to approve agenda.

Chair Ako: I'll second. We'll take a voice vote on this. All those in favor of the approval of the agenda, say aye. Aye (unanimous voice vote).

Mr. Hull: Motion passes. 2:0. Next on to Agenda Item D.

MINUTES of the meeting(s) of the Subdivision Committee

Mr. Hull: We have for view and action minutes from the April 11, 2023, meeting.

Mr. Ornellas: Move to approve minutes of April 11, 2023.

Chair Ako: Second. Again, we'll take a voice vote. All those in favor for the approval of the minutes of April 11, 2023, say aye. Aye (unanimous voice vote).

Mr. Hull: Moving on to Item E.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Hull: We have items received prior to the publication of the agenda on May 3, 2023, however after publication of the agenda, public testimony has been received, pursuant to Office of Information Practices, Rules and Guidance, we are required to hold that until this meeting date, make it available for all the public, as well the Commissioners, so the Commissioners, your receipt of one piece of testimony that came in this morning. Being that you just received and not being able to view it, they'll probably a five-minute recess, if that's okay, for you to take some time and go over it and if you want to use it as part of your analysis on the upcoming agenda items.

Mr. Ako: Do we need a motion for that?

Mr. Hull: No, you just have to (inaudible).

Chair Ako: So, with that, I apologize for the delay, but we'll be taking a five-minute recess, and we'll reconvene at about 8:40. Thank you.

Committee went into recess at 8:33 a.m.
Committee reconvened from recess at 8:45 a.m.

Chair Ako: I'd like to reconvene the meeting of Subdivision Committee, it is 8:45. Mr. Clerk?

Mr. Hull: Next we have Agenda Item F. Unfinished Business.

UNFINISHED BUSINESS

Mr. Hull: We have no items for that. So, moving on to Item G. New Business For Action.

NEW BUSINESS (For Action)

Final Subdivision Map Approval

Subdivision Application No. S-2005-41
Visionary LLC. DBA Lihu'e Land Company
Ahukini Makai Subdivision
Proposed 49-lot Subdivision

TMK: (4) 3-7-002: 001 (por.)
Hanama'ulu, Lihu'e, Kaua'i

Mr. Hull: I'll turn it over to Kenny for the subdivision report pertaining to this matter.

Staff Planner Kenny Estes: Good morning, Commissioners. I'll read the summarized report for the record.

Mr. Estes read the Subdivision Report for the record (on file with the Planning Department)

Chair Ako: Commissioner Ornellas, you have any questions for staff?

Mr. Ornellas: No, I do not.

Chair Ako: Okay. If we have a representative for the applicant that would like to share. Good morning.

Mr. David Hinazumi: Good morning, David Hinazumi on behalf of Visionary.

Mr. William Eddy: Good morning, Commissioners. My name is William Eddy, I'm with Kodani & Associates Engineers, we're the owner's consultant for the project.

Chair Ako: Please if you have anything that you'd like to share with us.

Mr. Hinazumi: Yes, as you are aware, this is an old subdivision from 2005, there's been a lot of challenges to get to this point, and we've worked through it, and we are requesting final subdivision approval. We do realize that there's been testimony submitted to the Commission as well as other people here that are going to testify regarding a Ka Pa`akai Analysis, so, when we first filed for subdivision in 2005, there was not a condition of subdivision. What I can share with the Commission is that we have engaged a consultant to do a Ka Pa`akai Analysis for this subdivision as well as other subdivisions that we have. It is in the process, there is input that's been received, there's more input to be received, with that said we will leave it to the Commission to decide how they want to proceed.

Chair Ako: Commissioner Ornellas, anything?

Mr. Ornellas: I have no questions.

Chair Ako: Okay, but you're planning on completing the Ka Pa`akai Analysis?

Mr. Hinazumi: That is correct.

Chair Ako: I just wanted to add, I know this is old but we're talking about a 2005 permit out here but at that time it was talked about the airports, acquiring more land to increase the size of the airports. Is that still part of their vision? Is that still part of their...

Mr. Hinazumi: Yes, that's correct. If you take a look at your subdivision map, it's Lots 2, 3, and 5, that is under contract with the State Department of Transportation Airports Division.

Chair Ako: Another question I had was, maybe just for curiosity purposes but I know part of the conditions was, as you sell your properties, the owners now need to be aware that here in an area by the airport there is noise that is coming from the helicopters, as well as the aircrafts that's passing there, I guess with the possibility of increasing the size of the runway, I'm also guessing, that more planes may be coming in, bigger planes maybe coming in, more noise may be created or maybe more helicopter traffic going back and forth, as we make it aware to the people that are buying these properties that there is

noise, I think we're talking about the noise that is happening today. Is that a concern for the developer that the frequency and maybe the, I guess how loud the noise is, may be increasing in the future. Is that a concern for the developers?

Mr. Hinazumi: The airports been there for the time it has been there and there are subdivisions in that close proximity. Myself, I grew up in Molokoa, so I am aware of the noise personally. What has been done is studies to determine what's the appropriate development actions around it. We did enter into a aviation easement with the Department of Transportation Airports Division, so that will be disclosed through, it's on title and that'll be disclosed to all the buyers, so they are aware. This subdivision that in closest proximity is an industrial subdivision, so you would imagine that there would be enough noises generated by the industrial uses itself and the residential areas in adjacent subdivisions are a little further away, but disclosures will also be made.

Chair Ako: Any other questions? Seeing none, I thank you for coming.

Mr. Hull: Mr. Chair, we don't have individuals of the public signed up to testify but at this it may be appropriate to ask if there's any member of the public that would like to testify.

Chair Ako: Is there anyone from the public that would like to testify on this permit application? Please come forward.

Ms. Belle Kaiwi: Good morning, gentlemen. For the record, my name is Belle Kaiwi, and I'm in opposition for the development of that area. For one main reason, I know there's still heirs to Victoria Kamāmalu, who is the true owner of those properties, in fact this entire Līhu'e. All these ahupua'a is hers, and I don't see how there's any clear title to any of this lands, so I already submitted my testimony yesterday by way of email, so you should be getting it. But for the record I am against this for those reasons, and I wasn't consulted on any of, anything regarding cultural sites or anything else on these areas. Thank you.

Chair Ako: Thank you, Mrs. Kaiwi. Are there any other questions? Is there anyone else that would like to testify? I am sorry, please.

Ms. Kanani Kagawa Fu: Hello,

Chair Ako: good morning.

Ms. Fu: Aloha and good morning, subdivision committee. My name is Kanani Kagawa Fu and I testify before you today as, take all hats off, as a resident of Kaua'i, as descendant of those that should be consulted for this land as well as someone who was born and raised here on Kaua'i. I was born and raised in Anahola, I then relocated to Hanamā'ulu, I raised my children there for the last ten years and I now am in Koloa, residing to complete a project. My last 20-years have been in development, particularly working with native Hawaiians, creating taro patches and agriculture, and somewhere through that I transversed into Housing and Development. What I ask before you today is to just consider before you make the subdivision some facts and some information, although it is new to you, although it came within the last 24-hours, I really would ask that you take all of this information into consideration. First and foremost, the thing that is being acknowledged by both the landowner/developer, as well as our previous testimony, is just the lack of the completion of the Ka Pa'akai Analysis. As someone who has been in this for a really long time and on the professional level, and the personal level, you guys have, I should testify and remind you guys the importance of a Ka Pa'akai Analysis, in all land developments that we do going forward on Kaua'i. It gives us the opportunity to revisit everyone, it gives us the opportunity to reconstruct the way we do things, and I just wanted to leave you with this. In consideration of the Ka Pa'akai, and also in

consideration, which I thought was just the most fascinating that changed a lot for me. I went to the Planning Conference this past year and one of the things was, how can planning honor a place in Hawai'i nei, it's just a thing that I picked up and I was fascinated. How can planners support social justice for ohana, practitioners, and care takers and places, as a central decision maker, shaping the future of their own communities for generations yet to come. I leave you with this, there are ten criteria that we should be considering as we move forward in land development and all things here on Kaua'i, until you have fully received analysis and recommendations on how to proceed with the land, we would ask wholeheartedly that you consider (inaudible) to make the appropriate decisions you guys need to make moving on. Thank you very much, and I'm here for any questions if you guys want to talk.

Chair Ako: Thank you.

Ms. Fu: Thank you.

Chair Ako: Thanks, Kanani.

Mr. Hull: Is there anyone else in the audience that hasn't testified, that would like to testify on this agenda item? Seeing none, your discretion, Chair.

Chair Ako: So, based upon that, is there anything else we'd like to add? Commissioner Ornellas, ready for the motion.

Mr. Ornellas: I make a motion for final approval of Subdivision Application No. S-2005-41.

Chair Ako: I'll second that. Mr. Clerk, if we can have a roll call vote?

Mr. Hull: Roll call and motion to approve. Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Chair Ako?

Chair Ako: Aye.

Mr. Hull: Motion passes, Mr. Chair. 2:0. With that, we have no further agenda items.

Chair Ako: Ok, so with that, can we have a motion to adjourn?

Mr. Ornellas: Move to adjourn.

Chair Ako: Second. All those in favor say aye. Aye (unanimous voice vote). We are adjourned.

Chair Ako adjourned the meeting at 8:59 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.

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-2021-7		5425 Pa'u A Laka, LLC.	
Location:	Kōloa	Tax Map Key:	(4) 2-8-014:032
Extension Request No. (1 st , 2 nd , etc.)		Tentative Approval Granted On:	Previous Ext. Expired On:
1 st		08.10.2021	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	
06.07.2023 Date	
[✓] Approved and Recommended to Planning Commission	[] Denied
Comments:	
 Planning Director	
6/7/2023 Date	

F.I.A.I. G.V.B.I.
JUL 11 2023 JUN 27 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.

FINDINGS/BACKGROUND:

The proposed development involves a four (4) lot subdivision that establishes two (2) lots within the County Residential (R-10) zoning district, one (1) remnant lot within the County Open (O) zoning district and one (1) roadway lot. The proposed development is within the State Land Use Urban District and within the Kaua'i General Plan Resort District. This application was granted tentative approval by the Planning Commission on August 10, 2021 and the Applicant's request is the **1st** extension of the tentative approval.

The subject property is located in the Po'ipū area at the corner of Kiahuna Plantation Drive and Pa'u A Laka Street. The total area involved is 27.885 acres and the intent of the subdivision is to separate Kiahuna Plantation Drive from existing Lot 88 and Lot B. It should be noted that the portion of Kiahuna Plantation Drive that traverses through Lot 88 and Lot B is a constructed roadway and it currently provides access to the 73-lot Wainani at Kiahuna Subdivision (Subdivision No. S-2004-48) that was approved by the Kaua'i Planning Commission on October 24, 2006.

In evaluating the proposed development, it is noted that development of the subject property was previously reviewed through Project Development Use Permit PDU-2006-25, Use Permit U-2006-26 and Class IV Zoning Permit Z-IV-2006-27 that involves construction of a 280-unit multi-family residential project. The subject permits were approved with conditions by the Kaua'i Planning Commission on

August 22, 2006. In considering the subdivision, the Applicant is subject to the applicable requirements of the foregoing permits.

PROGRESS OF THE SUBDIVISION:

The Applicant is currently working with the Planning Department, the Department of Public Works and the Department of Water in resolving Conditions 1.g., 1.h. and 1.i. of tentative approval relating to water and roadway improvements including the construction of curbs, gutters, and sidewalks on Lot 2. Currently, the construction plans that contain roadway improvements on Lot 2 and a water meter plan servicing Lots 1 and 3 of the development has been approved, and the Applicant intends to post a bond for completion. The Applicant is also working with the Planning Department in resolving the applicable requirements of Project Development Use Permit PDU-2006-25, Use Permit U-2006-26 and Class IV Zoning Permit Z-IV-2006-27. The construction plans for the 280-unit multi-family residential project will be processed separately from this subdivision application and building permits for the development will be processed accordingly once the requirements of the Project Development Use Permit have been satisfied.

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 have been made and conditions satisfied.

RECOMMENDATION:

It is recommended that an extension until **AUGUST 10, 2023** 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.

ESAKI SURVEYING & MAPPING, INC

1610 HALEUKANA STREET - LIHUE, KAUA'I, HAWAII 96766
(808) 246-0625 ESM@ESAKIMAP.COM

April 24th, 2023

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

RE: S-2021-7, 5425 PAU A LAKA, LLC
1st SUBDIVISION EXTENSION REQUEST
TMK (4) 2-8-14: 32
KŌLOA, KAUA'I, HAWAII

The subject subdivision was granted **TENTATIVE APPROVAL** by the Planning Commission at their meeting held on August 10th, 2021. Since then, the applicant has been diligently working on the conditions set forth in the Tentative Approval letter.

The following construction plans have been prepared, most of these plans have received final approval:

- Mass Grading Plans for Lot 1, Ka Ua Noe O Koloa
- Kiahuna Plantation Drive Roadway Improvement For Lot 2 & Water Meter Plan Servicing Lots 1, 3
- Construction Plans for Phase 1A and 1B, Lot 1 of Ka Ua Noe O Koloa
- Construction Plans for Phase 2, 3 and 4, Lot 1 of Ka Ua Noe O Koloa

Attached is the status on the conditions set forth by the Planning Commission.

The applicant requires more time to complete all the conditions. We respectfully request an extension in time of two years to file the Final Subdivision Map. Two years are being requested to allow for approval of all construction plans and to post a surety bond for completion and/or construct the improvements.

Thank you for your consideration,

Very truly yours,



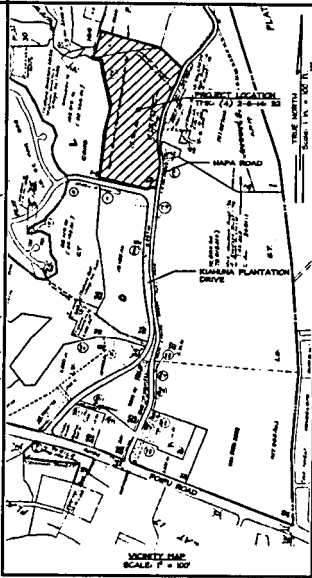
Dennis M. Esaki, Authorized Agent

S-2021-7 Status on Conditions
Kauanoë o Kōloa Subdivision
5425 Pau a Laka, LLC (formerly Yellow Hale, LLC)

#	Requirement	Status
	Requirements of Planning Department:	
1. a.	An updated preliminary title report for each existing lot shall be submitted to the Planning Department for review.	Acknowledged and will be complied with.
1. b.	All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.	Acknowledged and will be complied with.
1. c.	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.	Acknowledged and will be complied with.
1. d.	The street labeling for Pau A Laka Street needs to be amended to Pa'u A Laka Street.	Acknowledged and will be complied with.
1. e.	A Park Dedication Fee of Three Hundred Dollars (\$300.00) shall be paid to the County of Kaua'i.	Acknowledged and will be complied with.
1. f.	An Environmental Impact Assessment Fee of Two Hundred Fifty Dollars (\$250.00) shall be paid to the County of Kaua'i.	Acknowledged and will be complied with.
1. g.	The Subdivider shall comply with the requirements in Section 9-2.3(e) of the Kaua'i County Code (1987) relating to the provision of curbs, gutters and sidewalks along Roadway Lot 2. The extent of improvements shall be resolved with the Planning Department and Department of Public Works prior to final subdivision map approval.	Construction Plans for Roadway Lot 2 received approval in March 2023. Construction is expected to commence June 2023.
1. h.	The improvements within Roadway Lot 2 shall be constructed to the Department of Public Works standards for a "Minor Street" classification.	Acknowledged and will be complied with.
1. i.	Relative to Condition No. 1.j., the Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.	Acknowledged and will be complied with.
1. j.	Pursuant to Section 9-2.7(a) of the Subdivision Ordinance, all electrical services, street light wiring and other utility and communication services shall be installed underground within the proposed residential subdivision.	Acknowledged and will be complied with.
	The subject property was previously reviewed through Project Development Use Permit PDU-2006-25, Use Permit U-2006-26 and Class IV Zoning Permit Z-IV- 2006-27 that involves construction of a 280-unit multi-family residential project. Prior to final subdivision approval, the Applicant shall be subject to the applicable requirements of the foregoing permits. More particularly, the Applicant shall comply with Condition 2. that reads as follow:	Acknowledged and will be complied with. The project has received SHPD's determination of "No Historic Properties Affected" and has permitted

#	Requirement	Status
1. k. (a)	(a) The Applicant shall provide clearance from SHPD that data recovery is complete for any non-significant sites on the parcel prior to any grading or grubbing on the site.	the project initiation process to continue (March 1, 2022).
1. k. (b)	(b) Prior to building permit approval, the Applicant shall provide to the Planning Department evidence that the subject parcel is clear of habitats for the Kaua'i cave amphipod or cave spiders worthy of preservation.	Biological Certification submitted and accepted by the Planning Department on May 12, 2022.
2. a.	Requirements of the Department of Water (DOW): The subdivider shall comply with all requirements of the Department of Water, if any, prior to final subdivision approval.	Acknowledged and will be complied with.
3. a.	Requirements of the Department of Health (DOH): The property is located within the covered area for Po'ipu Water Reclamation Facility private sewer treatment plant. All lots and structures within new subdivision must connect to private sewer for Po'ipu Water Reclamation Facility.	Acknowledged and will be complied with.
3. b.	The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control", Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.	Acknowledged and will be complied with.
3. c.	Noise will be generated during the construction and grading phase of the project. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded, unless a noise permit is obtained from the State Department of Health (DOH).	Acknowledged and will be complied with.
3. d.	Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1, entitled "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the offsite roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.	Acknowledged and will be complied with.
3. e.	The construction waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1, "Solid Waste Management Control", the open burning of any of these wastes on or off site is prohibited.	Acknowledged and will be complied with.
4.	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.	Acknowledged and will be complied with.

#	Requirement	Status
5.	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).	Acknowledged and will be complied with.



1610 Holmdene Street
Lynn, Mass. 01902

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR

MICHAEL A. DAHLIG, MANAGING DIRECTOR

SUPPLEMENT #1 TO SUBDIVISION REPORT

RE: Subdivision Application No. S-2021-7

APPLICANT: 5425 Pa'u A Laka, LLC.

Preliminary Subdivision Extension Request

At the Subdivision Committee Meeting held on June 27, 2023, there were concerns raised regarding the timeliness of the subdivision extension request as it relates to Section 9-3.8(c)(1) of the Subdivision Ordinance, Kaua'i County Code (K.C.C.), 1987, as amended. The Planning Department has referred the subject matter to the Office of the County Attorney and the department is requesting to defer Planning Commission action for a preliminary subdivision extension request of the subject subdivision application until the Office of the County Attorney has opined on the matter.

By Kenneth A. Estes
Kenneth A. Estes, Planner

Date: 07.03.2023

F.I.A.2.
JUL 11 2023

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Attorneys for Petitioners FRIENDS OF MĀHĀ'ULEPU and SAVE KŌLOA

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Applications for	) Permit Nos. Z-IV-2006-27, U-2006-26, and
	) PDU-2006-25/ Subdivision No. S-2021-7
(1) Preliminary subdivision extension request for)
application no. S-2021-7, 5425 PA'U A LAKA,	) PETITIONERS FRIENDS OF
LLC for proposed 2-lot consolidation and resub-	) MĀHĀ'ULEPU AND SAVE KŌLOA'S
division into 4-lots; and, (2) Amendment to Class	) PETITION TO INTERVENE AND,
IV Zoning Permit (Z-IV-2006-27), Use Permit	) ALTERNATIVELY FOR DENIAL OF
(U-2006-26), and Project Development Use	) APPLICATIONS; DECLARATION OF
Permit (PDU-2006-25) for modification to Con-	) BRIDGET HAMMERQUIST;
dition No. 26 relating to drainage requirement	) DECLARATION OF ELIZABETH
for a development situated at the Pau A Laka	) OKINAKA; DECLARATION OF
Street/ Kiahuna Plantation Drive, 5425 Pau A	) LLEWELYN (BILLY) KAOHELAULI'I;
Laka Street, Tax Map Key: 2-8-014:032, and con-	) EXHIBITS "01" – "18"; CERTIFICATE OF
taining a total area of 27.886 acres	) SERVICE

PETITIONERS FRIENDS OF MĀHĀ'ULEPU AND SAVE KŌLOA'S PETITION TO
INTERVENE AND, ALTERNATIVELY FOR DENIAL OF APPLICATIONS

Petitioners FRIENDS OF MĀHĀ'ULEPU, a non-profit corporation and SAVE KŌLOA, an unincorporated association, (collectively, "Petitioners"), pursuant to Hawai'i Revised Statutes (HRS) chapter 91 and the Rules of Practice and Procedure of the Kauai County Planning Commission (Commission Rules) §§ 1-3-1 and 1-4-1 through 1-4-6, respectfully submit this petition to intervene, or alternatively for denial of applications referenced in the above-captioned matters initiated by: (1) Applicant 5425 PA'U A LAKA, LLC (Applicant) for Preliminary subdivision

F.1.a.3

F.2.a.2.

July 11, 2023

extension request for application no. S-2021-7, proposed 2-lot consolidation and resubdivision into 4-lots (“expired preliminary subdivision approval”); and, (2) an un-named Applicant¹ (Applicant) for Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) (collectively “zoning & use permits”) for modification to Condition No. 26 relating to drainage requirement, both of which concern 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 (“property” or “development”).²

I. BACKGROUND

A. The property harbors sensitive resources and is vulnerable to stormwater runoff.

Applicant seeks the Commission’s approval for an extension for its already-expired preliminary subdivision approval and to modify its zoning & use permits to relieve obligations to comply with the County’s Condition 26 requiring a drainage master plan for the property.

The property is currently marketed for development of 280 vacation-rental luxury condominiums, swimming pools and water features, parking, driveways, and other hardscape structures.³ The developer is Meridian Pacific, a California corporation. Applicant has already sought to slough off multiple obligations to protect natural and cultural resources and prevent undue impacts on Kaua‘i public infrastructure, Petitioners’ constitutionally protected rights, and Kōloa’s natural and cultural resources as discussed *infra*.

The property is adjacent to the historic, public Hapa trail, which was once the major route connecting Po‘ipū and Kōloa. Declaration of Elizabeth Okinaka (Okinaka Decl.) ¶8. Hapa trail is at a lower elevation to the property and would receive stormwater runoff from the property. *Id.* ¶9. The property serves as a sink for much of the area’s stormwater runoff, including through culverts on the northern edge of the property that allow water to flow from the adjacent golf course and Wainani development project. *Id.* The property is part of the historic Kōloa field system, a

¹ Kiahuna Poipu Golf Resort, LLC was listed on the initial September 15, 2006 zoning and use permit approval letter. Exh. 13. On December 14, 2022, Laurel Loo, partner at the McCorriston Miller Mukai McKinnon LLP, represented to this Commission that it represents MERIDIAN PACIFIC, LTD., which is the “parent company of MP ELKO II, LLC”, a Nevada limited liability company, “which owns and is developing the above-referenced parcel.” Hammerquist Decl. ¶34; Exh. 17.

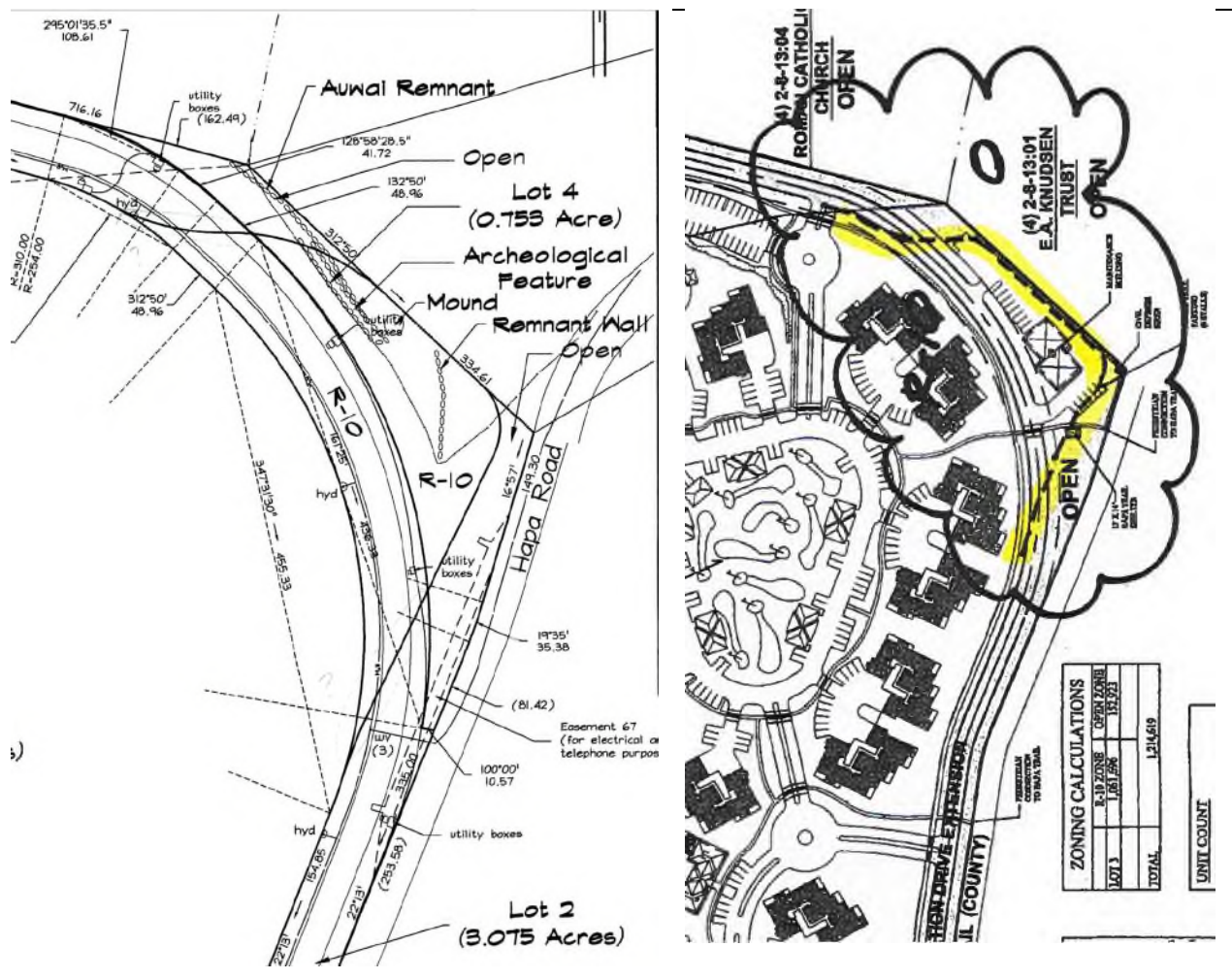
² Petitioners are submitting a Petition for Revocation of Permits for the development to the Planning Director concurrently with the instant petition to intervene pursuant to Commission Rules §§1-12-2, -3, & -5.

³ See Meridian Pacific, Kauanoe o Kōloa website (accessed June 26, 2023) *available at*: meridianpacificltd.com/properties/kauanoe/

traditional Hawaiian agricultural irrigation complex, with parallel and branching ‘auwai, lo‘i terraces, aqueducts, and other innovations. *Id.* ¶11. The property is also part of the Kiahuna complex of archaeological sites. *Id.* ¶12. The subsurface of the property is characterized by many voids, which can and likely do serve as habitat for the endangered Kaua‘i cave spider and Kaua‘i cave amphipod. *Id.* ¶13. It adjoins the singular Kōloa cave system, which is the only area in the world that these species are known to be found. *Id.* ¶14. Petitioners’ Kanaka Maoli supporters and their families have used these caves, including those on the property, for burials. *Id.* ¶15.

B. Expired preliminary subdivision would impact historic resources & intensify land uses.

Applicant YELLOW HALE, LLC (“Applicant”) applied for tentative subdivision approval on May 12, 2021. Declaration of Bridget Hammerquist (Hammerquist Decl.) ¶13; Exh. 01 (subdivision application).



Exh. 01 (Subdivision application at 3-4, excerpts) (above).

The subdivision application proposes subdividing the property into 4 lots (Lots 1, 2, 3, and

4), which will allow future projects to occur independent from the current proposed project which will occur within the newly created 23.406-acre Lot 1. As proposed, Lot 1 is bounded on the north and east by Kiahuna Plantation Drive, on the west by the Kiahuna Golf Course, and on the south by Pau o Laka Street. *Id.* ¶14. The subdivision application is silent on independent uses of Lots 2, 3, and 4. In its review of the project, however, the Planning Department described the subdivision as permitting Applicant to “adjust” Open and R-10 zoning to install proposed parking and a maintenance building within R-10 zoning. Exh. 01 at 2. The “adjustment” would thus allow installation of the proposed maintenance building and parking near or possibly overlapping with archaeological features, including an ‘auwai, a mound, and historic wall that would be within Lot 4. *See above.* Use of further project land for maintenance buildings and parking lots will intensify land uses on the property as well as nearby areas, including public trails, beaches, roads, and other areas utilized by tourists. Hammerquist Decl. ¶15.

C. Applicant’s repeated failures to comply with entitlement conditions.

On July 11, 1977, the State Land Use Commission (LUC) approved a district boundary amendment to remove 457.54 acres of lands in Poipu, Kaua‘i located at TMK (4) 2-8-014:005, 007, 008, por. 019,020, 021, 026 through 036; 2-8-15:077; 2-8-029:001 through 094, from the agricultural district into the urban district under the LUC’s Decision and Order in Docket A76-418. The LUC order applies to the property.

By order dated August 5, 1997, the LUC modified and added conditions on its district boundary amendment.⁴ Hammerquist Decl. ¶33; Exh. “14”. The LUC’s conditions include:

7. That Petitioner commission and complete a comprehensive archaeological and biological study with actual inventories of archaeological sites and flora and fauna on the subject property, and that the Petitioner preserve any archaeological sites which archaeologist conducting such archaeological study believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers, which the biologist conducting the biological study believes to be worthy of preservation. The Petitioner may commission such archaeological and biological study to any archaeologist and biologist or firm connected therewith who is qualified to conduct such a study to satisfy the foregoing condition. The Petitioner may apply to the County of Kauai for rezoning of the subject property before the completion of

⁴ See also “Order Granting Kiahuna Mauka Partners, LLC’s Motion to Amend or Modify Condition No. 9 of Decision and Order, as amended August 5, 1997; and Eric A. Knudsen Trust’s Motion to Modify Condition No. 9a of Decision and Order”, In the Matter of the Petition of Moana Corporation, Docket no. A76-418 (Mar. 25, 2004) *available at*: luc.hawaii.gov/wp-content/uploads/2014/03/A76-418_Moana-Corporation_DO-Grant-Kiahuna-Amend-Cond-9-Knudsen-9a_3-25-2004.pdf.

the archaeological and biological study, provided that no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed. Actual work on any portion of the subject property may be commenced by the Petitioner upon certification by the archaeologist and biologist that the area for which work is to commence does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation.
[. . . .]

11. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kaua'i of an updated master drainage plan covering the then remaining undeveloped portions of the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Sports Shinko Property, if rezoning is not required.

By letter dated September 15, 2006, the Kaua'i Planning Department (Planning Department) informed Kiahuna Poipu Golf Resort LLC that the Commission had approved the permits, which concern development on lands located at the property. The permits are subject to certain conditions including:

1. The Applicant is advised that the property is subject to the conditions of LUC Decision and Order A76-418 (D&O) and County of Kauai Ordinances No. PM-31-79, PM-148-87 and PM-334-97 ("the Ordinances"), which shall run with the land. All conditions of the Ordinances are enforceable against any party seeking to use the entitlement. The following conditions are deemed complete, ongoing or to be resolved with LUC, or not applicable to the subject property: LUC Docket A76-418 #1-6, 17, 19-22; PM-31-79, PM-148-87, and PM-334-97 #1 3, 4, 8, 15, 17, 19(c), 25.

[. . . .]

23. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or to revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval or if unforeseen problems are generated by the proposed use at the project site.

24. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

[. . . .]

26. Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneioulouma Heiau.

Hammerquist Decl. ¶12; Exhibit "13" (2006 Planning Director letter). Condition 26 specifically references Kaneioulouma heiau, which is part of the larger Kāhua o Kaneioulouma ("Kāneioulouma"), an important cultural site located in Po'ipū, Kōloa, Kaua'i and just mauka of Poipu beach.

Declaration of L. Billy Kaohelauii (Kaohelauii Decl.) ¶7. Kāneiolouma is a 13-acre complex, which contains hale sites, fishponds, taro fields, auwai irrigation systems, and a makahiki arena dating back to the mid-1400s. *Id.* Since 2012, Hui Mālama O Kāneiolouma, a local 501(c)(3) non-profit cultural organization, has held a formal stewardship agreement with the County of Kauaʻi. *Id.* Fishponds at Kāneiolouma are fed by underground freshwater flows from mauka areas, including from the subject property. *Id.* ¶8. These fishponds are contiguous with nearshore waters and contribute freshwater and nutrients to the coastal ecosystem. *Id.* Kānaka Maoli traditional practitioners gather freshwater from seeps springs at the ocean in the Poʻipū beach area. These freshwater seeps have been greatly reduced since blasting has occurred on the property. *Id.* ¶22.

Since at least December 14, 2020, Petitioners have observed developers clearing and excavating the property. Okinaka Decl. ¶23.

In April 2021, denuding vegetation and excavations with heavy machinery occurred on the property. Hammerquist Decl. ¶10. Denuding, rock-crushing, and excavating actions on the property occurred again in April 2022. *Id.* ¶11. Petitioners are concerned that such actual work on the property in periods prior to the May 7 and 8, 2022 “survey” by Applicant’s consultant, Montgomery, compromised the property’s fitness as habitat for listed cave species as discussed *infra*. *Id.* ¶11.

By letter dated October 27, 2021, the U.S. Fish and Wildlife Service (FWS) wrote to the Planning Department concerning listed species habitat on the property, specifically the peʻe peʻe makaʻole or Kauaʻi cave wolf spider (*Adelocosa anops*), ʻuku noho ana or Kauaʻi cave amphipod (*Spelaeorchestia koloana*), stating:

If a cave is found during construction, work will stop around the newly found cave immediately and contact the Service immediately for guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of the guidelines or actions developed during consultation with the Service.

Hammerquist Decl. ¶18; Exh. “15.”

On December 13, 2021, the Commission Subdivision Committee approved a tentative subdivision for the property.⁵ At the time, the Planning Department was not aware of certain conditions imposed on the property by the LUC Decision and Order and therefore failed to implement them in approving the tentative subdivision application. Hammerquist Decl. ¶¶16-17; Exhibit “02” & “03” (transcripts of County staff).

⁵ Kauaʻi Planning Commission Subdivision Committee Agenda (Dec. 13, 2021) *available at*: www.kauai.gov/files/assets/public/boards-and-commissions/documents/1st-addition-to-december-14-2021-subdivision-committee-agenda.pdf

On May 11, 2022, Save Kōloa and Friends of Māhā‘ulepu filed a lawsuit against the County and property Developers for failing to comply with LUC conditions and violating public trust obligations to protect natural and cultural resources. *E Ola Kākou v. County of Kaua‘i*, Civil No. 5CCV-22-0000036. Okinaka Decl. ¶5.

On or about May 12, 2022, the Planning Department received “Survey of Kauanoe o Kōloa Parcel for Cave Habitats of Native Spiders and Sandhoppers near Po‘ipū, Kaua‘i,” prepared by Steven Montgomery for Applicant MERIDIAN PACIFIC, LTD., also dated May 12, 2022 (“Montgomery report”). Okinaka Decl. ¶28; Exh. “11.” The Montgomery report stated in part:

... it is reassuring to note that during stages of construction a scientist will be monitoring for any moist, food containing voids that are inhabited by either of the 2 species, based on USFWS’ (2019) avoidance and minimization measures for the Kaua‘i cave wolf spider and Kaua‘i cave amphipod, and if a cave is found during construction, work around the cave stops immediately and USFWS and DLNR/ DOFAW are contacted for guidance to minimize and mitigate adverse effects.

Exh. 11 at 4.

On or about May 12, 2022, developers resumed work, including using explosives on the property. Petitioners’ worked with Dr. Erin Wallin, a geologist and faculty member with administration responsibilities for the Geophysicist Research Corporation University of Hawai‘i, who made a site visit to the caves and lava tubes on the adjacent parcels to the “property” and observed video of the property as it was subjected to detonations and observed cavern structures and voids collapsing in the subsurface. Hammerquist Decl. ¶19.

On June 1, 2022, Petitioners contacted State, County, and federal officials to alert them that cave structures and voids were being found on the property during Applicant’s blasting. Hammerquist Decl. ¶21; Exh. “16.” Despite guidance from FWS, blasting on the property continued. *Id.* ¶20.

In June 2022, hundreds of Kaua‘i community members gathered to protest the development and specifically blasting of the Kōloa caves at the property. Hammerquist Decl. ¶¶22-24; Exh. “04” & “05”.

Also in June 2022, Hui Mālama o Kāneiolouma officers, including Billy Kaohelaui‘i and Rupert Rowe, observed Kāneiolouma fishponds were unusually and persistently stagnant. Kaohelaui‘i Decl. ¶12. Fresh, clean water is needed for fishponds to be productive. *Id.* It is commonly known that these fishponds are fed by underground freshwater flows coming from mauka areas, including areas of the property. *Id.* Stagnating and polluted fishpond water impacts

nearshore water quality and ecosystems at Po'ipū beach, which fronts Kāneiolouma, and other coastal areas. *Id.* ¶13.

On August 2, 2022, Petitioners filed a petition to intervene against the Commission's final subdivision approval for the same property subject to the instant petition. Hammerquist Decl. ¶¶25-26; Exh. 06 (Petition to Intervene), 07 (Supplement to Petition to Intervene). That petition remains pending before this Commission.

On February 14, 2023, the Commission approved Applicant's motion to excuse compliance with Condition 10 of their permits relating to traffic impact mitigation.⁶

On February 2-3, and May 25, 2023, the Fifth Circuit Court held an evidentiary hearing in Civil No. 5CCV-22-0000036, concerning violations of LUC conditions and public trust obligations arising from development of the property. Hammerquist Decl. ¶27. As of May 25, 2023, the Planning Department has still made no determination that Applicant complied with LUC Condition 7. Hammerquist Decl. ¶32; Exh. 18 (Tr. 5/25/2023 at 100-101 (Sayegusa direct)).

On or about June 23, 2023, Petitioners were advised the Commission had noticed a public hearing⁷ on Applicant's application for an amendment to its permits to allow a modification to Condition No. 26. Hammerquist Decl. ¶¶28-29; Exh. 08 (public notice).⁸

At its June 27, 2023 meeting, the Commission subdivision committee met to consider a preliminary subdivision extension request for the property, but determined to defer the matter to July 11, 2023 for reasons including the existing preliminary subdivision approval had expired. Hammerquist Decl. ¶30.

On June 30, 2023, Petitioners timely filed the instant petition more than seven days prior to the July 11, 2023 agency hearing at which the Commission is scheduled to consider Applicant's requested modification of Condition 26 and extension of its expired preliminary subdivision approval.⁹

⁶ Commission Minutes, at 39 (Feb. 14, 2023) *available at*: www.kauai.gov/files/assets/public/boards-and-commissions/planning-commission/planning-commission-meeting-minutes/d.2.-2023-2-14-planning-commission-minutes.pdf

⁷ The Commission's public notice was published on its website available at: www.kauai.gov/files/assets/public/boards-and-commissions/planning-commission/planning-commission-public-hearing-notices/2023-7-11-public-hearing-notice-jahs.pdf

⁸ The "public notice" did not include any description of the proposed modification nor the identity of the applicant. Such notice is defective as notice of a contested case under HRS §91-9(a).

⁹ Commission Rule § 1-4-3 provides:

II. Petitioners' rights and interests affected by the Commission's decision

A. Petitioners constitutional rights to a clean and healthful environment and to protection of their Kānaka Maoli traditional and customary rights.

Petitioners and their officers, directors, and supporters (collectively, “Petitioners”) have constitutionally protected property rights under article XI, §§1 and 9 of the Hawai‘i constitution as beneficiaries of public trust and their rights to a clean and healthful environment as defined by land use laws implemented under authority of HRS chapter 205 and other laws defining environmental quality. Petitioners also include Kānaka Maoli traditional and cultural practitioners, whose rights are protected under article XII, §7 of the Hawai‘i Constitution.

Article XI, § 1 of the Hawai‘i Constitution provides:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

Id. Article XI, §9 of the Hawai‘i Constitution provides:

Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources.

Id.; see also *Cty. of Haw. v. Ala Loop Homeowners*, 123 Hawai‘i 391, 409, 417, 235 P.3d 1103, 1121, 1127 (2010) (recognizing a substantive right to a clean and healthful environment). Article XI, § 9 is self-executing, and it “establishes the right to a clean and healthful environment, ‘as defined by laws relating to environmental quality.’” *In re Maui Elec. Co., Ltd.*, 408 P.3d 1, 13 (2017). HRS chapter 205 is one of several pertinent laws relating to environmental quality implemented by both the LUC and the County.

Petitioner SAVE KŌLOA, an unincorporated association, is based on Kaua‘i and composed of Kaua‘i residents who value and have interests in the preservation of natural and cultural resources

Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

on the South Shore of Kauaʻi, including the preservation of endangered and threatened species. Okinaka Decl. ¶16. Save Kōloa founders and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property and are lineal descendants of iwi kupuna located on the property. *Id.* ¶17. Save Kōloa members utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species. *Id.* ¶18.

Petitioners' exercises of Kānaka Maoli traditional and customary rights include utilizing Hapa trail, which is adjacent to the property, to access the beach for gathering, fishing, swimming and other nearshore practice. Kaohelauiʻi Decl. ¶¶15-16. These rights are also exercised through visiting, memorializing, and caring for historic properties, including the three burial mounds that exist on the property, as well as heiau that were not documented in the June 2021 Cultural Surveys Hawaiʻi literature review.¹⁰ Okinaka Decl. ¶19. The property is known as a site of spring water, caves, and endangered native species - the peʻapeʻa makaʻole or Kauaʻi cave spider - that is revered as an ancient kupuna. Kaohelauiʻi Decl. ¶¶17.

Petitioner FRIENDS OF MĀHĀʻULEPŪ, a nonprofit corporation, is based on Kauaʻi and is comprised of Kauaʻi citizens who are entitled to a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kauaʻi. Hammerquist Decl. ¶4. Friends of Māhāʻulepū officers, directors, and supporters are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property. *Id.*

Friends of Māhāʻulepū officers and directors include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species, including but not limited to endangered sea birds, the Newell Shearwater and uaʻu and ʻakēʻakē. Petitioners have also photographed a threatened species, nēnē, on the subject TMK. Hammerquist Decl. ¶5.

Petitioners' missions include supporting and protecting historic and culturally significant sites, including Kāneiolouma. Hammerquist Decl. ¶6. Petitioners' supporters overlap with those of Hui o Kāneiolouma, including its founding member, Billy Kaohelauiʻi. Kaohelauiʻi Decl. ¶6. Kānaka Maoli supporters include those whose practices include protecting aumakua, revering ancient native species, and protecting iwi kūpuna on the property. *Id.* ¶¶17-20. Kānaka Maoli officers

¹⁰ See Draft Archaeological Literature Review of the Proposed Kauanoē o Kōloa Project, Kōloa Ahupuaʻa, Kōloa District, Kauaʻi TMK: (4) 2-8-014:032 Lot 1, prepared for Meridian Pacific, Ltd. by W. Folk, N. Kamai, and H. Hammatt, Cultural Surveys Hawaiʻi, Inc. (Jun. 2021).

and supporters include fishers and other nearshore gatherers, surfers, and other ocean-going activities whose cultural practices could be adversely impacted by improper drainage precautions and other uses of the property. *Id.* ¶¶11, 15, 18. Further blasting on the property, including to create detention or retention basins, may further impair underground hydrogeological flows to Kāneiolouma. *Id.* ¶14.

Petitioners hold interests clearly distinguishable from the general public because their rights will be directly and immediately affected by the proposed drainage modification and extension of the preliminary subdivision approval. *See* Commission Rule §1-4-1.

B. Petitioners constitutional rights as nearby and adjacent property owners

Petitioners have constitutional rights affected by the Commission’s decisionmaking and hold interests clearly distinguishable from the general public consequent to their ownership of and residence within adjacent property under article I, § 5 of the Hawai’i Constitution and the U.S. Constitution, amendments V and XIV. Friends of Māhā‘ulepū members and supporters also include those residing in the adjacent developments of Wainani, Pili Mai, Kiahuna Golf Village and Po‘ipu Estates, who are similarly concerned about the intensification of land uses and destruction of natural and cultural resources due to Applicant’s actions, which also includes the intensification of traffic on Kiahuna Plantation Drive, the single road access and exit source for the near 1,100 residential units that are already occupied that rely on this sole entry and exit road. Amongst these residents are Patricia Biehn, a resident of Pili Mai, Derrick Pellen who lives in Wainani subdivision, adjacent to the parcel, TMK (4) 2-8-30:023 and Jerry McGrath, a former resident who sold and moved out of his home at 2717 Milo Hae Loop, Kōloa, Hawai’i 96756, TMK (4) 2-8-029:089 because of the persistent blasting and fugitive dust that plagued his property for more than 8 months. Hammerquist Decl. ¶7; *see* Commission Rule §1-4-4(2).

Petitioners’ members and supporters include residents of the adjacent Wainani and Kiahuna golf village developments, whose peaceable enjoyment of their residences will be substantially disturbed by the intensification of land uses consequent to approval of Applicant’s subdivision application. Settled Hawai’i case law recognizes nearby and adjacent landowners hold a “concrete interest” in proceedings on proposed developments so as to satisfy standing requirements, including requirements for mandatory intervenor status. *See County of Hawai’i v. Ala Loop Homeowners*, 123 Hawai’i 391, 419-20, 235 P.3d 1103, 1131 (2010) (recognizing adjoining landownership as a form of standing, but not a private right of action); *Mabuiki v. Planning Comm’n*, 65 Haw. 506, 654 P.2d 874 (1982) (decision to permit development nearby land in the special management area could have an adverse impact on

an adjacent landowner); *Town v. Land Use Comm'n*, 55 Haw. 538, 524 P.2d 84 (1974) (adjacent and nearby property owners had a property interest in changing the land use entitlements and adjacent and nearby landowners have legal rights as a specific and interested party in a contested case proceeding to change land use designations or entitlements); *East Diamond Head Ass'n v. Zoning Bd. Appeals*, 52 Haw. 518, 479 P.2d 796 (1971) (adjoining property owner has standing to protect property from “threatening neighborhood change”); *Dalton v. City & County of Honolulu*, 51 Haw. 400, 462 P.2d 199 (1969) (property owners across the street from a proposed project have a concrete interest in scenic views, sense of space and density of population).

III. Issues sought to be raised to the Commission.

Petitioners seek to raise the following issues through intervention in the Commission’s decision-making on modification of Condition 26, which is related to the property developers’ failures to also comply with LUC conditions for protection of cave habitat for listed species, and Applicant’s request for an “extension” of its already expired preliminary subdivision approval.

A. Improper drainage would impact adjacent and nearby public trust resources.

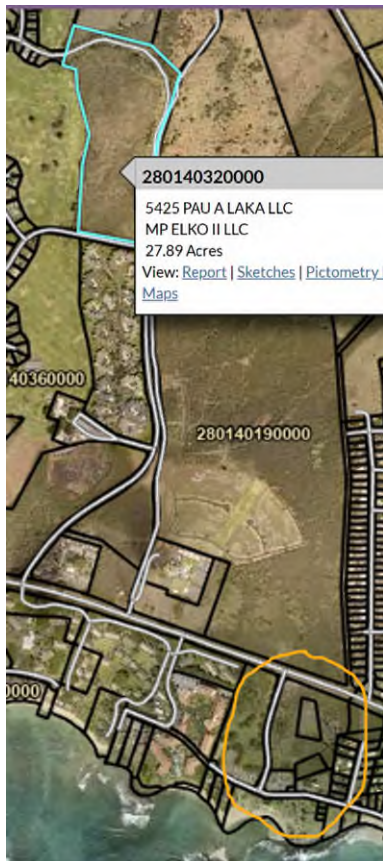
Development proposed for the property includes construction of copious hardscaped structures and vacation rental uses, inclusive of swimming pools, driveways, and parking spaces. The property is already a “sink” for much of the runoff in adjoining areas. *See supra* Part I. Stormwater runoff from these hardscaped areas can cause flooding on nearby and adjacent areas, including Hapa trail. Runoff can also carry pollutants from car tires, swimming pool chlorine and other chemical treatments, pesticides from landscaped areas, and other pollution incident to urbanized areas. Attempting to corral runoff into detention basins on the property by excavating sensitive subsurface areas may further impact culturally significant underground freshwater flows that feed Kāneiolouma and nearby coastal areas. All water resources are public trust resources.

Improper drainage will impact public trust lands. Hapa trail is part of the (un)ceded lands corpus as it became part of the government lands owned by the Hawaiian Kingdom by operation of the Highways Act of 1892. This Act has been codified under HRS §264-1, which provides:

All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-way by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights of way at any time hereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the State Board of Land and Natural Resources - unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county. All State trails once established shall continue until lawfully disposed of pursuant to Chapter 171, HRS.

Id. Petitioners hold interests, as Kānaka Maoli beneficiaries of the public trust lands corpus, in the condition of Hapa trail.

1. *Improper drainage will impact Kāneiolouma and nearshore resources.*



Property runoff would not only affect adjacent areas, but would travel through underground pathways towards Kāneiolouma and other coastal environs. Petitioners have sought public documents relating to the property and project and found no drainage master plan incorporating impacts to Kāneiolouma. Condition 26 specifically requires a drainage master plan that incorporates impacts to Kāneiolouma, which lies less than 5,000 feet away from the property. Kaohelaui'i Decl. ¶7. This is because there are underground passageways through which freshwater passes under the property towards the ocean, including to Kāneiolouma. *Id.* ¶10. Developers' geotechnical consultants produced a report showing the property is riddled with myriad mesocaverns and interstitial voids "commonly encountered in the basalt formation that characterizes the project site." Exh. 10 (Geolabs report at 8). These cave structures can provide habitat for listed species and also indicate the porous nature of the substrate underlying the property.

(Above image): County of Kaua'i Real Property map of TMK (4) 2-8-014:032, property is outlined in blue and the Kāneiolouma area is circled in orange.

Beginning in June 2022, and in the weeks after developers detonated explosives to grade the property, Kāneiolouma caretakers observed a marked decrease in freshwater flows to Kāneiolouma. Kaohelaui'i Decl. ¶12. Mauka freshwater flows are important to the functioning of fishponds along the coast, including at Kāneiolouma. *Id.* Though blasting on the property disrupted the groundwater flows, they continue to Kāneiolouma (and then to the coast). *Id.* ¶14. The underground pathway from the property to Kāneiolouma could bring pollutants and runoff into Kāneiolouma fishponds, compromising our ability to restore them for production, and degrade nearshore areas that we use for gathering and other cultural practices. *Id.* ¶13.

The proposed modification of Condition 26 could result in Applicant's failure to prepare a drainage master plan that adequately examines stormwater flow volume, dynamics, storage, pollutant treatment and/or sequestration on the parcel, and other factors that would impact Hapa trail, the

nearshore areas, and Kāneiolouma. A Commission determination to relieve Applicant of its obligations to plan for drainage impacts would violate Petitioners' rights and harm their interests.

2. *No analysis of impacts to Kānaka Maoli traditional and customary rights from the proposed action.*

The Commission has not prepared, nor required Applicant to prepare, an analysis of how the proposed modification of Condition 26 would impact the exercise of Kānaka Maoli traditional and customary rights. Should the Commission approve Applicant's request, this omission would constitute a violation of article XII, §7 of the Hawai'i Constitution. *Ka Pa'akai o Ka 'Āina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000) provided an analytical framework "to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests[.]" *Id.*, 91 Hawai'i at 46-47, 7 P.3d at 1083-84. Under *Ka Pa'akai*, the Commission must make specific findings and conclusions as to:

(1) the identity and scope of "valued cultural, historical, or natural resources in the [application] area, including the extent to which traditional and customary native Hawaiian rights are exercised in the [application] area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [agency] to reasonably protect native Hawaiian rights if they are found to exist.

Id., 91 Hawai'i at 47, 7 P.3d at 1084 (emphasis added, footnotes omitted). No *Ka Pa'akai* analysis had been performed for the proposed modification of Condition 26 or by issuing a new preliminary subdivision approval.

3. *The Commission cannot unilaterally relieve Applicant of obligations required by the LUC.*

Condition 26 is imposed by the County, but is also connected to the LUC's prior condition:

11. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated master drainage plan covering the then remaining undeveloped portions of the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Sports Shinko Property, if rezoning is not required.

The LUC anticipated that once the County exercised its discretion to require a drainage master plan, that such an updated master plan could be imposed as a requirement prior to approval of the County's final subdivision approval or any building permit. The Commission should not relieve Applicant of its obligations to prepare a drainage master plan.

4. *Extending the expired subdivision approval will further erase historic sites.*

Erasure of historic and culturally significant sites from the land, and replacement of them with parking lots and buildings, will deter and prevent the exercise of Kānaka Maoli traditional and customary practices on and near the property, and impoverish the cultural value of the adjacent Hapa trail. Kaohelaui'i Decl. ¶15. This trail is one used by Kānaka Maoli ancestors to connect Po'ipū and Kōloa. Walking on these traditional paths is an important cultural practice and is a way of maintaining the identity of these lands. *Id.* ¶¶16.

The installation of structures and parking lots in areas zoned as open space will also detract from the aesthetic, recreational, and environmental experience of the Kaua'i community that uses Hapa trail. Okinaka Decl. ¶20.

B. Neither the Commission, nor its Director, can delegate obligations to determine compliance with Condition 26 of the zoning permits.

Though not disclosed in the County's public notice, Petitioners' believe Applicant MERIDIAN PACIFIC, LTD. is requesting the County Department of Public Works' (DPW) Engineering division become the final decisionmaker in determining whether Condition 26 of its zoning amendment approval is met. Because Petitioners are not informed of Applicant's specific request, the following is raised preliminarily and Petitioners' reserve the ability to revise their positions.

1. *No ordinance authorizes DPW to determine zoning and use compliance.*

DPW is an agency. "An agency is a creature of the legislature, and the scope of its authority is specifically delineated by statute." *Mauna Kea Anaina Hou v. Bd. of Land & Natural Res.*, 136 Hawai'i 376, 413 n.14, 363 P.3d 224, 261 n.14 (2015) *quoting Marquette Cement Mfg. Co. v. FTC*, 147 F.2d 589, 592–93 (7th Cir. 1945). DPW does not have the authority to determine compliance with zoning and subdivision ordinances. Under the Kaua'i County Charter ("County Charter"), the DPW is headed by a "county engineer" who is:

responsible for the administration of the department of public works and shall:

- A. Perform all engineering, designing, planning, and construction of all public facilities and improvements undertaken by the county.
- B. Maintain, repair, and upkeep all county facilities and improvements.
- C. Collect and dispose of garbage and refuse.
- D. Examine and enforce the construction requirements and standards of all public and private construction and improvements in accordance with the building code, subdivision code, or such other regulations as may be in effect in the county.
- E. Design, install, inspect, maintain, and repair all traffic signs, traffic control facilities and devices, and street lighting systems.
- F. Perform such other duties as may be assigned by the mayor or prescribed by law.

County Charter §13.03. By contrast the Planning Director's is, amongst other things, to:

B. Be charged with the administration of the zoning and subdivision ordinance and the regulations adopted thereunder.

County Charter §14.05.

“[A]n agency cannot delegate to another agency powers that Congress did not give that second agency.” *United States v. Bryant*, 996 F.3d 1243, 1272 (11th Cir. 2021) (Martin, J. dissenting) *citing Bayou Lawn & Landscape Servs. v. Sec'y of Labor*, 713 F.3d 1080, 1084–85 (11th Cir. 2013) (“Even if it were not axiomatic that an agency's power to promulgate legislative regulations is limited to the authority delegate[d] to it by Congress, we would be hard-pressed to locate that power in one agency where it had been specifically and expressly delegated by Congress to a different agency.”). No ordinance or other authority permits the Planning Director or this Commission to delegate determinations concerning compliance with zoning and subdivision permit conditions, particularly because these conditions impact public trust resources.

2. *Commission has public trustee obligations to ensure compliance with Condition 26.*

Improper drainage master planning for the property could result in: (1) stormwater runoff and pollution flowing into adjacent areas, Kāneiolouma, and Po'ipū beach, amongst other plan; and, (2) further destruction of underground water passageways in the course of constructing detention basins. Determining compliance of any drainage master plan for the property is not a mere technical exercise in checking figures according to the rational method. It means weighing of impacts to irreplaceable public resources – and protected rights in those resources - and the costs of preventing stormwater runoff pollution. *See In the Matter of Conservation District Use Application HA-3568*, 143 Hawai'i 379, 387, 431 P.3d 752, 760 (2018) (*Mauna Kea II*) (An “agency must perform its functions in a manner that fulfills the State's affirmative obligations under the Hawai'i constitution.”).

Protected public trust resources is a constitutional obligation. *See e.g., Kelly v. 1250 Oceanside Partners*, 111 Hawai'i 205, 227, 140 P.3d 985, 1007 (2006) (county's public trustee obligations at issue where property's stormwater runoff likely contributed ocean pollution); *In re Maui Elec. Co.*, 150 Hawai'i 528, 546, 506 P.3d 192, 209 (2022) (Wilson, J. dissenting) (“in addition to statutory duties to consider harms outside of its usual expertise—to wit impacts to native vegetation and water runoff—the public trust doctrine requires consideration of harm to public trust resources”) *citing Kaua'i Springs, Inc. v. Plan. Comm'n of Kaua'i*, 133 Hawai'i 141, 172, 324 P.3d 951, 982 (2014).

“[P]ursuant to article VIII, section 1 of the Hawai'i Constitution, the County is a political subdivision of the State” and “as a political subdivision of the State of Hawai'i, the public trust

duties imposed on the [S]tate under [a]rticle XI, section 1, also apply to the County.” *Kelly*, 111 Hawai‘i at 224, 140 P.3d at 1004. The Commission is a public trustee. *See Kauai Springs*, 133 Hawai‘i at 172, 324 P.3d at 982. The Commission “must execute its statutory duties in a manner that fulfills the State's affirmative constitutional obligations.” *Mauna Kea Anaina I*, 136 Hawai‘i at 413, 363 P.3d at 261.

The affirmative determination as to whether sufficiently protects public trust resources, and the rights of Petitioners therein, is a constitutional obligation that is more wide-ranging than a technical review of runoff storage volumes. The Commission is a public trustee and is best situated to make determinations about the acceptability of any drainage master plan, particularly as it will impact public trust resources.

C. Applicant’s expired preliminary subdivision approval must be denied.

1. *“Extending” Applicant’s preliminary subdivision is contrary to Ordinance.*

The Planning Commission approved a preliminary subdivision map for the project on August 10, 2021. “Following approval of the preliminary subdivision map by the Planning Commission, the subdivider shall prepare and submit to the Planning Department six (6) copies of grading plans, construction plans and specifications showing details and road construction, drainage structures, sewers, water mains, and all other utilities proposed to be constructed in the subdivision.” Kaua‘i County Code (KCC) §9-3.5(a). “The approved construction plans shall be in effect for only one (1) year unless construction is started. If construction is not started within this one (1) year period, the construction plans shall be resubmitted for review and approval by all agencies. *Id.*§(e).

“Construction” is not defined in this section of the Code. The plain ordinary meaning of “construction” is “1. the act or process of building, or of devising and forming; fabrication, erection; or . . . 6. something constructed; structure; building[.]” Webster’s Unabridged Dictionary 392 (2d ed. 1983) *quoted by Brandt v. Hallwood Management Co.*, 560 N.W.2d 396, 400 (Minn. App. 1997). Nothing has been built, fabricated, or erected on the property as of this writing. Hammerquist Decl. ¶36.

More than one year past its date of tentative subdivision approval, Applicant cannot obtain an “extension” of the approval. Instead, Applicant must begin again and resubmit its preliminary subdivision maps for review and approval by all agencies. KCC §9-3.5(e).

2. *Applicant forfeited their ability to utilize the parcel by failing to comply with LUC Condition 7.*

Applicant is utilizing the property is subject to LUC Condition 7, which provides in relevant part: “Actual work on any portion of the subject property may be commenced by Petitioner upon

certification by the archaeologist and biologist that the area for which work is to commenced does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation.” Emphasis added. Since at least December 14, 2020, Petitioners have observed developers clearing and excavating the property. Okinaka Decl. ¶23. This constitutes “actual work” and, specific to Condition 7, compromises the ability of endangered native Kaua‘i cave spiders and cave amphipods to inhabit the underlying substrate. *Id.*; Exh. “03” (Hull deposition at 74).

As has been set forth in U.S. Fish and Wildlife guidance and that of Applicant’s own consultants, recognize these endangered cave-dwelling species live in underground voids, that have moisture, and in areas where soils are shallow and not more than a foot deep. Okinaka Decl. ¶24; Exh. 09 (FWS letter). In such areas, vegetation should be maintained and not cleared. *Id.* ¶26. These conditions exist on the property, as evidenced by the developers’ own geotechnical report. *Id.* ¶27; Exh. 10 (Geotechnical report).

On May 12, 2022, Developer MERIDIAN PACIFIC, LTD. submitted a report purporting to be the required certification from a “qualified biologist” that did not include the “complete . . . biological study with actual inventories of archaeological sites and flora and fauna on the subject property,” required by LUC Condition 7. Okinaka Decl. ¶28; Exh. 11 (Montgomery report). The report incorrectly represented findings from the geotechnical report, including that the property’s subsurface lacked groundwater and voids. These native, endangered species potentially inhabit the property and the biological studies to determine their presence were not done prior to extensive groundbreaking activity as specifically required by LUC Condition 7.

Dr. Adam Asquith, an entomologist who has studied the Kōloa cave system, examined the area, LUC Condition 7, and other relevant literature. Dr. Asquith concluded and report purporting to comply with LUC Condition 7 must include the following:

- a. No grading, grubbing or any ground disturbing activities should be allowed until an appropriate survey, specific for these species and their habitat, can be conducted and reviewed by FWS.
- b. The habitat must be identified by carefully hand cutting all the vegetation so that surface geology can be seen and mapped. If parts of the area have already been disturbed, then additional techniques such as coring or ground penetrating radar should be employed to identify the habitat and avoid disturbance.

Okinaka Decl. ¶30; Exh. 12 (Asquith declaration). Geologist Dr. Erin Wallin concurred, noting ground penetrating radar is commonly used to detect voids in roads, runways, etc. Other techniques

can also identify voids including electrical resistivity tomography and induced polarization that would be easier to use on rough terrain.

Applicant's violation of Condition 7, and commencing actual work on the property well in advance of any, even purported "certification" requires restorative measures as well as further studies. Applicant has likely compromised habitat needed for endangered native species that are irreplaceable resources and kupuna and aumakua for Kānaka Maoli traditional and customary practitioners. Kaohelaulii Decl. ¶17.

3. *Commission, and its Planning Director, must take a "close look" at whether Applicant's submissions satisfied LUC Condition 7.*

LUC Condition 7 required:

7. That Petitioner commission and complete a comprehensive archaeological and biological study with actual inventories of archaeological sites and flora and fauna on the subject property, and that the Petitioner preserve any archaeological sites which archaeologist conducting such archaeological study believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers, which the biologist conducting the biological study believes to be worthy of preservation. The Petitioner may commission such archaeological and biological study to any archaeologist and biologist or firm connected therewith who is qualified to conduct such a study to satisfy the foregoing condition. The Petitioner may apply to the County of Kauai for rezoning of the subject property before the completion of the archaeological and biological study, provided that no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed. Actual work on any portion of the subject property may be commenced by the Petitioner upon certification by the archaeologist and biologist that the area for which work is to commence does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation.

Exh. 14. Hawai'i's indigenous, listed, and endangered species and waters are public trust resources subject to article XI, §1 of the Hawai'i constitution. The endangered Kaua'i cave spider and Kaua'i cave amphipod, which may exist in caverns and mesocaverns on the subject parcel, are public trust resources. Artesian well water and other ground water found on the property, Kāneioulouma, as well as Po'ipū beach coastal waters, are public trust resources. *See In re Waiola O Moloka'i, Inc.*, 103 Hawai'i 401, 83 P.3d 664 (2004). California courts have explicitly held: "Wildlife, including birds, is considered to be a public trust resource of all the people of the state, and private parties have the right to bring an action to enforce the public trust." *Center for Biological Diversity, Inc. v. Fpl Group, Inc.*, 83 Cal. Rptr. 3d 588 (Cal. App. 2008). "Congress intended endangered species to be afforded the highest of priorities." *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 174 (1978).

Public trust duties did not end with the LUC, but were continued into the County's obligations. Public trust "constitutional obligations are ongoing, regardless of the nature of the proceeding." *In re Gas Co.*, 147 Hawai'i 186, 207, 465 P.3d 633, 654 (2020); *Ching v. Case*, 145 Hawai'i 148, 177–78, 449 P.3d 1146, 1175–76 (2019); *see also Lana'ians for Sensible Growth v. Land Use Comm'n*, 146 Hawai'i 496, 504–05, 463 P.3d 1153, 1162–62 (2020) (agencies have a continuing constitutional obligation to ensure measures it imposes to protect public trust resources are implemented and complied with).

The Commission has a continuing duty to monitor the subject parcel and public trust resources therein throughout its proceedings on Developers' applications for a special use permit, zoning permit, tentative subdivision approval, grading permit, final subdivision approval, and to enforce conditions imposed on these permits. *See Kelly v. 1250 Oceanside Partners*, 111 Hawai'i 205, 231, 140 P.3d 985, 1011 (2006) (article XI, § 1 public trust duty to protect coastal waters required it to "not only issue permits after prescribed measures appear to be in compliance with state regulation, but also to ensure that the prescribed measures are actually being implemented.").

The Commission and the Planning Director's decisions concerning public trust resources are scrutinized under a "close look" standard by the Courts. *Kauai Springs*, 133 Hawai'i at 165, 324 P.3d at 975 ("In light of the duty imposed on the state under the public trust doctrine, we have stated we must take a "close look" at agency decisions that involve the public trust.") *citing In re Water Use Permit Applications*, 105 Hawai'i 1, 16, 93 P.3d 643, 658 (2004) ("*Waiahole II*").

The Commission and its staff, including the Planning Director, "must not relegate itself to the role of a 'mere umpire' . . . but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process." *Mauna Kea I*, 136 Hawai'i at 406, 363 P.3d at 254 *quoting Kelly*, 111 Hawai'i at 231, 140 P.3d at 1011 *quoting Waiahole I*, 94 Hawai'i at 143, 9 P.3d at 456. The Planning Director's " cursory review" of the Montgomery report and failure "to read it in depth" does not suffice. Exh. 03 at 100:13-14 (Hull deposition transcript).

Neither the Commission, nor the Planning Director, are not permitted to delegate determination of compliance with HRS chapter 205, including whether Condition No. 7 is met, to Developers' consultants. *Hui Alaloa v. Planning Com'n of Maui County*, 68 Haw. 135, 137, 705 P.2d 1042, 1044 (1985) (planning commission unlawfully delegated its duty to make findings to developer's archaeologist under conditions on a permit). They cannot "assume" that a pile of papers submitted by Applicant referencing flora and faunal meet Condition 7. Exh. "03" (Hull deposition at

87-88). Nor could they have relied on the inconsistent Montgomery report, which was anyway submitted after “actual work” occurred on the property as compliance with Condition 7. *Id.* at 74.

IV. No grounds exist to deny this Petition and the Petition should be granted

A. No other relief is available for impacts to Petitioners’ rights and interests

Petitioners have attempted to seek relief through public testimony to this Commission, writing letters and seeking audiences with various agencies and the Office of the Mayor, by attempting to talk to Applicant’s consultants, and by litigating to the Circuit Court of the Fifth Circuit in Civil No. 5CCV-22-0000036. Hammerquist Decl. ¶8. None of those proceedings squarely address the drainage master plan requirements or the impacts of the preliminary subdivision approval for the project, nor have been successful in preventing, fully disclosing, or mitigating impacts from Applicant’s development.

B. Petitioners share no position with existing parties to the proceedings.

Petitioners share no position with existing parties - the Applicant or the Planning Department. The former is a proponent of “extending” its preliminary subdivision approval and Condition 26. Although the Planning Department is duty bound to protect public trust resources and native Hawaiian traditional and customary rights, their representation of these protected resources and rights are inadequate and do not substitute for that of Petitioners. *See Hoopai v. Civil Service Comm’n*, 106 Hawai’i 205, 217, 103 P.3d 365, 377 (2004) (“[Proposed intervenors] need only show that the Commission’s representation of [its] interests may have been inadequate”). A “lack of adequate representation” also exists where a prospective intervenor would make a “more vigorous presentation” of a side of an argument than the government defendant because the regulation – the validity of which is being challenged – would benefit members of the prospective intervenor group. *New York Public Interest Res. Grp. v. Regents of Univ. of New York*, 516 F.2d 350, 352 (2d. Cir. 1975). Petitioners have more on-the-ground information and would make a more vigorous presentation of their rights, interests, and positions than any existing party. As lineal descendants, Kānaka Maoli traditional and customary practitioners, and Kaua’i residents who live and utilize the affected areas, Petitioners hold different interests from existing parties.

C. Intervention will not unduly delay or broaden proceedings.

Inclusion of the Petitioners would not unduly delay proceedings. The standard is not one under which any potential delay weighs against granting intervention. “Additional parties always take additional time which may result in delay, but this does not mean that intervention should be denied.”

7C Wright, Miller & Kane. *Federal Prac. & Procedure*, Civil 2d. 1913 at 381-82 (2d ed. 1986). Rather, judicial bodies may consider intervention improper only where it “will ‘unduly delay’ the adjudication.” *Id.*; see also *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 265 F.2d 364, 367 N.1 (D.C. Cir. 1959) (“Efficient and expeditious hearing should be achieved not by excluding parties who have a right to participate, but by controlling the proceedings so that all participants are required to adhere to the issues and to refrain from introducing cumulative or irrelevant evidence”). The Petitioners’ interests are all pertinent to this proceeding and their intervention would not inject collateral, new issues, wholly unrelated to the underlying matter. See *Blackfeld Hawaii Corp. v. Travelodge Int’l, Inc.*, 3 Haw. App. 61, 641 P.2d 981 (1983); *Taylor Comm. Grp v. Southwestern Bell Tel. Co.*, 172 F.3d 385, 389 (5th Cir. 1999); *United States v. S. Florida Water Management Dist.*, 922 F. 2d 704, 711-712 (11th Cir. 1991).

Additionally, the Petitioners are organizations represented by directors and this arrangement would serve to increase the efficiency and timeliness of the Petitioners’ intervention so as not to unduly delay proceedings.

D. Intervention is needed to develop a full record for the Commission.

Petitioners have invaluable information and perspectives on the proposal to relieve Applicant of full compliance with Condition 26. The Commission has yet to consider *Ka Pa‘akai* analyses for the proposed actions, which require that the Commission become informed on Kānaka Maoli traditional and customary practices that would be affected by the Commission’s actions. *Id.*, 91 Hawai‘i at 47, 7 P.3d at 1084 (footnotes omitted). Issues Petitioners raise drainage planning also impact Kānaka Maoli traditional and customary practices in the area. For instance, Petitioners’ member and supporter, Kaohelauii conducts traditional fishing practices near the project area and would be thwarted in his abilities’ to conduct these practices by vehicular traffic and parking issues caused by the new development, subdivision, and faulty drainage plans. Kaohelauii Decl.¶18.

For many of the same reasons, Petitioners’ intervention would assist in, development of a complete record for the Commission to make its required determinations about Hawaiian cultural practices, the subdivision’s impacts, and feasible protections for these practices, amongst other issues that would improve the quality of life in Kōloa.

E. Petitioners’ intervention would serve the public interest

The Applicant is proposing to reduce or modify drainage master plan requirements for a 279-unit condominium primarily composed of short term vacation rentals and over lands that hold

ancient kupuna iwi, burial caves, heiau, and listed and native species that are part of the cultural heritage of Petitioners and all of Kauaʻi. The management and proper disposal and reuse of stormwater runoff is in the public interest. Conversely improper drainage management may infringe on Kānaka Maoli traditional and customary rights, the rights to a clean and healthful environment defined by HRS chapter 205 and other laws defining environmental quality, and the rights of adjacent and nearby property owners who are officers and supporters of Petitioners' groups.

In addition, Petitioners' have an interest in upholding the integrity of environmental laws, which benefits the public at large. Petitioners' intervention will also serve to ensure that public facilities are not burdened by Applicants' proposed modification, by, at minimum, providing testimony and evidence concerning Condition 26 and the proposed preliminary subdivision extension. Petitioners therefore will provide a much needed community voice in the proceedings.

V. CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Commission grant their petition for intervention in the above-captioned proceedings, or alternatively to deny the challenged permit approvals.

DATED: Honolulu, Hawaiʻi

July 3, 2023

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BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Applications for) Permit Nos. Z-IV-2006-27, U-2006-26, and
) PDU-2006-25/ Subdivision No. S-2021-7
(1) Preliminary subdivision extension request for)
application no. S-2021-7, 5425 PA'U A LAKA, LLC) DECLARATION OF BRIDGET
for proposed 2-lot consolidation and resubdivision) HAMMERQUIST
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)

DECLARATION OF BRIDGET HAMMERQUIST

I, BRIDGET HAMMERQUIST, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I was born in Hilo in 1947, was raised on the Big Island until my family and I moved to Kaumakani, Kaua'i in 1964.
3. I currently reside in Kōloa on the island of Kaua'i.
4. I serve as the president of Petitioner FRIENDS OF MĀHĀ'ULEPU, a nonprofit corporation, which is based on Kaua'i and is comprised of Kaua'i citizens whose mission is the protection and preservation of a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kaua'i. Friends of Māhā'ulepū officers, directors, and supporters are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property.
5. Friends of Māhā'ulepū officers and directors include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species, including but not limited to endangered sea birds, the Newell Shearwater and ua'u and 'akē'akē. Petitioners have also photographed a threatened species, nēnē, on the property at issue in the above-captioned proceedings, located at 5425 Pau A Laka Street, Tax Map Key: (4) 2-8-014:032 ("property").

6. Petitioners' missions include supporting and protecting historic and culturally significant sites, including Kāneiolouma.

7. Friends of Māhā'ulepū members and supporters also include those residing in the adjacent developments of Wainani, Pili Mai, Kiahuna Golf Village and Po'ipu Estates, who are similarly concerned about the intensification of land uses and destruction of natural and cultural resources due to Applicant's actions, which also includes the intensification of traffic on Kiahuna Plantation Drive, the single road access and exit source for the near 1,100 residential units that are already occupied that rely on this sole entry and exit road. Amongst these residents are Patricia Biehn, a resident of Pili Mai, Derrick Pellen who lives in Wainani subdivision, adjacent to the parcel, TMK (4) 2-8-30:023 and Jerry McGrath, a former resident who sold and moved out of his home at 2717 Milo Hae Loop, Kōloa, Hawai'i 96756, TMK (4) 2-8-029:089 because of the persistent blasting and fugitive dust that plagued his property for more than 8 months.

8. Petitioners Friends of Māhā'ulepu and Save Kōloa (collectively "Petitioners") have attempted to seek relief through public testimony to this Commission, writing letters and seeking audiences with various agencies and the Office of the Mayor, by attempting to talk to Applicant's consultants, and by litigating to the Circuit Court of the Fifth Circuit in Civil No. 5CCV-22-0000036.

9. I am familiar with the property and its environs, having visited it many times and in recent years.

10. Denuding vegetation and excavations with heavy machinery occurred on the property in months prior to the May 7 and 8, 2022 dates Applicant's consultant, Steven Montgomery reports he walked the property. I know this occurred in April 2021 and in April 2022.

11. I was present on the property in April 2022 and participated in videorecording denuding, rock-crushing, and excavating actions on the property. I and others affiliated with Petitioners are concerned that such actual work on the property in periods prior to the May 2022 "survey" by Applicant's consultant, Montgomery, compromised the property's fitness as habitat for listed cave species.

12. Attached as Exhibit "13" is a true and correct copy of the letter from Ian Costa, Director, Kaua'i Planning Dep't to Kiahuna Poipu Golf Resort, LLC, dated Sep. 15, 2006, obtained from the Kaua'i Planning Department via discovery processes in Civil No. 5CCV-22-0000036.

13. Upon information and belief, YELLOW HALE, LLC applied for tentative subdivision approval on May 12, 2021. Attached as Exhibit "01" is a true and correct copy of the Subdivision Application No. S-2021-07, from Yellow Hale LLC, Subdivision Application

PW06.21.016, obtained through a public records request to the County of Kaua'i Department of Public Works (DPW) in June 2023.

14. The subdivision application proposes subdividing the property into 4 lots (Lots 1, 2, 3, and 4), which will allow future projects to occur independent from the current proposed project which will occur within the newly created 23.406-acre Lot 1. As proposed, Lot 1 is bounded on the north and east by Kiahuna Plantation Drive, on the west by the Kiahuna Golf Course, and on the south by Pau o Laka Street.

15. Use of further project land for maintenance buildings and parking lots will intensify land uses on the property as well as nearby areas, including public trails, beaches, roads, and other areas utilized by tourists.

16. Attached as Exhibit "02" is a true and correct copy of the Transcription of Examination of Kenneth Estes in *E Ola Kakou v. County of Kaua'i*, Civil No. 5CCV-22-0000036, at 25:18-21 (Estes); at 36-37 (Feb. 3, 2023) (excerpts)

17. Attached as Exhibit "03" is a true and correct copy of the Transcription of Deposition of Ka'aina Hull in *E Ola Kakou v. County of Kaua'i*, Civil No. 5CCV-22-0000036, at 75-134 (Aug. 30, 2023) (excerpts).

18. Attached as Exhibit "15" is a true and correct copy of the Memorandum from Aaron Nadig, Island Team Manager, U.S. Fish & Wildlife, to Kenneth Estes, County of Kaua'i Dep't of Planning, Subject: "Technical Assistance Regarding Proposed Yellow Hale Subdivision, Po'ipū, Kaua'i" (Oct. 27, 2021) obtained from the Kaua'i Planning Department via discovery processes in Civil No. 5CCV-22-0000036

19. On or about May 12, 2022, developers resumed work, including using explosives on the property. Petitioners' worked with Dr. Erin Wallin, a geologist and faculty member with administration responsibilities for the Geophysicist Research Corporation University of Hawai'i, who made a site visit to the caves and lava tubes on the adjacent parcels to the "property" and observed video of the property as it was subjected to detonations and observed cavern structures and voids collapsing in the subsurface.

20. On June 1, 2022, I contacted State, County, and Federal officials to alert them that cave structures and voids were being found on the property during Applicant's blasting. Despite guidance from FWS, blasting on the property continued.

21. Attached as Exhibit "16" is a true and correct copy of my email to to Governor Ige, Brandon T. Asuka, all Kaua'i County Council members, Mayor Derek Kawakami, Aaron Nadig and

others from FWS, Michael Dahilig and Sarah Blane of Kauaʻi County, Susan Lebo and Alan Downer of the State Historic Preservation Division, and Leimana DaMate, Subject: “Blasting Impacts Habitat for Endangered Species”, dated June 1, 2022. Photographs and descriptions of blasting work on the property included in my email were obtained using drone photographic devices on the dates indicated by my assistant and under my direction. I instructed my assistant to take photographs of the property using the drone equipment on dates including May 22, 24, and 29, 2022.

22. In June 2022, hundreds of Kauaʻi community members, including myself, gathered to protest the development and specifically blasting of the Kōloa caves at the property.

23. Attached as Exhibit “04” is a true and correct copy of the Scott Yunker, “Blasts spark ‘Save Kōloa’ march at luxury condo development” *The Garden Island* (Jun. 5, 2022) available at: www.thegardenisland.com/2022/06/05/hawaii-news/blasts-spark-save-koloa-march-at-luxury-condo-development/

24. Attached as Exhibit “05” is a true and correct copy of the Brittany Lyte, “Endangered Blind Spiders And Ancient Burials Spur Angst Over Luxury Condo Project” *Civil Beat* (Jun. 3, 2022) available at: www.civilbeat.org/2022/06/endangered-blind-spiders-and-ancient-burials-spur-angst-over-luxury-condo-project/

25. On August 2, 2022, Petitioners filed a petition to intervene against the Commission’s final subdivision approval for the same property subject to the instant petition. That petition remains pending. Attached as Exhibit “06” is a true and correct copy of the Petitioners Friends of Māhāʻulepu and Save Kōloa’s Petition to Intervene in Final Subdivision Approval before the Kauaʻi Planning Commission, filed August 2, 2022 by myself and my assistant at the Kauaʻi Planning Department.

26. Attached as Exhibit “07” is a true and correct copy of the Petitioners Friends of Māhāʻulepu and Save Kōloa’s Supplement to Petition to Intervene in Final Subdivision Approval, filed August 12, 2022 by myself and my assistant at the Kauaʻi Planning Department.

27. On February 2-3, and May 25, 2023, the Fifth Circuit Court held an evidentiary hearing in Civil No. 5CCV-22-0000036, concerning Petitioners’ complaint against violations of LUC conditions and public trust obligations arising from development of the property.

28. On or about June 23, 2023, Petitioners, including myself, were advised the Commission had noticed a public hearing on Applicant’s application for an amendment to its permits to allow a modification to Condition No. 26.

29. Attached as Exhibit “08” is a true and correct copy of the Kauaʻi County Planning

Commission's Public Notice, accessed June 22, 2023 *available at:*
www.kauai.gov/files/assets/public/boards-and-commissions/planning-commission/planning-commission-public-hearing-notice/2023-7-11-public-hearing-notice-jahs.pdf.

30. At its June 27, 2023 meeting, the Commission subdivision committee met to consider a preliminary subdivision extension request for the property, but determined to defer the matter to July 11, 2023 for reasons including the existing preliminary subdivision approval had expired. I attended this meeting and heard these discussions.

31. Petitioners understand Applicant MERIDIAN PACIFIC is requesting the County Department of Public Works' (DPW) Engineering division become the final decisionmaker in determining whether Condition 26 of its zoning amendment approval is met.

32. I believe at least one DPW engineer left the Department in recent months.

33. Attached as Exhibit "14" is a true and correct copy of "Order Granting First Hawaiian Bank, Trustee of the Eric A. Knudsen Trust's Amendment to Motion to Modify Condition Imposed by Land Use Commission", In the Matter of the Petition of Moana Corporation, Docket no. A76-418 (Aug. 5, 1997) *available at:* luc.hawaii.gov/wp-content/uploads/2014/03/A76-418_Moana-Corporation_DO-Grant-Knudsen-Amend-Motion-Modify-Condition-9_8-5-1997.pdf.

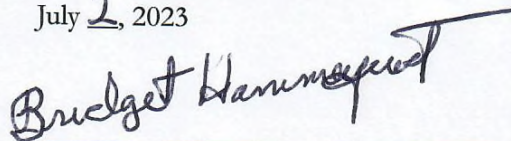
34. Attached as Exhibit "17" is a true and correct copy of the Letter from Laurel Loo, McCorriston Miller Mukai McKinnon LLP, to Helen Cox, Chair, County of Kaua'i Planning Commission, dated December 14, 2022, obtained from Commission materials for its regular February 14, 2023 meeting, at PDF668-69 (accessed Jul. 1, 2023) *available at:*
www.kauaigovonline.org/WebLink/DocView.aspx?id=3378662&dbid=0&repo=LF-IMAGING.

35. Attached as Exhibit "18" is a true and correct copy of the transcript of proceedings in *E Ola Kakou v. County of Kaua'i*, Civil No. 5CCV-22-0000036, (May 25, 2023) (excerpts).

36. Nothing has been built, fabricated, or erected on the property as of this writing.
DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kaua'i

July 2, 2023



BRIDGET HAMMERQUIST
Declarant

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Applications for	) Permit Nos. Z-IV-2006-27, U-2006-26, and
	) PDU-2006-25/ Subdivision Application No. S-
(1) Preliminary subdivision extension request	) 2021-7
for application no. S-2021-7, 5425 PAU A)
LAKA, LLC for proposed 2-lot consolidation	) DECLARATION OF ELIZABETH
and resubdivision into 4-lots; and, (2)	) OKINAKA
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)

DECLARATION OF ELIZABETH OKINAKA

I, ELIZABETH OKINAKA, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I am a resident of Kōloa on the island of Kauaʻi.
3. I am the founder of Petitioner SAVE KŌLOA, an unincorporated community association, whose purpose includes raising awareness and trying to ensure that our Koloa community is not developed in violation of applicable laws and regulations.
4. I am also the treasurer of a non-profit 501c3 corporation, E Ola Kākou Hawaiʻi, whose purpose is to promote the vitality of our community and its environment while raising public awareness on issues that threaten the environmental health of our species at risk and the quality of life for the people of our community. Save Kōloa is a project of E Ola Kakou Hawaiʻi.
5. E Ola Kakou Hawaiʻi, also known as Save Kōloa, filed a lawsuit for declaratory and injunctive relief against the County of Kauaʻi and developers of the property at issue in the above-captioned proceedings on May 11, 2022, in Civil No. 5CCV-22-0000036.
6. I was raised in Kōloa and Omao. I currently live in Kōloa.
7. I am familiar with the property and its environs, having visited the area many times

and in recent years.

8. The property is adjacent to the historic, public Hapa trail, which was once the major route connecting Po'ipū and Kōloa.

9. Hapa trail is at a lower elevation to the property and would receive stormwater runoff from the property.

10. The property serves as a sink for much of the area's stormwater runoff, including through culverts on the northern edge of the property that allow water to flow from the adjacent golf course and Wainani development project.

11. The property is part of the historic Kōloa field system, a traditional Hawaiian agricultural irrigation complex, with parallel and branching 'auwai, lo'i terraces, aqueducts, and other innovations.

12. The property is also part of the Kiahuna complex of archaeological sites.

13. The subsurface of the property is characterized by many voids, which can and likely do serve as habitat for the endangered Kaua'i cave spider and Kaua'i cave amphipod.

14. It adjoins the singular Kōloa cave system, which is the only area in the world that these species are known to be found.

15. Petitioner Save Kōloa's members and supporters have used these caves, including those on the property, for burials.

16. Petitioner SAVE KŌLOA, an unincorporated association, is based on Kaua'i and composed of Kaua'i residents who value and have interests in the preservation of natural and cultural resources on the South Shore of Kaua'i, including the preservation of endangered and threatened species.

17. Save Kōloa founders and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property and are lineal descendants of iwi kupuna located on the property.

18. Save Kōloa members include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species.

19. Save Kōloa members' Kānaka Maoli traditional and customary rights are also exercised through visiting, memorializing, and caring for historic properties, including the three burial mounds that exist on the property, as well as a heiau that were not documented in the June 2021 Cultural Surveys Hawai'i literature review.

20. The installation of structures and parking lots in areas zoned as open space will also detract from the aesthetic, recreational, and environmental experience of the Kaua'i community that uses Hapa trail.

21. On March 21, 2021, I observed the property from Kiahuna Plantation Road and saw multiple culverts between the northern Wainani subdivision and the property. I have seen water draining from these culverts onto the property.

22. I have also observed culvert structures on the eastern edge of the property on April 26, 2021. Those culvert structures may also allow stormwater runoff to flow into or off of the property

23. Since at least December 14, 2020, I have observed developers clearing and excavating the property. This constitutes "actual work" and, specific to Condition 7, compromises the ability of endangered native Kaua'i cave spiders and cave amphipods to inhabit the underlying substrate.

24. As has been set forth in U.S. Fish and Wildlife guidance and that of Applicant's own consultants, recognize these endangered cave-dwelling species live in underground voids, that have moisture, and in areas where soils are shallow and not more than a foot deep.

25. Attached as Exhibit "09" is a true and correct copy of the U.S. Fish and Wildlife Services letter to the Office of Planning, State of Hawai'i, dated March 24, 2014, Subject: Technical Assistance for Motion to Amend Conditions Nos. 5 and 7 through 22 of the Decision and Order, TMK 2-8-12:05, 07, 08, POR. 19, 20, 21, 26-36; 2-8-12:77; 2-8-29:1-94, Poipu, Kaua'i", which was stipulated into evidence in Civil No. 5CCV-22-0000036 as Exhibit J-04, part 3.

26. In such areas that may constitute habitat for endangered cave dwelling species, vegetation should be maintained and not cleared.

27. These conditions exist on the property, as evidenced by the developers' own geotechnical report. Attached as Exhibit "10" is a true and correct copy of the Geolabs Inc., Geotechnical Engineering Exploration Kauano'e o Koloa Development, Poipu, Kauai, Hawaii TMK (4) 2-8-014: POR. 32," dated July 13, 2021, which was stipulated into evidence in Civil No. 5CCV-22-0000036 as Exhibit J-13.

28. On May 12, 2022, Developer MERIDIAN PACIFIC, LTD. submitted a report purporting to be the required certification from a "qualified biologist" that did not include the "complete . . . biological study with actual inventories of archaeological sites and flora and fauna on the subject property," required by LUC Condition 7. Attached as Exhibit "11" is a true and correct

copy of the “Survey of Kauanoē o Kōloa Parcel for Cave Habitats of Native Spiders and Sandhoppers near Po‘ipū, Kaua‘i,” prepared by Steven Montgomery for Meridian Pacific, Ltd., dated May 12, 2022, which was stipulated into evidence in Civil No. 5CCV-22-0000036 as Exhibit J-12.

29. In assembling our lawsuit in Civil No. 5CCV-22-0000036, we retained Dr. Adam Asquith, an entomologist living and working on Kaua‘i, who examined the property, LUC Condition 7, and other relevant literature.

30. Dr. Asquith concluded and report purporting to comply with LUC Condition 7 must include the following:

- a. No grading, grubbing or any ground disturbing activities should be allowed until an appropriate survey, specific for these species and their habitat, can be conducted and reviewed by FWS.
- b. The habitat must be identified by carefully hand cutting all the vegetation so that surface geology can be seen and mapped. If parts of the area have already been disturbed, then additional techniques such as coring or ground penetrating radar should be employed to identify the habitat and avoid disturbance.

Attached as Exhibit “12” is a true and correct copy of Dr. Asquith’s declaration, dated May 10, 2022, which was attached to Plaintiff Friends of Māhā‘ulepu and Save Kōloa’s motion for preliminary injunction, filed May 11, 2022 in Civil No. 5CCV-22-0000036.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kaua‘i

June 30, 2023



ELIZABETH OKINAKA
Declarant

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Applications for

(1) Preliminary subdivision extension request for application no. S-2021-7, 5425 PAU 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

) Permit Nos. Z-IV-2006-27, U-2006-26,
) and PDU-2006-25/ Subdivision
) Application No. S-2021-7

) DECLARATION OF LLEWELYN
) (BILLY) KAOHELAULI

DECLARATION OF LLEWELYN (BILLY) KAOHELAULI

I, LLEWELYN (BILLY) KAOHELAULI, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I was born on the island Kaua'i, Manokalanipō, in 1950. I have lived my entire life in Po'ipū/ Kōloa, on the island of Kaua'i.
3. I am a supporter of Petitioner FRIENDS OF MĀHĀ'ULEPU, a nonprofit corporation, and a member of Petitioner SAVE KŌLOA. We are petitioning for intervention in the above-captioned proceeding.
4. I am Kānaka Maoli and descended from the aboriginal people who inhabited the Hawaiian Islands before 1778.
5. I am a member of the 'Aha Moku Advisory Committee and serve as the gubernatorial appointed Po'o for the 'Island of Kaua'i Manokalanipō, and also serve Aha Moku for the Kona district.
6. On the south shore of Kaua'i I was instrumental in the restoration of Kāneiolouma, and am a founding member of the Board of Directors of Hui Malama o Kāneiolouma, which is home to one of the most archeologically significant heiau on the island of Kaua'i.
7. Kāneiolouma heiau, is part of the larger Kāhua o Kāneiolouma ("Kāneiolouma"), an important cultural site located in Po'ipū, Kōloa, Kaua'i and just mauka of Poipu beach.

Kāneiolouma is a 13-acre plus complex, which contains hale sites, fishponds, taro patches, auwai irrigation systems, and a makahiki arena dating back to the mid-1400s. Since 2012, Hui Mālama O Kāneiolouma, a local 501(c)(3) non-profit cultural organization, has held a formal stewardship agreement with the County of Kauaʻi.

8. Fishponds at Kāneiolouma are fed by underground freshwater flows from mauka areas, including from the property at issue in the above-captioned proceedings (“property”). These fishponds are connected with nearshore waters and contribute freshwater and nutrients to the coastal ecosystem.

9. Detonations of explosives have occurred on the property prior to June 2022.

10. Underground passageways exist between mauka areas, including the property, and the Kāneiolouma area. Groundwater flows from mauka to Poʻipū beach and arises as seeps and springs.

11. Kānaka Maoli traditional practitioners, including myself and others at Kāneiolouma, gather freshwater from seeps springs at the ocean in the Poʻipū beach area. These freshwater seeps have been greatly reduced since blasting has occurred on the property.

12. In late June 2022, Hui Mālama o Kāneiolouma officers, including myself and Rupert Rowe, observed Kāneiolouma fishponds were unusually and persistently stagnant. Fresh, clean water is needed for fishponds, including those at Kāneiolouma, in order to be productive. It is commonly known that these fishponds are fed by underground freshwater flows coming from mauka areas, including areas of the property.

13. In late June 2022, when the stagnant and polluted fishpond water was observed, I met with the Office of Hawaiian Affairs (OHA) Board of Directors, who all met at Kāneiolouma to hear our concerns regarding the reduced fresh water flows into the fishponds within weeks of the underground blasting that began at the property. Concerns we expressed to OHA included but were not limited to impacts nearshore water quality and ecosystems at Poʻipū beach, which fronts Kāneiolouma, and other coastal areas.

14. Further blasting on the property, including that which may be used to create detention or retention basins, may further impair underground hydrogeological flows to Kāneiolouma.

15. My exercise of Kānaka Maoli traditional and customary rights include utilizing Hapa trail, which is adjacent to the property, for gathering traditional plants and to access the beach for fishing, gathering limu and opihi, swimming and other nearshore practice.

16. The Hapa Trail, the Royal Pathway, is one used by Kānaka Maoli ancestors to connect Po'ipū beach and Kōloa town and was the only road between Po'ipū beach and Koloa town until 1960. Walking on these traditional paths is an important cultural practice and is a way of maintaining the identity of these lands. Hapa Trail should be protected from flooding and erosion.

17. To myself and other Kānaka Maoli, the property is known as a site of spring water, burial caves, and endangered native species - the pe'ape'a maka'ole or Kaua'i blind cave spider - that is revered as an ancient aumakua. Our tradition and customs instruct that these should be protected.

18. My cultural practices include fishing and other nearshore gathering, throwing net, surfing, diving, and canoe paddling at Po'ipū that is being adversely impacted. I personally have seen an ongoing change in the clarity of the waters at Po'ipū and Waiohai beaches. The water is almost always cloudy and often times has significant floating dirt and other debris that it never use to have since approximately June 2022.


19. Erasure of historic and culturally significant sites from the land, and replacement of them with parking lots and buildings, will deter and prevent the exercise of Kānaka Maoli traditional and customary practices on and near the property, and impoverish the cultural value of the adjacent Hapa trail, including my own family home which is right adjacent to Kāneiolouma.

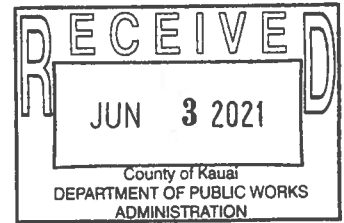
20. Developers of the property have likely compromised native species habitat and the resting places of iwi kupuna by their ground disturbing activities. I have observed burial mounds and know Glenn Silva would go to the property with his grandmother to take flowers to honor the iwi buried there.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kaua'i

July 1, 2023


LLEWELYN (BILLY) KAOHELAULI
Declarant



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

SUBDIVISION APPLICATION ROUTING FORM
DATE: June 3, 2021

Subdivision Map Review and Approval			
REQUEST:	<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> Final	
	<input type="checkbox"/> Pre-Final	<input type="checkbox"/> Extension	
SUDIVISION APPLICATION NO:		Subdivision Permit NO. S-2021-7,	
Owner(s)/Applicant(s):		Yellow Hale LLC	
Name of Surveyor/Engineer/Authorized Agent:		Dennis Esaki	
Tax Map Key:	Tax Map Key: (4) 2-8-014:032	Assigned to:	Kenny
Improvements:			

Route To:

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

COMMENTS (Comment Due Date: 7/3/2021):

EXHIBIT "01"

S-2021-07
PW06.21.06

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

MYLES S. HIRONAKA
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

COPY

July 29, 2005

Greg Kamm
Planning & Management
P.O. Box 1200
Koloa, Kauai HI 96756

SUBJECT: Zoning Refinement ZR-2005-8
Kiahuna Mauka Project 4, TMK: 2-8-14: 32 at Poipu, Kauai

After meeting with you and discussing the finer details of the May 19, 2005 refinement, we acknowledge your concerns and agree that the further adjustment of the Open and R-10 zoning around the proposed maintenance building is appropriate (see Exhibit "A"). Your proposal is to adjust the alignment of the R-10 and Open zones to allow for the maintenance building and public parking to be located within the R-10 zone. In this manner, the maintenance building for the project will be within the same zoning as the residential units. Further, this modification will not result in any increase or loss of density for either the R-10 and Open zones for the project.

Other than this adjustment, the balance of the refinement approved in our May 19, 2005 letter still applies.

Please feel free to contact Keith Nitta of my staff at 241-6677 to discuss this matter or to respond to any questions that you may have.

IAN K. COSTA
Planning Director

(4) 2-8-14:07
KAHUNA PLAYERS,
LLC
OPEN
(GOLF COURSE)

(4) 2-8-14:32 (por.)
LOT B
R-10

(GOLF COURSE)

(4) 2-8-14: 33
BROOKFIELD/MARYL
R-10

(4) 2-8-14:32 (par.)
LOT 3 —

4) 2-B-13:04
ROMAN CATHOLIC
CHURCH
OPEN

(4) 2-8-14:32 (part)
LOT 3
R-10

PAU A LAKA STREET

KAWAHUKU PLANTATION DRIVE EXTENSION
HADA TRAIL (COUNTY)

OPEN

ROMANA CATH CHURCH
(4) 2-8-13:3
OPEN

OKFIELD/MARYL
R-10

OPEN

OPEN ZONE AREA CALCULATIONS

OPEN ZONE AREA CALCULATIONS					
	QUANTITY	SIZE IN FT.			% OPEN
GRAVEL TOTAL EXPOSED	150	120			0.09%
ROB TOTALS	180	130			0.09%
30" DIA. AIR PIPES	234	324			1.07%
PACINGS	172	175			0.11%
ROB TOTALS	2,777				1.08%
AV. AIR PER CONCRETE					
POS 2 CONCRETE PANEL CURTAINS	12,116	12,116			0.25%
TOTAL CURTAIN CONCRETE					26 %
TOTAL CURTAIN AREA			15,200		90%
LANDSCAPE TOTAL			15,200		100%

ZONING CALCULATIONS

ZONING CALCULATIONS	
R-10 ZONE	OPEN ZONE
LOT 3	152,923
TOTAL	1,214,619

UNIT COUNT

280 MULTIFAMILY UNIT
2 EDGEE PARKWAY CEN (APT)

KIAHUNA MAUKA PARTNERS PROJECT 4
ZONING REFINEMENT CLARIFICATION 7/01/05
SCALE 1"=100'

EXHIBIT "A"

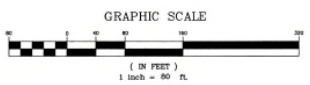
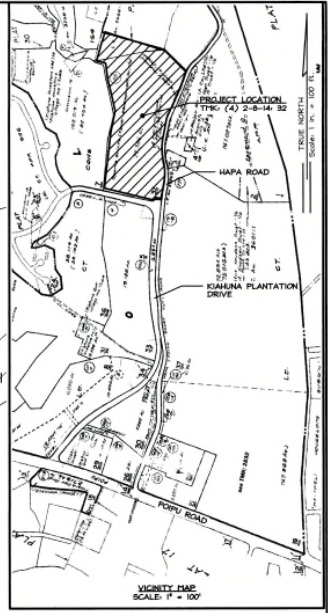
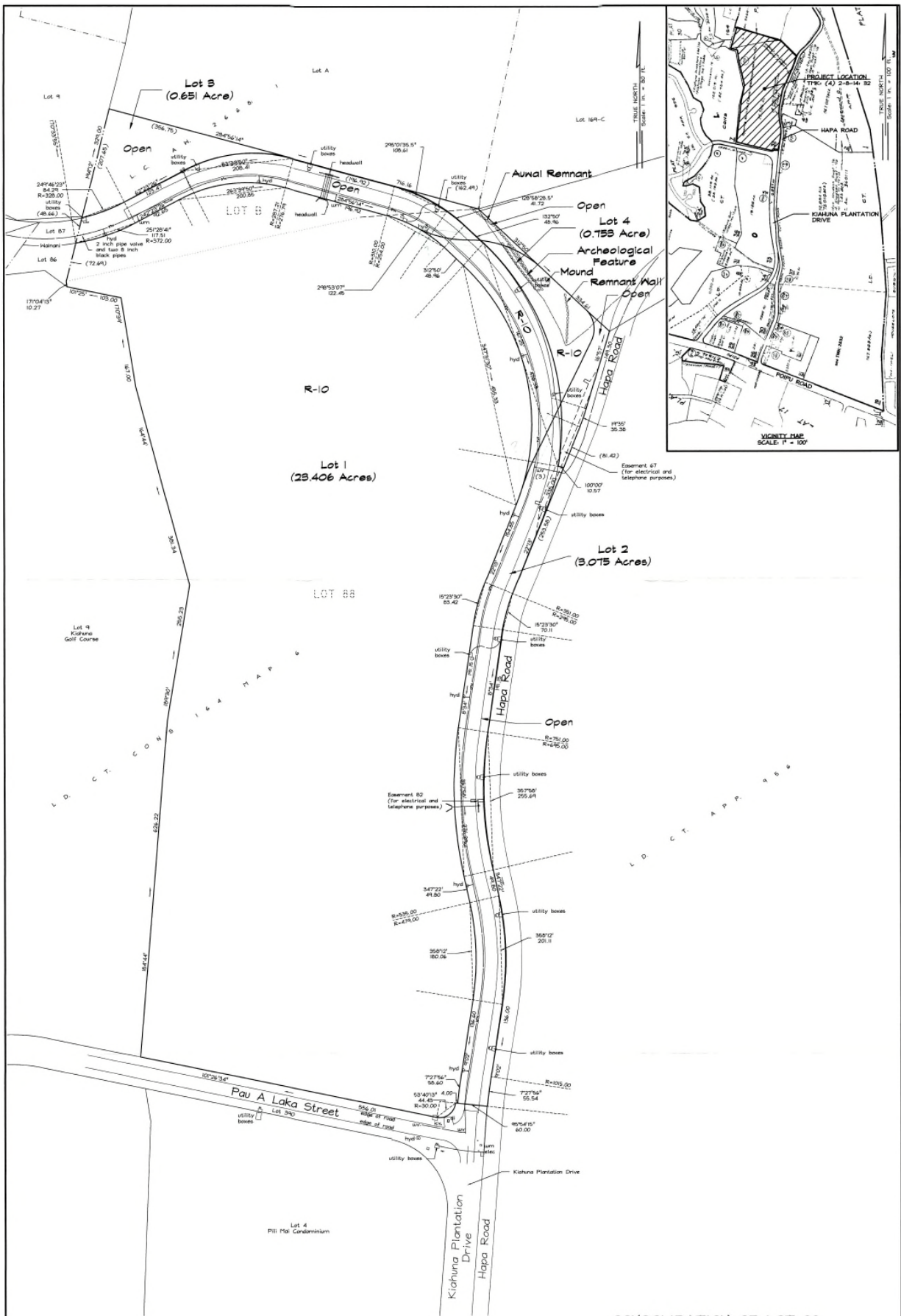
FOR PARTNERS

ARCHITECTURE

KIAHUNA POIPU GOLF RESORT L.L.C.
P.O. BOX 1200
KOLOA, HI. 96768

ZONING REINEMENT SITE PLAN	KIAHUNA POIPU GOLF RESORT KMP PROJECT 4 KOLOA, KAUAI, HAWAII	
	DRAWING DATE: 7-01-05	JOB NO. 0014
	DRAWN BY: JF	FILE NO:

Z.1



THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION

Signature
ESAKI SURVEYING & MAPPING, INC.
EXPIRES: APRIL 30, 2022

CONSOLIDATION OF LOT 88
OF LAND COURT CONSOLIDATION 164
AND LOT B
BEING PORTION OF L.C. AW 2668, APANA I
AND RESUBDIVISION
INTO LOTS 1 THROUGH 4, INCLUSIVE
KA UA NOE O KOLOA
KOLOA, KAUAI, HAWAII
OWNER: YELLOW HALE, LLC
Tax Map Key: (4) 2-8-14: 32
Date: May 21, 2021

1 IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
2 STATE OF HAWAII
3
4 _____
5 E OLA KAKOU HAWAII, ET AL.,
6 Plaintiffs,
7 Vs.
8 COUNTY OF KAUAI, ET AL.,
9 Defendants.
10 _____
11
12
13
14 TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS
15 had before the Honorable Kathleen N.A. Watanabe,
16 Circuit Court Judge presiding, on Friday, February 3,
17 2023, AM Session, in the above-entitled matter.
18
19
20
21
22
23
24
25 Transcribed by:

EXHIBIT "02"
Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

1 importance; correct?

2 A. Correct.

3 Q. And you're also supposed to give
4 specific consideration to the preservation of
5 existing flora and fauna; correct?

6 A. Correct.

7 MR. MORIMOTO: May I?

8 THE COURT: Yes.

9 BY MR. MORIMOTO:

10 Q. Now, when you're processing a
11 subdivision application, do you check with other
12 agencies?

13 A. In processing a subdivision
14 application, reaching out to the agencies would be
15 after accepting the subdivision application.

16 Q. And you check with those other agencies
17 to determine what legal requirements they may have?

18 A. Correct.

19 Q. And need to be fulfilled prior to
20 construction beginning?

21 A. Yes.

22 Q. And you check with the Department of
23 Water; correct?

24 A. Correct.

25 Q. And the Health Department?

1 A. Yes.

2 Q. The Department of Transportation?

3 A. Yes.

4 Q. Do you look at Planning Department
5 files?

6 A. Yes, I do.

7 Q. What files do you normally look at when
8 processing a subdivision?

9 A. Any use permits or past previous
10 subdivision applications.

11 Q. What about zoning amendments?

12 A. Yes, I do.

13 Q. What about Land Use Commission orders?

14 A. I have not experienced reviewing a Land
15 Use Commission order except for this subdivision.

16 Q. Pardon me.

17 A. I haven't -- I have not -- I have
18 reviewed past zoning amendments. The first Land Use
19 Commission decision orders that I have reviewed is
20 with this subdivision, tied to this property and
21 subdivision.

22 Q. And the subdivision you're talking
23 about initially started out as the Yellow Hale
24 subdivision application; correct?

25 A. Yes.

1 Q. And you processed that subdivision
2 application?

3 A. Yes, I did.

4 Q. Do you know why the property is being
5 subdivided?

6 A. I believe the --

7 MR. MINKIN: Objection; speculation,
8 lacks foundation.

9 THE COURT: All right. Sustained.
10 BY MR. MORIMOTO:

11 Q. Mr. Estes, as a subdivision planner,
12 did you discuss the reason for the subdivision with
13 anyone like the applicant?

14 A. I had talks with Wayne Wada from Esaki
15 Surveying and Mapping, Inc.

16 Q. And do you know why the applicant is
17 applying for the subdivision?

18 MR. MINKIN: Objection. Now it's
19 hearsay; lacks foundation, calls for speculation.

20 MR. MORIMOTO: Your Honor, this is not
21 hearsay. This is words of notice, words of legal
22 effect. They're not being offered for the truth of
23 the matter asserted. They're being offered that
24 these words were spoken to the defendant or to
25 Mr. Estes.

1 THE COURT: There are other grounds of
2 the objection so I am still sustaining the objection.

3 BY MR. MORIMOTO:

4 Q. How many lots are being created by this
5 subdivision?

6 A. It's a four-lot subdivision, I believe
7 or five lots, four or five lots.

8 Q. And have they received final approval?

9 A. No, they have not.

10 Q. And do you know where they are in the
11 process?

12 A. No. I would have to go look at the --
13 they're still in the tentative stage of the
14 subdivision application.

15 Q. But work is commencing on the property?

16 A. I believe so. Yes, work is commencing
17 on the property.

18 Q. Now, before this subdivision
19 application -- before you began processing the
20 subdivision application, did the Planning Department
21 receive any complaints about work being done on the
22 property.

23 A. I'm not -- I'm -- I don't recall.

24 Q. Did anyone bring any complaints to your
25 attention when you were processing the subdivision?

1 A. I don't think at the subdivision -- I
2 don't think at the time of procession of the
3 subdivision application.

4 Q. Now, at some point you received public
5 testimony; correct?

6 A. Correct.

7 Q. And this testimony came from Save
8 Koloa?

9 A. I don't recall.

10 Q. Do you recall in it came from Friends
11 of Maha Ulepu?

12 A. I don't recall who the testimony came
13 in from.

14 MR. MORIMOTO: May I approach, your
15 Honor?

16 THE COURT: Can you identify what
17 you're looking at.

18 MR. MORIMOTO: I'm not looking at
19 anything right now, your Honor.

20 THE COURT: Okay. I saw you retrieve
21 papers so I --

22 MR. MORIMOTO: Oh, sorry. Yes,
23 your Honor.

24 THE COURT: Is this an exhibit.

25 MR. MORIMOTO: This is Exhibit P-3.

1 THE COURT: P-3?

2 MR. MORIMOTO: Yes.

3 MR. MINKIN: Your Honor, was there a
4 witness binding prepared for the witness?

5 THE COURT: If there was, I didn't
6 receive that.

7 Mr. Morimoto.

8 MR. MORIMOTO: Oh, sorry.

9 THE COURT: This is P-3.

10 BY MR. MORIMOTO:

11 Q. Mr. Estes, directing your attention to
12 Exhibit P-3. Do you recognize that exhibit?

13 A. No, I do not recall this exhibit.

14 MR. FOSTER: Your Honor, if I may,
15 unless a witness's binder is within ours, it appears
16 as if the witness is looking at J-3. P-3 is a
17 separate section, part of the back in the binder.

18 THE COURT: So which exhibit are we on,
19 Mr. Morimoto?

20 MR. MORIMOTO: P-3, your Honor.
21 Mr. Estes has it in front of him.

22 THE COURT: All right. And I believe
23 he answered he has not.

24 MR. FOSTER: I think we're on the wrong
25 one, your Honor.

1 THE COURT: I'm sorry.

2 MR. MORIMOTO: I think he was looking
3 at Exhibit 2 but now he is looking at Exhibit 3.

4 BY MR. MORIMOTO:

5 Q. Have you seen Exhibit 3 before,
6 Mr. Estes?

7 A. I don't specifically recall this
8 testimony.

9 Q. When testimony is received by the
10 Planning Department, what happens to the testimony?

11 A. It is reviewed by the -- it's submitted
12 to the planning department. Alternately I get the
13 testimony. I transmit it over to Ka'aina for his
14 review and it gets transmitted over to the planning
15 commission for their review.

16 Q. Is there any follow up -- generally
17 speaking, is there any follow-up done with regard to
18 public comments or public testimony?

19 MR. MINKIN: Objection; vague and
20 ambiguous, "follow-up."

21 THE COURT: Sustained.

22 You may rephrase the question.

23 BY MR. MORIMOTO:

24 Q. After you receive the comments, do you
25 review them?

1 A. Yes, I do.

2 Q. And if there are comments --

3 A. I'm sorry. I briefly review them prior
4 to the -- I review them prior to the subdivision
5 committee meeting occurring.

6 Q. And do you determine whether any of the
7 comments are worthy of further research or review?

8 MR. MINKIN: Objection; vague and
9 ambiguous.

10 THE COURT: Sustained.

11 BY MR. MORIMOTO:

12 Q. What do you do with the comments when
13 you -- after you look at them?

14 A. It's transmitted over to the planning
15 director and then to the planning commission for
16 their review.

17 Q. Do you conduct any analysis of the
18 comments prior to turning them over to the planning
19 commission?

20 MR. MINKIN: Objection; vague and
21 ambiguous as to "analysis."

22 THE COURT: Sustained. Mr. Morimoto,
23 once again, if you wish to rephrase the question, if
24 not, let's move on.

25 BY MR. MORIMOTO:

1 Q. To the best of your recollection, have
2 you -- with regard to this project, you received
3 public comments and you turn those over to Ka'aina?

4 MR. MINKIN: For the record, the
5 witness nodded his head up and down.

6 So you need to answer out loud, sir.

7 THE WITNESS: Okay.

8 THE COURT: Okay. Thank you.

9 BY MR. MORIMOTO:

10 Q. And you turn them over to Ka'aina.
11 Before turning them over to Ka'aina, did you read
12 them?

13 A. Yes, I did.

14 Q. And after you read them, did you make
15 any determination as to whether or not there should
16 be follow-up or further research done?

17 A. With regards to this project, I believe
18 that we were fielding a lot of concerns. There was a
19 lot of public testimony submitted at the time of the
20 subdivision going before the subdivision committee
21 for their review. Because of those concerns that we
22 fielded, it was determined after the subdivision
23 committee meeting that we would contact the US Fish
24 and Wildlife Service.

25 Q. Who made that determination?

1 A. That was a determination that came from
2 the planning director.

3 Q. So after the public comments came in,
4 you discussed it with the planning director and he
5 decided to contact Fish and Wildlife Service?

6 MR. MINKIN: Asked and answered.

7 THE COURT: Well, go ahead. Answer the
8 question.

9 THE WITNESS: So after the subdivision
10 committee meeting -- because we fielded a lot of
11 concerns through public testimony, after the
12 subdivision is granted preliminary subdivision
13 approval we contacted the US Fish and Wildlife
14 Service -- well, I contacted the US Fish and Wildlife
15 Service. I reached out to Aaron Nadig.

16 BY MR. MORIMOTO:

17 Q. So what were the concerns that were
18 being raised by the public that caused you contact
19 Aaron Nadig?

20 A. That there was critical habitat on the
21 subject property.

22 Q. Critical habitat for what?

23 A. For the Kauai cave spiders and the
24 Kauai cave amphipod.

25 Q. When you contacted Aaron Nadig, were

1 you aware of Condition 7 at that time?

2 A. I don't think I was.

3 Q. And at the time you drafted -- excuse
4 me. Who drafted the tentative approval letter or who
5 drafts the tentative approval letter for
6 subdivisions?

7 A. I do.

8 Q. Who signs them?

9 A. The planning director.

10 Q. Now, with regard to the Yellow Hale
11 subdivision, did you draft the tentative approval
12 letter?

13 A. Yes, I did.

14 Q. And you did not include the language in
15 Condition 7, did you?

16 A. No, I did not.

17 Q. And that's because you didn't know
18 about it?

19 A. Correct.

20 Q. Now, when you wrote the tentative
21 approval letter, in this case you checked with other
22 agencies; correct?

23 A. Yes. I incorporate their conditions
24 into the subdivision report that is signed by the
25 director and transmitted over to the planning

1 commission for their review and action.

2 MR. MORIMOTO: Your Honor, may I
3 approach?

4 THE COURT: Yes. You want another
5 exhibit?

6 MR. MORIMOTO: Yes, your Honor.

7 MR. MINKIN: For the record,
8 Mr. Morimoto, what are you approaching with?

9 MR. MORIMOTO: Oh, excuse me. This is
10 going to be J-6, Exhibit J-6.

11 BY MR. MORIMOTO:

12 Q. Mr. Estes, turning your attention to
13 Condition 1(k)(b) which I believe is on page 3 --
14 excuse me -- page 2.

15 THE COURT: I'm sorry. We're on J-6.
16 Did you just direct him to a certain page?

17 MR. MORIMOTO: Yes, your Honor, page 2,
18 paragraph 1, (k)(b).

19 THE COURT: I'm sorry. The paragraph
20 again.

21 MR. MORIMOTO: 1(k)(b).

22 THE COURT: Oh, (k)?

23 MR. MORIMOTO: Yes.

24 THE COURT: Okay.

25 BY MR. MORIMOTO:

1 Q. Where did the language from Condition
2 1(k)(b) come from?

3 A. That came from the -- from Project
4 Development Use Permit, BU 2006-25, Use Permit U
5 2006-6, and Class 4 Zoning Permit Z-4 2006-7.

6 Q. Did you review that document before you
7 incorporated the language into the tentative
8 approval?

9 A. Yes, I did.

10 Q. Now, that document makes reference to
11 LUC Condition 7; correct?

12 A. Correct.

13 Q. But you didn't include -- you didn't go
14 back and look at Condition 7 when you -- after
15 reading the use permit?

16 A. No, I did not.

17 Q. Why not?

18 A. In drafting this -- in drafting the
19 subdivision report, I'm incorporating this specific
20 condition and in drafting this condition, I thought
21 that this would suffice for the development within
22 the project area.

23 Q. You thought this would satisfy the LUC
24 condition?

25 A. I -- at that time I was unaware of

1 Condition No. 7 while drafting this subdivision
2 report.

3 Q. So at that time as far as you know, had
4 any study been submitted by the applicant or the
5 applicant's predecessors with regard to protection of
6 the Kauai cave spider and the Kauai cave amphipod?

7 A. No, I don't think so.

8 Q. And the date of the letter was August
9 of 2022, the tentative approval letter?

10 A. August 11th.

11 MR. MINKIN: 2021.

12 THE WITNESS: 2021.

13 MR. MORIMOTO: 2021. My bad.

14 BY MR. MORIMOTO:

15 Q. So as of August 2021, as far as you
16 know there was nothing in the department that would
17 have satisfied this Condition 1(k)(b)?

18 A. As far as I know, yes.

19 Q. And you had looked through the files;
20 correct? You had looked through the department's
21 files and looked at the documents that applied to
22 this property; correct?

23 A. I looked at the tentative approval -- I
24 mean, the approval letter for the Class 4 zoning
25 permit. I did not look at all of the files that was

1 contained in that Class 4 zoning permit or I can't
2 recall if I looked at any other documents regarding
3 development in the surrounding area.

4 Q. While you were looking through the
5 files for the Class 4 zoning permit, were you
6 specifically looking for documents that related to
7 protection of the Kauai cave amphipod and the Kauai
8 cave spider?

9 A. No, I did not. I looked at the
10 approval letter for the Class 4 zoning permit.

11 Q. What about the underlying documents,
12 the application --

13 A. No, I did not.

14 Q. -- reports? Nothing?

15 A. Not that I can recall.

16 Q. Now, in addition to being the
17 subdivision planner, you also review the
18 clearinghouse forms; correct?

19 A. Correct.

20 Q. What is a clearinghouse form?

21 A. A clearinghouse form is issued by the
22 Department of Public Works Engineering Division and
23 they are the clearinghouse. The Planning Department
24 is a reviewing agency to their clearinghouse form.
25 As for the Planning Department, the clearinghouse is



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**IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

E OLA KAKOU HAWAII, also known as
SAVE KOLOA, a Hawai'i non-profit
corporation; FRIENDS OF MAHA'ULEPU,
a Hawai'i non-profit corporation,

Plaintiffs,

vs.

Civil No. 5CCV-22-0000036

COUNTY OF KAUA'I; 5425 PAU A LAKA LLC, a Hawai'i
limited liability company; MP ELKO II, LLC; a
Nevada limited liability company; KAUAI HALE,
INC., a Delaware corporation; KAUANOE O KOLOA
(PHASE 1), a Hawai'i condominium project;
KAUANOE O KOLOA (PHASE 2), a Hawai'i condominium
project KAUANOE O KOLOA (PHASE 3), a Hawai'i
condominium project KAUANOE O KOLOA (PHASE 4), a
Hawai'i condominium project; MP FINANCIAL GROUP,
LTD., dba Meridian Pacific, a Nevada corporation;
EARTHWORKS PACIFIC, INC., a Hawai'i corporation;
and DOE DEFENDANTS 1-100,

Defendants.

DEPOSITION OF

KA'AINA HULL

TAKEN ON

WEDNESDAY, AUGUST 31, 2022

8:41 A.M.

SHERATON KAUAI RESORT

650 ALEKA LOOP

KAPA'A, HAWAII 96746

EXHIBIT "03"

1 **Q. Now the last sentence says, "Actual work**
2 **on any portion of the subject property may be**
3 **commenced...upon certification". See that? What**
4 **does the phrase "actual work" mean to you?**

5 A. For zoning purposes it generally means
6 construction of the site itself.

7 **Q. So that would be any ground breaking.**

8 A. The Department only reviews grading
9 permits as part of a subdivision or as part of a
10 special management area review. So in some
11 situations we do have a regulatory oversight on
12 grading.

13 But the vast majority of our actions do
14 not include grading. So at times it can include
15 grading, but there are a lot of times when grading
16 permits are not submitted our way.

17 **Q. Okay. So actual work in this case --**
18 **would that include grading?**

19 A. I believe so; yeah.

20 **Q. Okay. So would it be fair to say that no**
21 **actual work should have taken place until the**
22 **Department received the certification?**

23 A. Yeah.

24 **Q. Should that have been included in the**
25 **condition of tentative approval as one of the**

1 conditions of tentative approval?

2 A. It could be.

3 Q. Should it have been given what was already
4 in there about preserving and protecting species'
5 habitats?

6 A. So rephrase the question.

7 Q. That requirement that certification be
8 provided prior to actual work beginning.

9 A. It could be. But at the same time --
10 well, let me think about it. Yes; it should be.
11 Yes.

12 MR. MORIMOTO: Can we have Exhibit No.
13 8?

14 THE REPORTER: Yes, sir.

15 BY MR. MORIMOTO:

16 Q. You've been handed Plaintiff's Exhibit No.
17 8. Do you recognize that? Take your time and look
18 through it. Let us know when you're done.

19 A. Okay.

20 Q. Have you seen that document before?

21 A. I don't believe so.

22 Q. There's a matrix attached to it. Have you
23 seen matrices like that before?

24 A. I have.

25 Q. Can you take a look at that matrix? Have

1 **you seen the matrix before? This particular matrix.**

2 A. I've seen matrices before for an array of
3 different projects, including this site. I can't
4 affirm if this is the exact matrix I've seen. It's
5 pretty dense.

6 Q. Now there are signatures attached to that
7 document and one of them is Laurel Loo. Did you
8 ever discuss the fact that Laurel Loo signed this
9 agreement with anyone?

10 A. No.

11 Q. Did you give consent to the McCorriston
12 firm to allow Ms. Loo to participate --

13 MR. FOSTER: I'm going to object on
14 attorney-client privilege.

15 BY MR. MORIMOTO:

16 Q. -- in representing --

17 MS. COBURN: Join.

18 MR. FOSTER: I'm going to assert the
19 privilege.

20 BY MR. MORIMOTO:

21 Q. Did you ever discuss -- again, did you
22 ever -- okay. Aside from the County attorney did
23 you ever discuss Ms. Loo's participation as attorney
24 for Meridian or any of the parties?

25 A. I can answer?

1 Q. Without --

2 A. Without --

3 Q. Yeah. Yeah. Not if it includes County
4 attorney but anyone else.

5 MR. FOSTER: Yeah; not with our office.

6 THE WITNESS: I was aware that you
7 yourself had a concern that Ms. Loo had some
8 oversight while she was working at the County
9 Attorney's Office concerning this property and
10 that's about it. I've not seen this document.
11 Wasn't aware it was specific to this document. But
12 I was aware of concerns being made or being had.

13 BY MR. MORIMOTO:

14 Q. And you weren't asked to do anything about
15 those concerns?

16 A. No.

17 Q. Did Ms. Loo ever consult with you about
18 her representation, her prior representation?

19 A. No.

20 MR. FOSTER: Object on attorney-client --
21 just clarify when, if you would -- when, you know,
22 at what point if --

23 MR. MORIMOTO: Okay.

24 MR. FOSTER: -- it was while she was
25 attorney --

1 **MR. MORIMOTO:** Yeah, yeah, yeah. Okay.

2 **BY MR. MORIMOTO:**

3 **Q.** In her role as attorney for Meridian.

4 **A.** No.

5 **Q.** No. Have you consented to Ms. Loo's
6 representation?

7 **MR. FOSTER:** I'm going to object. I'm
8 going to assert the privilege. That would be done
9 through our office.

10 **MS. LOO:** Same objection.

11 **BY MR. MORIMOTO:**

12 **Q.** Okay. But have you consented to it?

13 **A.** I can't say I have individually consented
14 in my capacity. The Department has a protocol for
15 having authorization from an applicant being granted
16 to individuals to represent them before the
17 Commission. I can't say whether or not one of those
18 forms has been filled out for Ms. Loo for this
19 application.

20 **Q.** Okay. But as far as you know you've never
21 consented or you have not --

22 **MS. COBURN:** I'm going to object --

23 **BY MR. MORIMOTO:**

24 **Q.** -- given --

25 **MS. COBURN:** -- to this line of

1 questioning as improper.

2 **BY MR. MORIMOTO:**

3 **Q. As far as you know have you given consent**
4 **to Ms. Loo's representation in this case?**

5 **A.** I got to --

6 **MR. FOSTER:** I'm going to object.

7 **THE WITNESS:** -- ask for clarification.

8 **MR. FOSTER:** I want to assert the
9 privilege and instruct him not to answer because --

10 **MR. MORIMOTO:** I'm not talking about any
11 discussions or --

12 **MS. COBURN:** He --

13 **MR. FOSTER:** That would be a matter of
14 attorney-client privilege, you know, the -- a waiver
15 of any kind or a consent with prior counsel is --
16 we're going to assert the attorney-client privilege.
17 And we'd be happy to, you know, let -- I mean, if
18 you'd like, to call the court on that. We can let
19 the court decide that. But I'm going to assert the
20 privilege here.

21 **MR. MORIMOTO:** Okay. Why don't we call
22 the court on that one?

23 **MR. FOSTER:** That's fine.

24 **MR. MORIMOTO:** We'll continue though.
25 We'll do that during the recess.

1 **THE WITNESS:** Just checking the time.

2 **MR. FOSTER:** And before you go I guess I
3 would also insert a relevance objection as well just
4 to preserve that. Go ahead.

5 **MR. MORIMOTO:** Let's go to this. Can we
6 have Exhibit No. 6?

7 **BY MR. MORIMOTO:**

8 **Q.** Can you take a look at Exhibit No. 6? Let
9 us know when you're done reading it.

10 A. Okay.

11 **Q.** Have you seen this --

12 A. I have.

13 **Q.** -- before? When was the first time you
14 saw it?

15 A. Sometime shortly after it arrived at the
16 Department.

17 **Q.** And --

18 A. Sometime after October 27, 2021.

19 **Q.** So it came after tentative approval.

20 A. Correct.

21 **Q.** After you read this letter what action did
22 you take if any?

23 A. I don't recall. I believe I talked with
24 Mr. Estes -- Kenny -- about seeing how the applicant
25 was going to suffice these conditions and that they

1 need to be met and that we should look at
2 incorporating or further discussing them for
3 implementation before final subdivision approval.

4 **Q. So you were considering amending the**
5 **tentative approval?**

6 A. Amending or at least reaching out to the
7 applicant to let them know that we may want to see
8 these conditions sufficed and that if they're not
9 sufficed before final that we would bring it up
10 during the final subdivision petition or
11 application.

12 **Q. Why was that necessary if that condition**
13 **had already been -- if Condition 7 had already been**
14 **complied with?**

15 A. Say that again.

16 **Q. Why was it necessary to take any action**
17 **regarding that letter if Condition 7 had already**
18 **been complied with?**

19 A. This is further clarifying language. And
20 as I said before, when we get -- it's pretty
21 standard for agency comments to be then folded into
22 specific subdivision actions. And because this is
23 coming to a specific agency from a specific agency -
24 - the discussion about folding that in.

25 **Q. Okay. Now this letter refers to a**

1 specific parcel; correct? In the first paragraph.

2 A. Correct. Yep.

3 Q. And that is -- that property is the same
4 property that's the subject of the Yellow Hale
5 subdivision.

6 A. It is.

7 Q. Can you reconcile your belief that
8 Condition 7 had been satisfied with Paragraph 2? Or
9 excuse me, Page 2 of the letter beginning with "to
10 minimize".

11 MS. COBURN: Objection. Misstates the --
12 BY MR. MORIMOTO:

13 Q. Oh. Excuse me. To --

14 MS. COBURN: Objection. Misstates --

15 BY MR. MORIMOTO:

16 Q. -- avoid and minimize impacts.

17 A. Can you restate the question?

18 Q. So you believe that Condition 7 had been
19 satisfied; correct?

20 A. I believe that it may have been satisfied.
21 And I want to also be clear too that, again, that
22 condition had been in effect for decades. And a
23 series of applications starting from before I was
24 born -- and, you know, to speak candidly, while
25 members in this room were also part of the County

1 Attorney's Office -- had been reviewed and had been
2 acted upon in the position from the Department at
3 that time the County of Kauai that the LUC
4 conditions had been satisfied.

5 **Q. Who in the County Attorney's Office or who**
6 **in this room had reviewed it?**

7 **MS. COBURN:** Objection.

8 **MR. FOSTER:** I'll --

9 **MS. COBURN:** Calls for speculation.

10 **MR. FOSTER:** -- object there. And it also
11 is attorney-client --

12 **MR. MORIMOTO:** Well, he said it.

13 **MR. FOSTER:** Attorney-client privilege.

14 **MR. MORIMOTO:** He said it. I didn't say
15 it.

16 **MS. COBURN:** He can't -- he doesn't know
17 who knows what.

18 **BY MR. MORIMOTO:**

19 **Q. So getting back to the question. Did you**
20 **incorporate this language into the tentative**
21 **approval?**

22 **A.** I don't believe we've amended the
23 tentative approval.

24 **Q. Why not?**

25 **A.** Whether it was the series of events that

1 occurred, as I stated, discussions with the Managing
2 Director, whether it's been having discussions with
3 you and the call to say let's make a very
4 conservative call that documentation is needed from
5 a biologist, from an archaeologist --

6 **Q. Oh, no, no, no, no, no, no. Sorry. I'm**
7 **talking about, you know, in October -- you know, on**
8 **October 27, 2021 or shortly thereafter you had**
9 **reviewed this letter; correct?**

10 A. Correct.

11 **Q. And there was language in here about**
12 **protection of the spider and amphipod.**

13 A. Correct.

14 **Q. And there's specific language about what**
15 **to do to minimize impacts.**

16 A. Correct.

17 **Q. Why weren't those recommendations included**
18 **in the tentative approval?**

19 A. Like I said, the discussions that we had
20 were to have discussions with the applicant and see
21 where they were on meeting these requirements. If I
22 recall -- and I'm a little sketchy on this -- but if
23 I recall Kenny did have these conversations or at
24 least there was some type of affirmation made that
25 these requirements would be met.

1 And with that we were of the position that
2 if they were not met during final -- when they came
3 in for their final application -- our position would
4 be you need to make -- you need to come back to us
5 with these conditions having been met or we would
6 look at implementing them as actual conditions with
7 the Planning Commission -- or the Subdivision
8 Committee.

9 **Q. But given that the Condition 7 says that**
10 **this is supposed to be done prior to actual work**
11 **commencing, shouldn't that have been incorporated**
12 **into the tentative approval letter?**

13 **A.** I don't believe I was aware of Condition
14 No. 7 when this letter came in. I may be wrong on
15 my chronology but I believe I was made aware of
16 Condition No. 7 after this letter came in.

17 **Q. All right. Had you known about this**
18 **letter what would you have done differently?**

19 **MS. COBURN:** Objection. Calls for
20 speculation.

21 **MS. LOO:** Join.

22 **THE WITNESS:** Well, I did know about this
23 letter when we received it.

24 **BY MR. MORIMOTO:**

25 **Q. Yeah. No, no, no, no. But had you known**

1 about this letter prior to tentative approval what
2 would you -- would you have treated it differently?

3 MS. COBURN: Same objection.

4 MS. LOO: Join.

5 THE WITNESS: Had we gotten this letter --

6 MR. MORIMOTO: Right.

7 THE WITNESS: -- prior to tentative
8 approval --

9 MR. MORIMOTO: Right.

10 THE WITNESS: Had we gotten this letter
11 prior to tentative approval it would have been
12 standard protocol to incorporate this as possible
13 conditions of approval.

14 BY MR. MORIMOTO:

15 Q. And if you --

16 A. Or possible conditions of tentative
17 subdivision approval.

18 Q. And if you knew about Condition 7 would
19 you have incorporated that into --

20 MS. COBURN: Objection. Calls for
21 speculation.

22 BY MR. MORIMOTO:

23 Q. -- into conditions of tentative approval?

24 A. Not necessarily.

25 Q. Why not?

1 A. As I said, it's not standard to
2 incorporate all the LUC and zoning amendment
3 conditions preceding an action.

4 Q. In this case given that the condition says
5 that prior to actual work commencing the
6 certification should have been provided, wouldn't it
7 have been good practice to include that condition
8 language in the actual tentative approval?

9 MS. COBURN: Objection. Compound.

10 THE WITNESS: As I previously stated, it's
11 not in the Department's practice to go back and look
12 at previous conditions of approval with the LUC that
13 are germane to an area that has received, again,
14 dozens of reviews over the past several decades to
15 look at reincorporating those conditions in.

16 BY MR. MORIMOTO:

17 Q. How would a condition be enforced
18 otherwise?

19 A. It should be enforced during those
20 applications. So while I would -- I would say that
21 during review of zoning applications discretionary
22 before the Planning Commission indeed.

23 Now being that there had been decades of
24 actions and zoning approvals granted dating back to
25 before I was even born there was an assumption that

1 these conditions had already been met. And I
2 wouldn't necessarily say an assumption on my part,
3 but an assumption on staff's part given the amount
4 of activity that's occurred here.

5 **Q. Okay. Not given what you know now --**
6 **well, strike that. How would this particular**
7 **condition be enforced if it wasn't included in the**
8 **tentative approval letter?**

9 A. As I stated, it was -- it's my
10 understanding with Kenny that affirmation would be
11 made by the client -- with the client -- the
12 applicant that the concerns of the US Fish and
13 Wildlife will be addressed during final subdivision
14 and if they are not addressed when the applicant
15 submits the final subdivision application that we
16 would look at amending or revisiting these specific
17 provisions.

18 **Q. Now given that actual work wasn't supposed**
19 **to commence until the certification was provided how**
20 **would you ensure that that would take place?**

21 A. Again, I wasn't --

22 **MS. COBURN:** Objection. Asked and
23 answered.

24 **BY MR. MORIMOTO:**

25 **Q. I mean, through what process -- what**

1 device does the Planning Department have to enforce
2 conditions that are not included in, let's say,
3 tentative approval letter or in a zoning amendment
4 or use permit or whatever kind of permit condition?

5 MS. COBURN: Objection. Compound.

6 BY MR. MORIMOTO:

7 Q. How would you enforce -- what mechanisms
8 does the Planning Department have to enforce Land
9 Use Commission conditions?

10 A. As I previously -- through discretionary
11 permit applications.

12 Q. And was this covered in a previous
13 discretionary permit?

14 A. I haven't reviewed the previous
15 discretionary permits.

16 Q. While you were reviewing the Yellow Hale
17 application and while you were processing the
18 subdivision were you ever informed that explosives
19 were going to be used in construction?

20 A. I don't believe so.

21 Q. Would the fact that explosives were going
22 to be used during construction affect how you
23 reviewed the subdivision or the project?

24 A. Not that I'm aware of.

25 MR. MORIMOTO: Okay. Will you hand him

1 Exhibit No. 7? Oh, and Exhibit No. 12 too. Thank
2 you.

3 **BY MR. MORIMOTO:**

4 **Q. Why don't we start with 12 first?**

5 **A. Okay.**

6 **Q. Give you these two.**

7 **THE WITNESS:** I have one of the exhibits
8 listed as H-A-L-L. If that's in reference to me
9 it's H-U-L-L. Just --

10 **THE REPORTER:** Oh, sorry.

11 **THE WITNESS:** No. No worries.

12 **MS. LOO:** Peter, can you identify it
13 because we didn't get physical copies of these --

14 **MR. MORIMOTO:** Okay.

15 **MS. LOO:** They were emailed by the court
16 reporter but we didn't -- we didn't make copies for
17 --

18 **MR. MORIMOTO:** Exhibit 12 is a February 3,
19 2022 letter from your client to Ka'aina -- to
20 Director Hull.

21 **MS. LOO:** Okay. Thank you.

22 **BY MR. MORIMOTO:**

23 **Q. Have you had a chance to look at Exhibit**
24 **12?**

25 **MS. HAMMERQUIST:** We didn't --

1 **MR. FOSTER:** Oh, it was never physical.

2 Okay.

3 **MS. HAMMERQUIST:** No.

4 **MS. COBURN:** Eleven through fifteen.

5 **THE WITNESS:** Okay.

6 **BY MR. MORIMOTO:**

7 **Q. Was this letter in response to a letter**
8 **that you had sent to him?**

9 A. I don't know if there was a letter
10 involved officially from us. But I believe this was
11 in response to our concern about Condition No. 7 and
12 wanting an updated letter and biological survey
13 particularly pertaining to the spiders and the
14 archaeological impacts to be provided to us. I
15 believe.

16 **Q. Now can you read the third paragraph?**

17 A. "In response to the Service's
18 recommendation ,we enlisted Tetra Tech, Incorporated
19 to conduct a biological survey and to provide an
20 assessment of whether the project area is clear of
21 habitats for the endangered pe'e pe'e maka'ole and
22 'uku noho ana worth of preservation.

23 "The attached Biological Survey Resources
24 Report summarizes the result (sic) of the biological
25 survey and provides similar recommendations to avoid

1 and minimize impacts to federally and state listed
2 species.

3 "The Report concludes that no cave
4 openings were found in the area nor were caves
5 identified as suitable habitat for the endangered
6 Kaua'i cave wolf spider and Kaua'i cave amphipod
7 while conducting the biological survey."

8 **Q. And turn your attention now to Exhibit No.**
9 **7. Is that the biological survey that was attached**
10 **to that letter?**

11 A. I believe, but I don't -- I believe so.

12 **Q. Can you look at that and tell us whether**
13 **you've seen it before and whether or not it's the**
14 **letter that was -- or the study that was provided**
15 **along with that letter?**

16 A. I believe so.

17 **Q. Did you see any other biological survey**
18 **that may have been attached to that letter?**

19 A. I don't recall.

20 **Q. What did you do when you got the letter**
21 **and the study?**

22 A. I assigned it out to be reviewed.

23 **Q. Who did you assign it to?**

24 A. Both Kenny Estes and Jodi Higuchi
25 Sayegusa.

1 **Q. And what was the result of that review?**

2 A. I believe these were the ones -- these
3 were the documents that felt that this sufficed --
4 as well as an archaeological survey and letter from,
5 I believe, Hal Hammatt that was part of the
6 submittal --

7 **Q. Okay. Let's not talk about the**
8 **archaeological -- we're only going to focus on the**
9 **biological component of Condition 7; okay?**

10 A. I understand that. But you're asking for
11 the answer on Condition No. 7 -- Condition 7 --

12 **Q. Yeah. So okay. Let me clarify. When I**
13 **talk about Condition 7 I'm only concerned about the**
14 **biological component of Condition 7; okay?**

15 A. Okay.

16 **Q. Okay. So getting back to that study --**
17 **you had your staff review it.**

18 A. I did.

19 **Q. And what happened after they reviewed it?**

20 A. After discussing with them we made the
21 determination that Condition No. 7 had been sufficed
22 as its germane to the biological components.

23 **Q. Now that's a draft study; correct? On the**
24 **very first page it says "draft".**

25 A. Where? Oh, there.

1 Q. Why did you accept the draft and not the
2 final?

3 A. I believe there was -- in addition to this
4 -- a letter from the biologist that prepared the
5 report transmitting it.

6 Q. You believe.

7 A. I believe. I --

8 Q. Who was that biologist?

9 A. I can't recall off the top of my head.

10 Q. Was it the same biologist that submitted
11 the report or the certification in May to the
12 County?

13 A. I can't recall.

14 Q. So Condition 7 requires that a qualified
15 biologist conduct the study.

16 A. Correct.

17 Q. And you believe that there was a letter
18 that was attached to the study from the biologist.

19 A. Or it came in at the same time. I don't
20 recall.

21 Q. Okay. But you can't recall who that
22 biologist is.

23 A. No.

24 MS. COBURN: Objection. Asked and
25 answered.

1 **MR. MORIMOTO:** Again, can we hold this
2 open and have that as the next exhibit in order?

3 **MR. FOSTER:** We can produce that. I'm
4 thinking there may be some confusion because there
5 was, you know --

6 **MR. MORIMOTO:** Oh, go off the record.

7 **THE REPORTER:** The time is 10:56 a.m. and
8 we are now off the record.

9 **(WHEREUPON, a recess was taken.)**

10 **THE REPORTER:** The time is 11:02 a.m. and
11 we are now on the record.

12 **BY MR. MORIMOTO:**

13 **Q. Mr. Hull, I'm going to show you Exhibit**
14 **No. -- Plaintiff's Exhibit No. 13 and ask if you**
15 **recognize that.**

16 **A. Yeah; I believe this is the letter that I**
17 **was actually referring to.**

18 **Q. Okay.**

19 **MS. LOO:** Okay. So which one is that?

20 **MR. MORIMOTO:** This is Exhibit 13.

21 **MS. COBURN:** We don't have --

22 **MS. LOO:** We don't have the hard copies.

23 **MR. MORIMOTO:** Oh.

24 **MS. LOO:** You didn't make copies for us so
25 you need to describe to us what --

1 **MR. MORIMOTO:** Exhibit 13 is a letter from
2 you

3 **MS. LOO:** Okay.

4 **MR. MORIMOTO:** -- Laurel Loo, partner --

5 **MS. COBURN:** What date is that?

6 **MR. MORIMOTO:** May 12, 2022. From Vera
7 Tabe to Ka'aina Hull. And it's a transmittal letter
8 transmitting a letter from Steven Montgomery to
9 Ka'aina Hull. Survey of the Kauanoe o Koloa Parcel
10 for Cave Habitats and a letter from Hal Hammatt to
11 Ka'aina Hull.

12 **MS. LOO:** Okay. Go ahead.

13 **MR. MORIMOTO:** Okay.

14 **BY MR. MORIMOTO:**

15 **Q.** Okay. So going back to Exhibit No. 7 --
16 do you recall now -- having review the other exhibit
17 -- whether or not there was a letter from a
18 biologist accompanying Exhibit No. 7?

19 **A.** I don't. So I'm not sure if this was --
20 Exhibit No. 7 dated December 31, 2021 was a part of
21 that. I recall getting the letters and I recall
22 reviewing the letters.

23 **Q.** Okay. So this --

24 **MR. FOSTER:** I'm sorry. Let me just -- so
25 there still appears to be confusion as to whether --

1 **THE WITNESS:** Right.

2 **MR. FOSTER:** -- this was the study
3 attached to that letter or not.

4 **BY MR. MORIMOTO:**

5 **Q.** Okay. So Mr. Hull, you earlier testified
6 that this draft study, Exhibit No. 7, accompanied
7 Exhibit No. 12.

8 **MS. COBURN:** Objection. Misstates the
9 testimony.

10 **BY MR. MORIMOTO:**

11 **Q.** Is that correct?

12 **A.** Yeah. And I'll state after looking at the
13 other exhibit you shared with Steven Montgomery and
14 Hal Hammatt I recall going over those specific
15 letters and I was mistaken that these were those
16 letters.

17 **Q.** Okay.

18 **A.** I don't recall really reviewing these two.

19 **Q.** Okay. Well, Exhibit No. 12 is addressed
20 to you; correct?

21 **A.** Correct.

22 **Q.** So you don't recall seeing this letter.

23 **A.** I don't recall actually seeing this
24 letter.

25 **Q.** And there are cc's to Jodi Sayegusa and

1 **Kenneth Estes.**

2 A. Correct.

3 **Q. Did you discuss this letter with them?**

4 A. No; I was mistaken when I spoke earlier.

5 I recall having discussions pertaining to the

6 previous letters from Steven Montgomery and Hal

7 Hammatt.

8 **Q. Okay. Okay. So turning your attention**
9 **now to Exhibit No. 7 -- do you recall seeing this?**

10 A. No. I was mistaken. Well, I recall
11 reviewing documentation provided, again, with Steven
12 Montgomery. Whether or not this was a part of it I
13 don't -- I couldn't say.

14 **Q. Okay. Is it normal practice for the**
15 **Planning Department to accept draft studies?**

16 A. It is. Well, it's -- I won't say it's --
17 I'd say it's standard to receive a draft.

18 **Q. Was this meant to be a draft?**

19 **MS. COBURN:** Objection. Calls for
20 speculation.

21 **THE WITNESS:** I couldn't say.

22 **BY MR. MORIMOTO:**

23 **Q. Okay. Did you ever see the final?**

24 A. I don't recall.

25 **Q. Do you know who in your department looked**

1 at this document or reviewed it?

2 A. I believe Mr. Estes and possibly Jodi
3 Higuchi Sayegusa.

4 Q. Did you discuss this document with Jodi
5 Sayegusa?

6 A. I don't recall.

7 Q. Did you discuss it with Kenneth Estes?

8 A. I don't recall.

9 Q. Do you recall discussing it with anyone --

10 A. No.

11 Q. -- at Planning? Okay. All right. I'm
12 handing you Exhibit No. 13. This is the letter from
13 Laurel Loo, partner at McCorriston Miller Mukai
14 MacKinnon transmitting to Ka'aina Hull the letter
15 from Steve Montgomery, the Survey of the Kauanoe o
16 Koloa Parcel for Cave Habitats and the letter from
17 Hal Hammatt.

18 MS. COBURN: Objection. I believe that
19 misstates the document. I thought you said earlier
20 it was from Vera Tabe.

21 MR. MORIMOTO: You're right. It's from
22 Vera Tabe, paralegal to Laurel Loo, partner at
23 McCorriston.

24 MS. LOO: Don't forget the partner.

25 MR. MORIMOTO: They take everybody

1 nowadays.

2 MS. LOO: Oh. Ouch.

3 BY MR. MORIMOTO:

4 Q. Have you seen this transmittal letter and
5 the documents attached to it?

6 A. Yes.

7 Q. When did you first see these documents?

8 A. It would have been shortly after they're
9 dated, which would have been sometime in May --
10 after May 12, 2022.

11 Q. Did you read the survey by Steven
12 Montgomery?

13 A. I gave it a cursory review. I did not
14 read it in depth though.

15 Q. Why not?

16 A. I was particularly concerned with the
17 issue of him being a certified biologist so I do
18 recall reviewing the resume and previous work
19 history and training. After reviewing that then I
20 asked both Kenneth Estes and Jodi Higuchi Sayegusa
21 to review documents to help make the determination
22 whether or not they sufficed Condition No. 7.

23 Q. When Mr. Estes was questioned about this
24 survey he said that he deferred to you, to the
25 Planning Director

1 **MS. COBURN:** Objection. Hearsay.

2 **BY MR. MORIMOTO:**

3 **Q.** -- with regard to its acceptability.

4 **A.** Okay.

5 **Q.** Is that correct?

6 **A.** Ultimately it does defer to me.

7 **Q.** But you say you did not read this
8 document.

9 **A.** I gave it a cursory review.

10 **Q.** And based on that cursory review you
11 determined that this document satisfied Condition 7.

12 **A.** No. So in discussions with Ken Estes and
13 particularly discussions with the Deputy Director --
14 after the Deputy Director made her review and
15 assessment of it then with that I was able to
16 determine that it meets Condition No. 7.

17 **Q.** What was the Deputy Director's assessment
18 of this survey?

19 **MS. LOO:** Objection. Calls for hearsay.

20 **MS. COBURN:** Join.

21 **THE WITNESS:** Ultimately that it meets the
22 requirement of Condition No. 7 as is germane to the
23 biological requirement.

24 **BY MR. MORIMOTO:**

25 **Q.** That's a fairly brief discussion then.

1 MS. COBURN: Objection.

2 THE WITNESS: It is.

3 MS. COBURN: That's not -- oh, I'm sorry.

4 Excuse me.

5 BY MR. MORIMOTO:

6 Q. In an email to Kanani Fu you had requested
7 time to review this document; correct?

8 A. Correct.

9 Q. And you said that you'd only had it, I
10 think, for a couple of days and that you needed more
11 time to look through it.

12 A. Correct.

13 Q. So the review that you were asking to
14 conduct or that you wanted time to conduct was a
15 cursory review that you had done.

16 A. Cursory had to do for the consultation
17 with Jodi.

18 Q. And then the consultation with Jodi. So
19 one of are you aware that one of the issues involved
20 is the presence of caverns on the property?

21 A. I am.

22 Q. And did you read this document with regard
23 to that issue?

24 MS. COBURN: Objection. Vague.

25 THE WITNESS: As I said, I gave it a

1 cursory review and asked for Jodi to review the
2 document and we would discuss it after.

3 **BY MR. MORIMOTO:**

4 **Q. In your cursory review and in your**
5 **discussions do you recall discussing the issue of**
6 **caves or mesocaverns?**

7 A. I do not.

8 **Q. Do you know what Dr. Montgomery concluded**
9 **with regard to the presence of caves or mesocaverns**
10 **on the property?**

11 A. I don't recall. I'm certain we had
12 discussions about it but I don't recall at this
13 time.

14 **Q. Now turning your attention to Page 3 of**
15 **this survey -- at the very top there's a Paragraph**
16 **No. 3. You see that?**

17 A. I do.

18 **Q. Can you read that?**

19 A. "The subject parcel had been part of a
20 working ranch cleared by heavy equipment of most
21 loose boulders, which were placed in piles. From
22 the report, 'Geotechnical Engineering Exploration,
23 Kauano'e O Koloa Development, Po'ipu, Kauai, Hawaii,'
24 prepared by (sic) Meridian Pacific by John Y. L.
25 Chen, P.E., with Geolabs, Inc., we read descriptions

1 of the soil and rock sample cores recovered during
2 2021 field explorations to the maximum depth of 16
3 feet below the existing ground surface.

4 "His field exploration generally
5 encountered relatively thin surface soils over the
6 weathered basalt formation. The rock cylinders
7 drilled out and retrieved revealed mostly solid
8 basalt with small, discrete vesicles and a lack of
9 larger voids.

10 "(Such large voids could hold dangling
11 roots or accumulate any other organic matter to
12 sustain a food web for amphipod crustaceans or
13 arachnids.) Also, he writes that groundwater was
14 not encountered."

15 **Q. Okay. Now can you take a look at that**
16 **survey and tell us what it says about the presence**
17 **of caves or mesocaverns on the property?**

18 **A.** You want me to read the whole thing?

19 **Q. Yeah. Take your time. We'll go off the**
20 **record and take a look at it.**

21 **THE REPORTER:** The time is 11:16 a.m. and
22 we are now off the record.

23 **(WHEREUPON, a recess was taken.)**

24 **THE REPORTER:** The time is 11:19 a.m. and
25 we are now on the record.

1 BY MR. MORIMOTO:

2 Q. So Mr. Hull, I'm asking you to review that
3 document and to assess as a planner what you
4 conclude about the presence of mesocaverns or caves
5 on the Yellow Hale property. Okay?

6 MR. FOSTER: I guess I would object to
7 vagueness but I would invite you to, you know, to
8 ask a more specific question pertaining to --

9 MR. MORIMOTO: We'll do that after --

10 MR. FOSTER: Yeah. Sure.

11 MR. MORIMOTO: -- he's finished his
12 review.

13 MR. FOSTER: I mean, sure.

14 MR. MORIMOTO: Now we can go off the
15 record --

16 MR. FOSTER: Okay.

17 MR. MORIMOTO: -- so we can do his review.

18 THE REPORTER: The time is 11:20 a.m. and
19 we are now off the record.

20 (WHEREUPON, a recess was taken.)

21 THE REPORTER: The time is 11:25 a.m. and
22 we are now on the record.

23 BY MR. MORIMOTO:

24 Q. So having reviewed Dr. Montgomery's report
25 have you drawn any conclusions about the presence of

1 **caves or mesocaverns on the property?**

2 A. From the report I can tell that a mapping
3 and analysis was done of existing mesocavern areas
4 and that it was determined that they -- those
5 existing and identified ones do not go into the
6 subject property, that there was also a series of
7 borings and other testings done that did not
8 determine the presence of caves. But the report
9 does acknowledge that there still could in fact be
10 caves located on this property.

11 **Q. And what does it say about groundwater?**

12 **Do you recall?**

13 A. I don't recall specifically going over
14 that. Here?

15 **Q. Right. With --**

16 **MS. LOO:** Objection. I want to have the
17 record reflect that Counsel, Mr. Morimoto, is
18 pointing out to the Deponent an area on the letter
19 and it wasn't the Deponent's independent reading of
20 the letter that brought him to where we are
21 proceeding now.

22 **BY MR. MORIMOTO:**

23 **Q. Directing your attention to the top of**
24 **Page 3.**

25 A. Seeing that. I also see that also he

1 writes that groundwater was not encountered.

2 Q. What's the significance of groundwater
3 being encountered? Do you know?

4 A. I don't.

5 Q. Okay. But it has some significance
6 apparently to Dr. Thompson.

7 MS. COBURN: Objection. Calls for
8 speculation.

9 BY MR. MORIMOTO:

10 Q. In addition to that report the -- oh,
11 excuse me. That report references a geotech or
12 Geolabs report; correct?

13 A. It does.

14 Q. Prepared by John Chen.

15 A. Right.

16 Q. All right. I'm going to show you
17 Exhibit 31 and ask if you've seen that before.

18 A. I may have but I don't recall.

19 MS. LOO: We don't have that one either.
20 A physical copy. What is that?

21 MR. MORIMOTO: It's the Geolabs report
22 that your client provided to the County.

23 MS. LOO: Object to the characterization.
24 I don't know who provided it to the County.

25 MR. MORIMOTO: You asked. You object to

1 my answer?

2 **MS. LOO:** I'm just asking for what the
3 name of the document is. I'm not asking for who
4 provided it and what vehicle they drove to the to
5 bring it and all that stuff. I'm asking what's the
6 document. You're not providing us with copies of
7 the document, Peter. Your responsibility in this
8 deposition -- if you want to use an exhibit -- is to
9 provide Counsel with copies of the exhibit.

10 **MR. MORIMOTO:** Where is that in the rules?

11 **MS. LOO:** To provide Counsel with a copy
12 of the exhibits?

13 **MR. MORIMOTO:** Yeah.

14 **MS. LOO:** Yeah. Where is it in the rules
15 that he's supposed to show up on time? It doesn't
16 say so but we do because this is normal practice.

17 **MR. MORIMOTO:** Okay. So --

18 **MS. LOO:** Are you saying that you go to a
19 deposition and you don't provide copies to counsel?

20 **MR. MORIMOTO:** Calm down, Laurel. I
21 didn't have copies because I just was provided with
22 it yesterday; okay? We asked for this document
23 months ago and we were only given it to today. So -
24 -

25 **MS. LOO:** Hey, that's not my problem. My

1 problem is --

2 **MR. MORIMOTO:** Yeah. Well, so you know
3 what --

4 **MS. LOO:** -- I come here --

5 **MR. MORIMOTO:** -- my problem --

6 **MS. LOO:** -- into a deposition --

7 **MR. FOSTER:** Actually I'll object also to
8 that characterization of the documents because what
9 you did is you went around the client's counsel and
10 subpoenaed him. I was completely unaware of the
11 subpoena.

12 When he asked me if he had to bring
13 anything to the deposition I said "no" because I was
14 unaware of the subpoena because you bypassed me to
15 serve my client directly a subpoena.

16 **MS. COBURN:** Before we go any further,
17 everybody should be mindful that we have a court
18 reporter here. Nobody should be talking over
19 anybody.

20 **MR. MORIMOTO:** Yeah. Why don't we go off
21 the record?

22 **THE REPORTER:** Time is 11:30 a.m. and we
23 are now off the record.

24 **(WHEREUPON, a recess was taken.)**

25 **THE REPORTER:** The time is 11:33 a.m. and

1 we are now on the record.

2 **MS. LOO:** So I just want to make an
3 objection that Counsel has not provided us -- Mr.
4 Foster, Ms. Coburn, and myself -- with hard copies
5 of Exhibits 11 through 15. So we are unable to
6 meaningfully participate given the pandemic in
7 presentation of these exhibits to the deponent
8 without taking an extraordinary amount of time.

9 Also want to object to the fact that off
10 the record Mr. Morimoto called Ms. Coburn's
11 complaints whining and bitching, which I believe are
12 misogynistic characteristics of her complaint. And
13 I would like to register my objection to proceeding
14 without hard copies of the appropriate exhibits.

15 **MR. FOSTER:** And the County joins.

16 **MR. MORIMOTO:** All right.

17 **BY MR. MORIMOTO:**

18 **Q.** Okay. So proceeding. Turning your
19 attention to Exhibit No. 31; okay? Excuse me.
20 Getting back to this document, to -- what exhibit is
21 this? Yeah. 31. And this is -- oh, 13. My bad.
22 This is 13. Yeah. Turning your attention to
23 Exhibit 13.

24 **THE REPORTER:** That's Exhibit 12, sir.

25 **MR. MORIMOTO:** Oh, my bad.

1 **THE REPORTER:** This is 31. This is -- oh
2 yes. This is 13. I apologize.

3 **BY MR. MORIMOTO:**

4 **Q.** Okay. Turning your attention to Exhibit
5 13. You've had a chance to review it; correct?

6 **A.** I have.

7 **Q.** Okay. And your conclusion with regard to
8 the presence of mesocaverns is -- after your review
9 of that document what did you conclude with regard
10 to the presence or absence of mesocaverns on the
11 property?

12 **MS. LOO:** Objection. The witness is not
13 an expert biologist. And I also object to the fact
14 that the document speaks for itself and the witness
15 cannot opine as to any degree of certainty as a
16 biologist --

17 **MR. MORIMOTO:** Right, right, right.

18 **MS. LOO:** -- what Mr. Montgomery -- Dr.
19 Montgomery has opined on.

20 **BY MR. MORIMOTO:**

21 **Q.** Okay. So as a Planning Department
22 employee who received this document and had your
23 staff review it, what did you -- and having reviewed
24 it today -- what do you conclude Dr. Montgomery's
25 analysis is with regard to the presence or absence

1 **of mesocaverns and caves on the subject property?**

2 **MS. LOO:** Objection in that it speculates
3 as to what Dr. Montgomery intended to include and
4 then again same objection -- running objection --
5 that Mr. Hull, as superstar of a planning director
6 as he is, is not an expert in biology.

7 **MR. FOSTER:** And the County would object
8 that the document speaks for itself.

9 **MR. MORIMOTO:** Well, the question was
10 about cave. It wasn't about biology.

11 **BY MR. MORIMOTO:**

12 **Q. But anyway, go ahead and answer.**

13 **MS. LOO:** Same objection as to Mr. Hull's
14 inability to be an expert on caves -- what Dr.
15 Montgomery is an expert on.

16 **MR. MORIMOTO:** Right.

17 **BY MR. MORIMOTO:**

18 **Q. And I'm not asking you for your opinion.**
19 **I'm asking you as a planner what did you conclude**
20 **after reading that document.**

21 **MS. LOO:** Objection. The document speaks
22 for itself.

23 **MR. FOSTER:** If you have an opinion you
24 can express it as your opinion.

25 **BY MR. MORIMOTO:**

1 **Q. What did you conclude after analyzing that**
2 **document?**

3 **MS. LOO:** Same objection.

4 **THE WITNESS:** I can conclude that the
5 study and survey of this area included mapping and
6 addressing the fact that existing and identified
7 caves in the area did not reach into the subject
8 property.

9 However, while there could be still
10 possible caves on the subject property, that the
11 biologist affirms that it does not contain any
12 habitats, i.e. caves, of any blind, eyeless, big-
13 eyed hunting spiders and blind terrestrial
14 sandhoppers.

15 **BY MR. MORIMOTO:**

16 **Q. Okay. So the presence of caves or the**
17 **presence or absence of caves was critical to -- from**
18 **your perspective as a planner -- was critical to his**
19 **analysis.**

20 A. I wouldn't be able --

21 **MS. LOO:** Objection.

22 **THE WITNESS:** -- to speculate.

23 **MS. LOO:** Mr. Hull is not an expert in
24 caves.

25 **BY MR. MORIMOTO:**

1 Q. But the presence or absence of caves was
2 an issue; correct?

3 A. It's my understanding that is one aspect
4 that the biologists used to review the possible
5 presence of the endangered species.

6 Q. And that report references a geotechnical
7 report; correct?

8 A. It does.

9 Q. Taking a look at Exhibit 31 -- is that the
10 geotechnical report that's referenced in Dr.
11 Montgomery's study?

12 MS. LOO: Can we pass around 31 so Counsel
13 can see --

14 MR. MORIMOTO: Yeah. After he's had a
15 chance to look at it.

16 MS. LOO: Wait. Why would we not allow
17 Counsel to look at it before the expert in case we
18 have an objection of him looking at it?

19 MR. MORIMOTO: He's not an expert. He's
20 not testifying as an expert. What are you --

21 MS. LOO: Yeah. Why would we have him
22 look at it before Counsel can look at it and decide
23 whether we have objections to it or not?

24 MR. MORIMOTO: You can raise your
25 objections after he's had a chance to look at it.

1 I'll pass it around. You can take a look at it.

2 **MS. LOO:** Well, when we're in court you
3 give documents to Counsel before you give them to
4 the witness. So we're in court basically.

5 **MR. MORIMOTO:** Actually no; we're not,
6 Laurel.

7 **MS. LOO:** This is testimony that can be
8 used --

9 **MR. MORIMOTO:** Are we on the record?

10 **MS. LOO:** -- in court.

11 **MR. MORIMOTO:** Okay. Let's go off the
12 record. Jesus.

13 **THE REPORTER:** The time is 11:39 a.m. and
14 we are now off the record.

15 **(WHEREUPON, a recess was taken.)**

16 **THE REPORTER:** The time is 11:46 a.m. and
17 we are now on the record.

18 **MR. MORIMOTO:** Okay. Back on the record.
19 Counsel, have you had an opportunity to review
20 Exhibit 31?

21 **MR. FOSTER:** The County has reviewed it.
22 Thank you.

23 **MS. LOO:** I've had a brief opportunity to
24 review it and haven't had -- for a document of that
25 size -- an opportunity to review it in depth. But

1 we can proceed.

2 **MR. MORIMOTO:** Counsel?

3 **MS. COBURN:** Me as well.

4 **MR. MORIMOTO:** When did you review it,
5 Counsel?

6 **MS. COBURN:** I briefly looked at it
7 yesterday.

8 **MR. MORIMOTO:** Thank you.

9 **MS. COBURN:** But again, for the record, no
10 copies were made between yesterday and today for all
11 counsel.

12 **MR. MORIMOTO:** And again for the record, I
13 did not have an opportunity to do so.

14 **BY MR. MORIMOTO:**

15 **Q. So you've had a chance to look through**
16 **Exhibit 31?**

17 **A. Yeah.**

18 **Q. Directing your attention to Page 8 of**
19 **Exhibit 31. Can you flip to Page 8? Can you read**
20 **the third paragraph?**

21 **A. "Cavities and/or voids are commonly**
22 **encountered in the basalt formation that**
23 **characterizes the project site. To reduce the**
24 **potential for loss of foundation support resulting**
25 **from the collapse of cavities below foundations, we**

1 recommend implementing a program of cavity probing
2 and grouting for the new building unit foundations.
3 Foundation probing and grouting requirements are
4 further discussed in the following 'Foundation
5 Probing and Grouting' section."

6 Q. Okay. Thank you. Now Dr. Montgomery's
7 report references this exhibit; correct? 31.

8 A. It does.

9 Q. Okay. Does it make any mention of the
10 cavities and voids that are commonly found on the
11 property?

12 A. In?

13 Q. In Dr. Montgomery's report.

14 A. I --

15 MR. FOSTER: I'm going to object to the
16 form of the question. You say "commonly found on
17 the property".

18 MR. MORIMOTO: Well, that's what the
19 report says. Are commonly found -- encountered in
20 the basalt formation that characterizes the project
21 site. So my apologies.

22 MS. LOO: Okay. Objection. The document
23 speaks for itself. This is a lengthy document. You
24 asked the Deponent to opine as to a scientific
25 conclusion --

1 **MR. MORIMOTO:** It's not a scientific
2 conclusion, Laurel. Stop making these speaking
3 objections. Object and be done with it; okay?

4 **MS. LOO:** I object the --

5 **MR. MORIMOTO:** State your objection --

6 **MS. LOO:** The document speaks for itself.

7 **MR. MORIMOTO:** All right. Thank you.

8 **MS. COBURN:** And please don't speak over
9 each other for the court reporter.

10 **BY MR. MORIMOTO:**

11 **Q.** Okay. So in Dr. Montgomery's report does
12 he reference or make mention of the presence of this
13 sentence?

14 **A.** Of cavity --

15 **MS. LOO:** Which sentence?

16 **THE WITNESS:** -- and/or voids?

17 **MR. MORIMOTO:** The one that he just read
18 about

19 **BY MR. MORIMOTO:**

20 **Q.** Can you read that sentence again for --

21 **A.** "Cavities and/or voids are commonly
22 encountered in the basalt formation that
23 characterizes the project site."

24 **Q.** Did he make any mention of that cavities
25 or voids are commonly encountered in the basalt

1 **characteristic of the project site?**

2 **MS. LOO:** Okay. Objection. The question
3 is vague because are we referring only to that one -
4 -

5 **MR. MORIMOTO:** State your objection --

6 **MS. LOO:** -- section? Or are we referring
7 --

8 **MR. MORIMOTO:** No, no, no, no, no, no, no.
9 She's using a speaking objection. State your
10 objection. What is your objection? Vague and --

11 **MS. COBURN:** And again --

12 **MR. MORIMOTO:** -- ambiguous?

13 **MS. LOO:** It's vague.

14 **MR. MORIMOTO:** Okay. Thank you.

15 **MS. LOO:** It is vague because --

16 **MR. MORIMOTO:** Okay. No, no, no.

17 **MS. LOO:** The reason is --

18 **MR. MORIMOTO:** You don't have to state why
19 it's vague.

20 **MS. LOO:** I do.

21 **MR. MORIMOTO:** You just have -- no; you
22 don't.

23 **MS. COBURN:** You're also speaking over
24 her.

25 **MS. LOO:** The reason that it's vague is

1 because this is a lengthy document and you're asking
2 him if Dr. Montgomery is saying something. And I
3 want to know if you're asking him in just that one
4 sentence or in the whole --

5 **MR. MORIMOTO:** You are in violation of the
6 rules of civil procedure; okay? They're specific
7 about what you do when you object. You object. You
8 state your objection and that's it.

9 **MS. COBURN:** We are not going to have a
10 clean record if you continue to speak over
11 everybody.

12 **MR. MORIMOTO:** Okay. So state your
13 objection and that's it. Don't do these speaking
14 objections.

15 **MS. LOO:** I already did.

16 **BY MR. MORIMOTO:**

17 **Q.** Okay. So was there any mention in Dr.
18 Montgomery's report that cavities and/or voids are
19 commonly encountered in the basalt formation that
20 characterizes the project site?

21 **MS. LOO:** Objection. Vague.

22 **THE WITNESS:** It may have. I don't
23 specifically recall those phrases being used, but
24 it's a fairly lengthy document so it may be.

25 **BY MR. MORIMOTO:**

1 **Q. You flagged out the sections that referred**
2 **to basalt or to caves and mesocaverns; correct?**

3 A. I flagged out sections that referred to
4 caves.

5 **Q. Okay. Can you find -- look through those**
6 **sections that you flagged out and see if he's made**
7 **any mention.**

8 A. There's a statement on Page 1 of the
9 survey that states, "Rock formations of the Koloa
10 Volcanic Series cover most of the eastern half of
11 the Island, including the project site, which is
12 generally composed of basalt rock built by extrusion
13 of lavas."

14 **Q. Does it mention that cavities and/or voids**
15 **are commonly encountered in these formations?**

16 **MS. LOO:** Objection. Vague.

17 **MR. FOSTER:** The document speaks for
18 itself.

19 **THE WITNESS:** In this particular statement
20 concerning basalt rock there is no discussion of
21 caves or cavities. It will go on to state, "A
22 prominent lava tube within the Koloa Volcanics of
23 the southern portion of the island is situated amid
24 the Kiahuna Golf Course in the vicinity of Po'ipu.

25 The (sic) lava tube, including its opening

1 to the surface, is most close to Hole Number 6 near
2 the northern boundary of the golf course." And then
3 I can read on, but --

4 **BY MR. MORIMOTO:**

5 **Q. Okay. Directing your attention to Page 10**
6 **of the Geolabs report.**

7 **MR. FOSTER:** I'm going to object. I'm not
8 sure the witness was finished reviewing the
9 document.

10 **MR. MORIMOTO:** Oh, I'm sorry.

11 **THE WITNESS:** So the next reference to
12 basalt and caverns is on Page 2. "When referencing
13 a specific identified cavern, lava rock exposed in
14 the wall of the tube displays the characteristic of
15 dense basaltic pahoehoe.

16 "Elongate, ridge-like levee features,
17 congealed along much of the lower portions of the
18 tube's wall, mark the varied levels of the molten
19 lava that once followed (sic) by gravity through
20 this tube.

21 "All features within this tube suggest the
22 presence of a shallow, elongate, single, isolated
23 feature not asserted -- not associated vertically or
24 laterally with other lava tubes of similar
25 character.

1 "Unrolling the flexible tape on the
2 surface, we can report that clearly, the narrow,
3 north-south oriented Kiahuna Mauka Lava Tube does
4 not extend laterally beyond the boundaries of the
5 Kiahuna Golf Course. Its closest approach to the
6 parcel in question is over 200 feet."

7 There's another section in this that
8 references specifically the geologic part concerning
9 soils and basaltic anatomy, which I read this
10 paragraph previously. Do you want me to read it
11 again?

12 **BY MR. MORIMOTO:**

13 **Q. Does it mention that cavities and/or voids**
14 **are commonly encountered in the basalt formation**
15 **that characterizes the project site?**

16 A. It states, "The rock cylinders drilled out
17 and retrieved revealed mostly solid basalt with
18 small, discrete vesicles and larger -- and a lack of
19 larger voids. Such large voids could hold dangling
20 roots or accumulate any other organic matter to
21 sustain a food web for amphipod crustaceans or
22 arachnids." Also he writes that groundwater was not
23 encountered.

24 **Q. So reading that did you conclude that the**
25 **Geolabs report -- or what did you conclude about the**

1 **Geolabs report from reading that statement?**

2 A. Just off of that that rock cylinders
3 drilled out and retrieved revealed mostly solid
4 basalt with small, discrete vesicles and a lack of
5 larger voids.

6 **Q. Okay.**

7 A. I'd say a lack of larger voids would -- I
8 could infer -- and I'm not a biologist or a
9 scientific of ever means -- but I would infer that
10 there's a lack of cavities or voids.

11 **Q. Now turning your attention to Page 10 of**
12 **Exhibit 31. Can you read the first paragraph?**

13 A. "We anticipate that the proposed new
14 foundations will be supported on basaltic materials.
15 Based on our experience in the vicinity of the
16 project site, cavities and/or voids are commonly
17 present in the basaltic lava tubes (sic).

18 "To reduce the potential for loss of
19 foundation support resulting from the collapse of
20 cavities below foundations, consideration may be
21 given to implementing a program of cavity probing
22 and grouting of the building foundations during
23 construction."

24 **Q. Was there any reference to this paragraph**
25 **in Dr. Montgomery's report?**

1 A. There may have, but I don't recall after
2 reading it.

3 **Q. Do you want to take a look at it again?**

4 A. I can take a look.

5 **MR. FOSTER:** I don't understand the point
6 here. The documents speak for themselves. I mean,
7 you can -- I mean, if you want to make -- you know,
8 if you were to, for instance, make an argument in
9 court --

10 **MR. MORIMOTO:** Excuse me. Let's go off
11 the record.

12 **THE REPORTER:** Time is 11:59 a.m. and we
13 are now off the record.

14 **(WHEREUPON, a recess was taken.)**

15 **THE REPORTER:** The time is 12:01 p.m. and
16 we are now on the record.

17 **MR. MORIMOTO:** Oh, my bad.

18 **THE REPORTER:** Thank you.

19 **BY MR. MORIMOTO:**

20 **Q. Now is there any reference or mention in**
21 **Dr. Montgomery's report that cavities and/or voids**
22 **are commonly present in basaltic lava flows?**

23 **MS. COBURN:** Objection. Document speaks
24 for itself.

25 **THE WITNESS:** I couldn't go that far,

1 Peter. I couldn't infer off of what I read to
2 confirm that for you. I can confirm that in the
3 paragraph at the top of Page 10 of the Geotech
4 report it states, "We anticipate that the proposed
5 new foundations will be supported on basaltic
6 materials. Based on our experience and the vicinity
7 of the project site, cavities and/or voids are
8 commonly present in the basaltic lava flows.

9 "To reduce the potential for loss of
10 foundation support -- excuse me -- to reduce the
11 potential for loss of foundation support resulting
12 from the collapse of cavities below foundations,
13 consideration may be given to implementing a program
14 of cavity probing and grouting of the building
15 foundations during construction."

16 In reading this report today in more
17 detail than I have before -- and still in a limited
18 fashion -- the portion of this Montgomery report --
19 that does not explicitly use that language. But I
20 would say errs on a similar vein.

21 On the top of Page 4 it states, "This
22 region spans 6,200 acres of lava lands, all of which
23 may contain mesocaverns (underground spaces in --
24 excuse me -- underground spaces and in-accessible
25 passages) and the underground mostly remains

1 unexplored by scientists.

2 "This is a vast field of potential micro-
3 habitats that over a half million years may have
4 been dispersed into by the subject species during
5 rainy periods before predatory ants and rats came to
6 Kaua'i with human aid.

7 "Therefore, having summarized our actual
8 recent work on the project location, and after
9 reviewing all relevant reports, I do conclude that,
10 with extremely high probability, caverns and
11 mesocavern habitats sustaining a food web with
12 resident native Crustacea or arachnids do not occur
13 on this Kauanoë parcel. Mesocaverns equal
14 underground spaces and in-accessible passages.

15 "Furthermore, it is reassuring to note
16 that during stages of construction a scientist will
17 be monitoring for any moist, food containing voids
18 that are inhabited by either of the 2 species, based
19 on US Fish and Wildlife Service's avoidance and
20 minimization measures for the Kaua'i cave wolf
21 spider and Kaua'i cave amphipod, and if a cave is
22 found during construction, work around the cave
23 stops immediately and US Fish and Wildlife Services
24 and DLNR/DOFAW are contacted for guidance to
25 minimize and mitigate adverse effects."

1 And those has language I would say -- I
2 would infer from reading in a limited fashion from
3 this document provided by Dr. Montgomery aligns with
4 the language used in this document from Geolabs
5 concerning Page 10.

6 **BY MR. MORIMOTO:**

7 **Q. This document seems to indicate that there**
8 **are no mesocaverns and caves; correct?**

9 **MS. LOO:** Objection.

10 **BY MR. MORIMOTO:**

11 **Q. That could handle -- that could support**
12 **habitat.**

13 **MS. LOO:** Objection. Counsel is
14 testifying.

15 **THE WITNESS:** I couldn't speculate that.

16 **BY MR. MORIMOTO:**

17 **Q. So Dr. Montgomery's report references a**
18 **geotechnical lab but makes no specific reference**
19 **about basaltic formations containing caves.**

20 **MS. COBURN:** Objection. Document speaks
21 for itself.

22 **THE WITNESS:** Yeah. I'm not sure what the
23 question is.

24 **BY MR. MORIMOTO:**

25 **Q. Okay. Dr. Montgomery's report references**

1 a geotechnical -- a Geolabs' report; correct?

2 A. It does.

3 Q. And it says that -- it seems to infer that

4 -- or their corings only hit solid rock.

5 A. Okay.

6 Q. Is that correct?

7 MS. LOO: Objection.

8 THE WITNESS: I wouldn't --

9 MS. LOO: The document speaks for itself.

10 THE WITNESS: -- be able to speculate.

11 BY MR. MORIMOTO:

12 Q. Okay. Can you go back and read that

13 Geolabs section?

14 A. This section?

15 Q. Here. The second paragraph.

16 A. Second paragraph. "Geolabs Incorporated
17 sampled eight borings, designated as Boring Nos. 1
18 through 8, extending to the maximum depth drilled of
19 16 feet below the existing ground surface.

20 "In addition, two boreholes, designated as
21 I-1 and I-2, were drilled to a depth of about 5 feet
22 below the existing ground surface. The basalt
23 formation encountered in the borings consisted of
24 hard, unweathered to slightly weathered basalt rock
25 with various fractured conditions and interbedded

1 with dense clinker layers.

2 "In general, the surface fill materials
3 consist of clayey/silty soils with some
4 boulders/cobbles extending to a depth of less than 3
5 feet below the existing ground surface.

6 "Stiff residual soils consisting of
7 clayey/silty soils with varying amounts of cobbles
8 encountered under the surface fills, extending to a
9 depth of about 3.5 feet below.

10 "Tiffany Bovino Agostini, Senior Biologist
11 with Tetra Tech contractor, reported on alien and
12 native biota and did also explore in detail the
13 Study Area for any caves or lave tube openings,
14 finding none."

15 **Q. Okay. But there was no reference of Tetra**
16 **Tech's findings or Tetra Tech's reference to caves**
17 **--**

18 **MS. COBURN:** Objection. Document speaks
19 for itself.

20 **BY MR. MORIMOTO:**

21 **Q. -- in Dr. Montgomery's report; correct?**
22 **Excuse me. Geolabs. There's no reference of**
23 **Geolabs' analysis of basalt rock formations;**
24 **correct?**

25 **MS. COBURN:** Objection. Same objection.

1 **THE WITNESS:** I believe that is a
2 reference to the Geolabs study.

3 **BY MR. MORIMOTO:**

4 **Q.** But there's no reference as to Geolabs'
5 analysis that basalt rock contains caves and
6 mesocaverns; correct?

7 **MS. COBURN:** Objection. Asked and
8 answered.

9 **MS. LOO:** Objection. Document speaks for
10 itself.

11 **THE WITNESS:** I can't say whether that
12 says that or not.

13 **BY MR. MORIMOTO:**

14 **Q.** Okay. Well, as a planner you read that
15 document. And earlier -- correct me if I'm wrong --
16 you testified that it appeared to indicate to you
17 that there were no mesocaverns and caves.

18 **A.** That --

19 **Q.** Dr. Montgomery's report.

20 **A.** That habitats were -- my understanding of
21 Dr. Montgomery's report is really just in the
22 conclusion in that he was hereby certifying that the
23 area for which the work is to commence does not
24 contain any habitats of any blind, eyeless, big-
25 eyed, hunting spiders, blind terrestrial sandhoppers

1 deemed worth of preservation. That's my
2 understanding. That I can understand.

3 Deciphering between -- I'm not trying to
4 be cute or play any games, but deciphering between
5 basaltic formations, clay, silty soils, clinker
6 layers -- I'm not even sure what a clinker layer is.
7 Being able to make some type of determination from
8 that paragraph -- I couldn't even attempt to
9 speculate.

10 **Q. So who made the determination to accept**
11 **that report --**

12 **MS. COBURN:** Objection. Vague.

13 **BY MR. MORIMOTO:**

14 **Q. -- at the Planning Department?**

15 **A.** I did.

16 **Q. As satisfaction of Condition 7?**

17 **A.** To accept the report as a biologist that
18 would qualify as a certified or licensed or
19 professional biologist under Condition 7.

20 **Q. So when you were asking Kanani Fu for more**
21 **time to analyze the reports what in particular were**
22 **you looking at?**

23 **A.** Some of it was I hadn't even reviewed his
24 resume.

25 **Q. Okay. And so that was important to you,**

1 **his resume?**

2 A. It was.

3 **Q. Anything else?**

4 A. Ultimately for my review was just to
5 determine upon receipt of it whether or not that
6 this individual would meet the biologist
7 qualifications. Or at least as set under Condition
8 7.

9 After I made the determination, looking
10 more towards the Deputy Director because of her
11 expertise within the Endangered Species Act as well
12 as being an attorney and assigned to the Land Use
13 Commission projects we have, then handing it off to
14 her.

15 **Q. So you weren't looking at the report for**
16 **its quality.**

17 A. No.

18 **Q. Its content.**

19 A. I was not.

20 **Q. Who was --**

21 A. At the --

22 **Q. -- in your department?**

23 A. At the end of the day we're more looking
24 at the qualifications of the person submitting the
25 report being that we don't have a trained biologist,

1 entomologist, scientist within the Department.

2 Q. Okay. Now this report came in May of
3 2022; correct?

4 A. I believe so.

5 Q. And this was -- work had already been
6 commenced I mean, work had already begun on the
7 property.

8 A. Work had commenced; correct.

9 Q. When in your opinion would you say that
10 Condition 7 had been complied with?

11 A. Sorry. Say that again.

12 Q. When was Condition 7 complied with with
13 regard to the Yellow Hale property?

14 A. Our official determination as far as
15 making that position was after this had been
16 received.

17 Q. What about prior to that?

18 A. We hadn't made an assessment of Condition
19 No. 7.

20 Q. So the Planning Department's official
21 determination that Condition 7 had been complied
22 with was done on or after May 12, 2022.

23 A. Correct.

24 Q. And this was after work had commenced.

25 A. Correct.

1 Q. And that included grading on the property.

2 A. Correct.

3 Q. Did it include any micro-blasts or
4 explosions?

5 A. I'm not familiar with what exact grading
6 was going on out there. I had -- yeah.

7 Q. Go ahead.

8 A. No; from what I understand there may have
9 been micro-blasting used, but we weren't a part of
10 the actual grading activity.

11 Q. Did you receive any complaints from the
12 community about blasts?

13 A. We did.

14 Q. When did those complaints start if you
15 remember?

16 A. I believe -- and I may be wrong -- but I
17 believe it happened we issued the determination.

18 Q. Who decides when to place the subdivision
19 application on the agenda?

20 MS. COBURN: Objection. Vague.

21 THE WITNESS: I think ultimately -- we
22 discussed it earlier -- the ultimate authority is
23 going to be the subdivision -- if it's a subdivision
24 application, the Subdivision Committee Chair.

25 But ultimately the Planning Department

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development site Meridian Pacific has named "Kaua'oe o Koloa."

Activists' claims regarding cave exposures stem from drone footage taken after contractors' daily blasting operations.

The videos, which are available online, show the rubble created by the daily blasts. Distinct shadows and gaps can be seen between the rocks.

But these shadows and gaps are not indicative of an underlying cave system, according to Meridian Pacific Vice President of Construction Colin Thompson and his team of specialists.

Fragmented rocks and boulders occur when blasts break apart a solid rock, said Dr. Chuck Blay, a geoscientist and Kaua'i resident retained by Meridian Pacific.

"When it collapses back down, (the fragments) don't fit back together, so they're really angular ... you get a lot of porosity, which is artificial," Blay continued, during a recent inspection of the property with

Thompson and invertebrate biologist Dr. Steven Lee Montgomery, who is also retained by the developer.

The excavation technique, which Meridian Pacific calls "micro-blasting," begins with a three-inch-diameter hole drilled 12 to 16 feet down into the center of the planned blast zone.

The bottom of the hole is then filled with a portion of the industrial explosive ANFO and topped off with a crushed rock product to contain the detonation.

The subsequent explosion transforms all rock surrounding the several-foot-deep hole to rubble, which is then excavated with a backhoe.

Thompson said the near-daily excavation, which may last up to eight months, is needed to install sewage and wastewater infrastructure.

Thompson, Blay and Montgomery claim any underground void potentially

home to the pe'e pe'e maka'ole
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or 'uku noho ana should be discovered during the pre-blast drilling process.

"If the drill was going to plummet through really fast—if you'd have hard rock and then it just dropped three feet or 10 feet—you'd know you've got something like a lava tube down there," said Montgomery.

"Well, that didn't seem to happen."

Blay and Montgomery co-authored a May 12 report stating the land does not contain any habitats of the spider or amphipod, a blind crustacean measuring up to 10 millimeters in length.

The scientists' conclusion is based, in part, on a two-day exploration of the nearest lava tube, known as the Kiahuna mauka cave. Their report states the tube's closest approach to the development is over 200 feet.

Blay claims he conducts inspections before, during and after each blast.

Montgomery assisted in scientists' first description of pe'e pe'e maka'ole and 'uku noho ana in the early 1970s.

Both he and Blay say it's effectively impossible to prognosticate what lies beneath the surface of the Earth in cases such as this.

However, the scientists say if there are cave habitats to be found, they will find them.

It's got these species that are so unique from anything else in the world," Montgomery said.

"These are our famous animals, and they deserve concern. I share the concern of the 'ohana and others who want to go extra lengths."

Pule
Protesters assembled at St. Raphael Church in Kololo Wednesday afternoon, hours after Thompson, Blay and Montgomery concluded their tour of the blast zones.

Their concerns also include

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affordable housing.

Some participants, like Elizabeth Lindsey of Waikua, described the march as a pule, or prayer gathering.

"There's nowhere else in the world like our home. Why are they trying to make this like everywhere else?" Lindsey asked from the church yard.

"I'm finding, more and more, that the people of the land are connecting back to the land," she continued. "The people who are looking to get rich from this land to make money — of all things that this world has to offer, money — just make me sick."

Lindsey and about 160 others initiated a procession that paused at a cave located behind St. Raphael Church before heading down the historic Hapa Trail to the Meridian Pacific construction site.

Save Koloa's founders — Elizabeth Okinaka, Nakai Villatora and Roslyn Manawaiakea Cummings — spoke throughout the march. Villatora said her involvement is driven by spirituality.

"Our culture, our language, was all taken from us," she explained.

"I'm able to spiritually pick up on my ancestors because I carry the same blood as them ... we are as much of them as they are of us."

Okinaka and Villatora also highlighted the lack of affordable housing on Kaua'i.

"On top of the desecration that's happening there, there's a housing crisis, you know? Local families are struggling," Okinaka said, referring to Kaaunaoe o Koloa units' high price tags.

Iwi kupuna

The presence of Iwi kupuna within the Kaaunaoe o Koloa site is also disputed.

A cultural survey prepared for Meridian Pacific found the historic 460-acre Koloa Field System in Kiahuna, which includes Kaaunaoe o Koloa, "was

an agricultural and habitation system that was the backbone of human burial sites.

The survey states no burial has been found within the Koloa Field System by archaeologists, other than a plantation-era burial crypt on the flood plain of Waikomo Stream, west of the Meridian Pacific site.

Okinaka cites a 1978 archaeological and biological survey of the Kiahuna Golf Village area, which notes a "partially collapsed tomb containing a coffin burial." However, she does not know the precise location of these remains.

At least one individual claims to remember ancestral burial sites in the area.

Albert Silva, 62, was born on Kaua'i, and now resides on Hawai'i Island.

He shared his childhood memories with The Garden Island on Thursday.

"My grandmother couldn't drive, so my mom would pick her up at her house in Kalaheo and take her to put flowers on graves," said Silva, who was 2 years old at the time.

His grandmother visited at least three gravesites located throughout Koloa, Silva recalled.

The first was located somewhere near the old Koloa fire station. The second, by Waikomo Stream. And the third was found beyond a St. Raphael Church boundary line, potentially on the contemporary Meridian Pacific property.

The Garden Island and Silva could not confirm this last gravesite's location at press time due to changes in the landscape and Silva not being on island.

Joe Aquino and 10 others journeyed from Oahu to attend the Koloa march.

Aquino, a student of Iwi kupuna, said Meridian Pacific and other developers don't care about his people's ancestors.

"Hopefully, the developers see a lot of people care about what's happening to the 'aina," he said.

"Get some education. Learn about our culture," Aquino

building on top of your family's plot."

Maui resident Torie Ho'opi'i, like others Wednesday, cited the importance of solidarity between Native Hawaiians across the islands.

"I have protected sites on Maui and Mauna Kea. And even though this is Kaua'i, it is still the same cause," she said.

...

Scott Yunker, reporter, can be reached at 245-0437 or syunker@thegardenisland.com.

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nobody June 5, 2022 5:47 am
Probably if there were enough houses for working residents there might be more slack for many new houses for the rich. Too bad our politicians can't figure it out. Fresh blood?

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Environment

Endangered Blind Spiders And Ancient Burials Spur Angst Over Luxury Condo Project

No one knows for certain what lies underground at a vacant parcel that's being developed on Kauai.

14

By Brittany Lyte / June 3, 2022

Reading time: 8 minutes.



Long before Kauai's southeastern shore became a magnet for golf courses, hotels and luxury condominiums, molten lava flowing over roughly 6,000 acres built a vast underground world of caves and caverns.



These subterranean voids, only a small number of which are accessible, are the only known habitat for [two native endangered species](#) — the Kauai cave wolf spider, which has three teeth to eat its prey and no eyes, and the Kauai cave amphipod, a blind, shrimp-like crustacean about the size of a fingernail.

Discovered in the early 1970s, these tiny cave-dwellers are known to exist in a handful of caves in the Koloa basin area and nowhere else on earth. Federal wildlife regulators say it's reasonable to think the invertebrates also reside in other nearby lava tubes unexplored by scientists due to their inaccessibility.

Last week, explosions used to break rock as part of a land-grading project for a planned 279-unit luxury condo complex exposed a hole in the earth that some environmentalists say appears to be a preexisting underground cavern that could be critical habitat for the pair of endangered species.

The environmental group [Save Koloa](#), which says it's guarding the potential last refuge of the town's imperiled sightless creatures, has since broadcast [drone footage of the new opening in the earth](#), generating outrage online among a broad cross-section of Kauai residents who want the blasting to stop.

The developer says it's all a misunderstanding.

EXHIBIT "05"



Several dozen demonstrators marched through the site of a planned luxury condo development that may also contain critical habitat for a pair of endangered species.

There's no evidence of the imperiled creatures beneath [the planned Kauanoe O Koloa condo complex](#), partly because the subterranean environment cannot be probed. But the 25-acre parcel where the blasting has occurred is adjacent to a series of explored underground passageways where the Koloa cave wolf spider has been known to dwell off of [Kiahuna Golf Club's](#) second fairway.

A principal threat to both blind species is habitat loss in part due to “grading, paving, quarrying and other activities associated with development,” according to the [U.S. Fish and Wildlife Service](#).

On Wednesday, about 80 people waving Hawaiian flags and signs gathered at the condo construction site to protest the excavation work, which is expected to continue for eight months with three to four blasts occurring weekly, according to a courtesy notice provided to neighbors.

Those who oppose the blasting include environmentalists worried about the looming extinction of rare native species, as well as Hawaiian activists who say the bones of their ancestors are buried in the vicinity of the condo development. Others dispute the construction of yet another luxury vacation homes complex at a time when local people are being displaced by the scarcity of lower- and middle-class housing.

“There’s no more Hawaiians in Koloa,” said 29-year-old Elizabeth Okinaka, an organizer with Save Koloa. “Who can afford to live here with all these multimillion dollar homes?”



Courtesy: Ryder Cummings/2022

Blasting associated with land grading is underway on a 25-acre parcel in Koloa that's being developed into a 279-unit luxury condo complex called Kauanoe O Koloa.

Hawaiian activist Keoni DeFranco, 34, said he took time away from work on Oahu to fly to Kauai for the demonstration because he wants the 25-acre construction site preserved for its unique underground geology.

"For people like me who feel strongly about my cultural identity, it's one thing to see a video posted online. It's another thing to witness it," DeFranco said. "Once you see it in person you cannot deny what is occurring here, which is gentrification at an extreme level and the literal collapse of our rich cultural and archeological heritage. It should be hands-off forever."

Citing harm to endangered wildlife habitat, a lawsuit filed last month in 5th Circuit Court by Save Koloa claims the developer is jeopardizing Hawaii residents' environmental interests under a section of the state constitution, which declares that [each person has the right to natural resource conservation and protection](#). Kauai County, which approved the developer's grading and grubbing permit, is also named a defendant.

Colin Thompson, vice president of construction at [Pacific Meridian](#), which is developing the condo project, said protesters have misinterpreted footage of crevices in the earth that have been widely shared on social media.

Excavation crews are using "micro-blasting" methods to build infrastructure improvements, such as storm water drainage, with a degree of precision that will not damage cave systems on neighboring parcels, according to Thompson. The project has a team of expert geologists, biologists and archaeologists who conducted pre-drilling tests, site surveys and ongoing monitoring to ensure that the blasting will not have adverse environmental effects.

Chuck Blay, a geologist hired by the developer to monitor the blasting, said in the same press release that voids in the ground created by excavation work are not caves or caverns, but "large, angular blocks of blue rock being broken up by the micro-blasting methods."

Biologist Steven Lee Montgomery, who is also retained by the developer, confirmed that the blasting has not unearthed any preexisting caves or caverns, adding that he sees "no evidence for the claims made by those who released the images and videos," according to the press release.

The clash between development and imperiled species at the Kauanoe O Koloa site dates to the 1970s, when the [state Land Use Commission](#) reclassified more than 450 acres of Koloa agricultural land for urban use in response to a request from a developer who proposed to build affordable houses and apartments.

This land use change more than 40 years ago enabled the [Kauanoe O Koloa subdivision](#) under development today.

Last month, an archaeological study funded by the developer — a state-ordered prerequisite to construction — found no evidence and "very low probability" of the presence of the endangered spider or amphipod on or in the vicinity of the parcel, in part due to the absence

of underground moisture. The species can only survive where there is enough humidity to sustain a food source.

The report concludes that there is no spider or amphipod habitat on the parcel “deemed worthy of preservation,” while noting the limitations of the “sparse data” from which to draw an objective answer.

In his report, Oahu-based biologist Steven Lee Montgomery, whose half-century career in Hawaii includes field work in Koloa cave systems, wrote it’s “reassuring to note” that a scientist will be present during construction to monitor for any “moist, food containing voids” that might be inhabited by the spider or amphipod.

Although not legally binding, the FWS last year recommended to Kauai County officials that, “if a cave is found during construction, work around the cave stops immediately.” Federal and state environmental regulators should also be contacted to provide guidance on how to minimize and mitigate adverse effects to the endangered species, the agency said.

Local activists dispute claims that holes exposed by blasting were not preexisting and say the developer has not adhered to the FWS guidance.

“Tragically, I don’t know what impact all of the grading and explosions have had on the endangered species or if it’s already too late,” said Peter Morimoto, the Kauai-based attorney representing Save Koloa in the lawsuit.



Brittany Lyte/Civil Beat/2022

Blasting associated with land grading work on the 25-acre site of a planned luxury condo complex is expected to continue for eight months, with blasts occurring three or four times weekly.



Brittany Lyte/Civil Beat/2022

Found only in Koloa, the endangered Kauai cave wolf spider is known to dwell in only a few subterranean lava tubes, including an underground cave system off the second fairway at Kiahuna Golf Club. The critical habitat is located roughly 200 yards from a planned luxury condo subdivision.

Adam Asquith, a former FWS biologist, spent years crawling around Koloa’s cave systems in the 1990s to research the rare spider and amphipod, eventually writing the biological justification that led the agency to designate them as endangered species.

He said it would be “most unusual” if the Kauanoe parcel did not contain suitable habitat for the spider and amphipod since there’s known habitat on the golf course approximately 200 yards away from the property line.

But for Asquith, the question of whether the developer must legally pause construction to mitigate harm to any species that may — or may not — be present on the property is besides the point. He faults the developer for a lack of effort toward the goal of figuring out what really lies beneath its real estate investment before moving forward with potentially detrimental site grading.

“When you chant E Ho Mai, you’re asking to be shown the hidden nature of what we can’t see,” said Asquith, referencing [the chant](#) composed by late kumu hula Edith Kanakaole. “Everybody from kindergarteners to kupuna, in state meetings and in federal meetings, we all chant E Ho Mai because we can’t see all the important things. In fact, most important things in life have to be revealed to us, so we ask for guidance.”

“I think that’s the fundamental problem,” Asquith continued. “They’re not asking, ‘Please show me what might be there so that we can make the right decisions.’ And that’s not consistent with our values in Hawaii.”

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BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of) Subdivision Application No. S-2021-07
)
YELLOW HALE, LLC, a domestic limited liability company, for approval of a proposed 2-lot consolidation and re-subdivision of real property located at Kōloa, Kaua‘i Tax Map Key (4) 2-8-014:032 and 2-8-014:041) PETITIONERS’ FRIENDS OF
) MĀHĀ‘ULEPU AND SAVE KŌLOA
) PETITION TO INTERVENE;
) DECLARATION OF BRIDGET
) HAMMERQUIST; DECLARATION OF
) ELIZABETH OKINAKA; DECLARATION
) OF LLEWELYN (BILLY) KAOHELAULII;
) EXHIBITS 1 - 7; FILING FEE;
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)

PETITIONERS’ FRIENDS OF MĀHĀ‘ULEPU AND SAVE KŌLOA’S PETITION TO INTERVENE

Petitioners FRIENDS OF MĀHĀ‘ULEPU, a non-profit corporation and SAVE KŌLOA, an unincorporated association, (collectively, “Petitioners”), pursuant to Hawai‘i Revised Statutes (HRS) chapter 91; and the Rules of Practice and Procedure of the Kaua‘i County Planning Commission (KPC Rules) §§ 1-3-1 and 1-4-1 through 1-4-6, respectfully submit this petition to intervene in the above-captioned proceedings initiated by Applicant YELLOW HALE, LLC, a domestic limited liability company (Applicant). Alternatively, as discussed *infra* Part III, the Commission should determine to deny the subdivision application such that no proceedings would exist into which Petitioners could intervene.

EXHIBIT "06"

I. BACKGROUND

The Kaua'i Planning Department (Planning Department) recommended that the Sub-division Committee of the Kauai Planning Commission approve Applicant's sub-division application of a proposed 2-lot consolidation and re-subdivision at Kōloa, Kaua'i Tax Map Key (4) 2-8-014:032 in order to construct its market-rate project for 280 condominiums to be used primarily as short term vacation rentals with 2 additional separate residences constructed on site. Declaration of Bridget Hammerquist (Hammerquist Declaration). According to the Planning Department, the proposed development involves a four lot subdivision that establishes two lots with County Residential District (R-10) zoning, one remnant lot zoned County Open (O) District, and one roadway lot.

On August 10, 2021, the Commission Subdivision Committee (subdivision committee) tentatively approved part one of Applicant's two-part subdivision application. The first part of the application achieves subdividing out a part of the parcel consisting in Kiahuna Plantation Drive. The remainder of the parcel would become part of an existing parcel, TMK (4) 2-8-014:032, and would later be subdivided into two parcels in the second part of Applicant's subdivision applications. As of August 10, 2021 the County did not have any report or qualified biologic study as required by LUC condition 7. It was not until February 3, 2022 that Gary Pinkston, new owner of the sub-division application parcel, filed a draft biological report claiming to have satisfied condition 2 (b), with a qualified biological study clearing the property of any blind wolf cave spider or amphipod or habitat for same. His letter of February 3, 2022 attached as Exhibit 2 to the Petition and the Tetrattech draft biologic attached to his letter was not filed until four months following the sub-division committee's tentative approval. The pertinent portions of the Tetrattech draft biological are filed with this Petition as Exhibit 3. Not only is there no clearance for the endangered species but the report filed by Mr. Pinkston recommends the developer hire a qualified biologist to properly evaluate the parcels in accord with condition 7. As a consequence of Gary Pinkston's February 3, 2022 mischaracterization of the Tetrattech report, Kauai County Public Works issued a grading and grubbing permit in March 2022. Attached to the Petition as Exhibit 4.

As of August 10, 2021 the County did not have any report or qualified biologic study as required by LUC condition 7. It was not until February 3, 2022 that Gary Pinkston, new owner of the sub-division application parcel, filed a draft biological report claiming to have satisfied condition 2 (b), with a qualified biological study clearing the property of any blind wolf cave spider or amphipod or habitat for same. His letter of February 3, 2022 attached as Exhibit 2 to the Petition

and the Tetrtech draft biologic attached to his letter was not filed until four months following the sub-division committee's tentative approval. The pertinent portions of the Tetrtech draft biological are filed with this Petition as Exhibit 3. Not only is there no clearance for the endangered species but the report filed by Mr. Pinkston recommends the developer hire a qualified biologist to properly evaluate the parcels in accord with condition 7.

As a consequence of Gary Pinkston's February 3, 2022 mischaracterization of the Tetrtech report, Kauai County Public Works issued a grading and grubbing permit in March 2022. Attached to the Petition as Exhibit 4.

Yellow Hale's sub-division application seeking consolidation of 2 parcels as part 1 of a 2 part sub-division application makes no reference to the County conditions that were supposed to be satisfied for these parcels prior to any building permit approvals. Specifically, Exhibit 5 identifies that following conditions which Yellow Hale failed to meet before groundbreaking activity and which are yet to be met: 2(a)(b), 3, 5, 8, 18, 22, 26, 27. In many of the conditions it refers to applicant's responsibilities and applicant Yellow Hale no longer has anything to do with the parcels identified for development.

As of the August 10 sub-division committee hearing applicant Yellow Hale was no longer the owner of the subject parcels advanced for consolidation, TMK 2-8-14:41 and 2-8-14:32.

Applicant, Yellow Hale, owner Enrico Donato, sold the subject parcels to Gary Pinkston in June 2021. Exhibit 1 to the Petition identifies Yellow Hale as still under the management of Enrico Donato. The County's records will reflect that Gary Pinkston became the owner of the subject parcels in June 2021 but, thus far, has never changed the identity of the applicant.

Gary Pinkston is the party advancing the sub-division application and is the owner intending to build the development described in the sub-committee's August 10 agenda. There are no documents filed with the State that link Gary Pinkston or Meridian Pacific to Yellow Hale.

When the sub-division committee, comprised of two planning commission members tentatively approved Yellow Hale's application, their tentative approval was improvidently granted and must be rescinded as Yellow Hale violated LUC condition 7 with destructive grading and ground disturbance as documented in the Folk et al August 28, 2021 Final Literature Search and Field Study. See Exhibit 6 filed with this Petition. See also Okinaka Decl. of May 10, 2022 filed in the Circuit Court and attached in support of this Petition which details the dates of rock wall destruction and other grading activity between December 2020 and August 2021.. The Final Folk et al. was prepared 18 days after the sub-division committee met and by its own text is not a

“comprehensive archaeological survey” as required by LUC condition 7. See the following relevant text from the Folk et al Final in exhibit 6:

“1.2 Document Purpose

...This investigation does not fulfill the requirements of an archaeological inventory survey investigation, per HAR §13-276.”

The same archaeologist, Missy Kamai, and the same firm, Cultural Survey’s Hawaii, that produced the Folk et al. final completed a comprehensive archaeological survey of 10 acres at the Old Koloa Mill site. In that document, they describe that it takes one archaeologist one day per acre to complete a comprehensive archaeological survey. See Exhibit 7. The final alleged archaeological clearance for the parcels now owned by Pinkston, previously by Yellow Hale, exceed 23 acres. The Planning Department is obligated to enforce and ensure compliance with the LUC conditions. There is no dispute that neither the biological or archaeological requirements of condition 7 were met or satisfied by Yellow Hale. Petitioners therefore file this Petition to Intervene and request a Contested Case hearing for all of the reasons stated herein.

On May 24, 2022 and May 26, 2022, Petitioners were contacted by Honua Consulting, who represented that they were hired by the Applicant to prepare a *Ka Pa‘akai* analysis for the Commission’s consideration and approval. See Hammerquist Decl. and Okinaka Decl.

II. Timeliness of Petition

A. Petitioners’ intervention is timely

Commission Rule § 1-4-3 provides:

Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

This Petition is timely for three reasons. First, Petitioners understand the subdivision committee only tentatively approved the first part of Applicant’s subdivision application on August 10, 2021. Minutes and records for their August 10, 2021 subdivision committee meeting. The second part of this application has not yet been heard by either the committee or the full Planning Commission. Petitioners are not aware of when exactly the Commission will schedule its decision making on the *Ka Pa‘akai* analysis and therefore are seeking to intervene at this time to avoid timeliness issues.

Second, the subdivision committee’s tentative subdivision approval is void because it acted in violation of article XII, §7 of the Hawai‘i Constitution. *Ka Pa‘akai o Ka ‘Āina v. Land Use*

Commission, 94 Hawai‘i 31, 7 P.3d 1068 (2000) provided an analytical framework "to effectuate the State’s obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests[.]” *Id.*, 91 Hawai‘i at 46-47, 7 P.3d at 1083-84. Under *Ka Pa‘akai*, the Commission must make specific findings and conclusions as to:

(1) the identity and scope of "valued cultural, historical, or natural resources in the [application] area, including the extent to which traditional and customary native Hawaiian rights are exercised in the [application] area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [agency] to reasonably protect native Hawaiian rights if they are found to exist.

Id., 91 Hawai‘i at 47, 7 P.3d at 1084 (footnotes omitted). No *Ka Pa‘akai* analysis had been performed or deliberated on as of the subdivision committee’s August 10, 2021 meeting and therefore its approval is void and must be rescinded.

Petitioners did not receive notice of the subdivision application until the agenda was published for the August 10, 2021 meeting. When the subdivision committee agenda was first released, Petitioners reviewed recent newspaper public notices and could not find any notice of the Yellow Hale subdivision application, see declaration of Elizabeth Okinaka.

B. Good cause exists to permit intervention at this time

Good cause exists to permit intervention. “Good cause” [] “depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which [the] decision is committed.” *Chen v. Mab*, 146 Hawai‘i 157, 178, 457 P.3d 796, 817 (2020) quoting *Doe v. Doe*, 98 Hawai‘i 144, 154, 44 P.3d 1085, 1095 (2002). *Chen* interpreted “good cause” by considering, amongst other things, Hawai‘i courts’ “preference for giving parties an opportunity to litigate claims or defenses on the merits[.]” *Id.*, 146 Hawai‘i at 179, 457 P.3d at 818 quoting *Shasteen, Inc. v. Hilton Hawaiian Village Joint Venture*, 79 Hawai‘i 103, 109, 899 P.2d 386, 392 (1995) (addressing an appeal of a HRCF Rule 41(b) dismissal). “Good cause” exists where “there is no (1) deliberate delay and/or contumacious conduct; or (2) if deliberate delay or contumacious conduct exist, there is no actual prejudice that cannot be addressed through lesser sanctions.” *Chen*, 146 Hawai‘i at 180, 457 P.3d at 819 (in the context of setting aside a dismissal under HRCF Rule 41(b)(2)).

Here, the subdivision committee acted in the absence of required information proceeding from a *Ka Pa‘akai* analysis, which directly concerns Petitioners’ property rights and interests. Petitioners did not deliberately delay or demonstrate contumacious conduct. Rather, Petitioners were

not aware of Applicant's plan to blast in the area, destroying culturally and environmentally significant cave formations and burial mounds, adversely impacting both and directly affecting public trust resources. Hammerquist Decl. Thus, "good cause" exists because the subdivision committee's actions were in excess of statutory and constitutional jurisdiction, made upon unlawful procedure, and affected by other error of law.

III. Petitioners hold property rights and interests in Commission's decision

A. Petitioners Save Kōloa and Friends of Māhā'ulepū

Petitioner SAVE KŌLOA, an unincorporated association, is based on Kaua'i and composed of Kaua'i residents who value and have interests in the preservation of endangered and threatened species, some of which are endemic to the South Shore of Kaua'i. Declaration of Elizabeth Okinaka (Okinaka Decl.). These native species also have traditional and customary significance for its members.

Save KŌLOA founders and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property and are lineal descendants of iwi kupuna located on the property. Okinaka Decl. Petitioners' exercises of Kānaka Maoli traditional and customary rights include utilizing the adjacent Hapa trail to access the beach for gathering, fishing, swimming and other nearshore practice. Llewelyn (Billy) Kaohelauli'i Decl. These rights are also exercised through visiting, memorializing, and caring for historic properties, including the three burial mounds that exist on the property, as well as a heiau that were not documented in the June 2021 Cultural Surveys Hawai'i literature review.¹ Okinaka Decl. The site also holds spring water, caves, and endangered native species - the pe'ape'a maka'ole or Kaua'i cave spider - that is revered as an ancient kupuna. Okinaka Decl. Save Kōloa members include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species. *Id.*

Petitioner FRIENDS OF MĀHĀ'ULEPŪ, a nonprofit corporation, is based on Kaua'i and is comprised of Kaua'i citizens who are entitled to a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kaua'i. Hammerquist Decl. Friends of Māhā'ulepū officers, directors, and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property. Hammer-

¹ Draft Archaeological Literature Review of the Proposed Kauanoe o Kōloa Project, Kōloa Ahupua'a, Kōloa District, Kaua'i TMK: (4) 2-8-014:032 Lot 1, prepared for Meridian Pacific, Ltd. by W. Folk, N. Kamai, and H. Hammatt, Cultural Surveys Hawai'i, Inc. (Jun. 2021).

quist Decl. These Kānaka Maoli members including those who use the site to visit aumakua, care for historic sites, revere ancient native species, and protect iwi kupuna. Declaration of Llewelyn (Billy) Kaohelauii Friends of Māhā‘ulepū members include Kānaka Maoli fishers and other nearshore gathers that will be blocked from feasibly accessing nearshore areas close to the project area due to the intensification of land uses consequent to Applicant’s proposals. *Id.*

Friends of Māhā‘ulepū members and supporters also include those residing in the adjacent Wainani development, who are similarly concerned about the intensification of land uses and destruction of natural and cultural resources due to Applicant’s actions, which also includes the intensification of traffic on Kiahuna Plantation Drive, the single road access and exit source for the near 1,100 residential units that are already occupied that rely on this sole entry and exit road. Amongst these residents is Derrick Pellen who lives in Wainani subdivision, adjacent to the parcel, TMK (4) 2-8-30:023 and Jerry McGrath, who lives at 2717 Milo Hae Loop, Kōloa, Hawai‘i 96756, TMK (4) 2-8-029:089. KPC Rule §1-4-4(2).

Friends of Māhā‘ulepū officers and directors include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species, including but not limited to three endangered sea birds, the Newell Shearwater and ua‘u and ‘akē‘akē (Hawaiian Petrel). Petitioners have also photographed a threatened species, nēnē, on the subject TMK. Hammerquist Decl.

B. Petitioners’ property rights and interests

Petitioners and their officers, directors, and members (“Petitioners”) have constitutionally protected property rights consequent to their ownership of and residence within adjacent property under article I, Section 5 of the Hawai‘i Constitution and the U.S. Constitution, amendments V and XIV; constitutional rights under article XI, §§1 and 9 as beneficiaries of Hawai‘i’s public trust and based on their rights to a clean and healthful environment as defined by the Commission’s exercise of subdivision powers under HRS chapter 46 and the Kāua‘i County Charter, and under article XII, §7 of the Hawai‘i Constitution. Additionally, Petitioners hold interests clearly distinguishable from the general public because their rights will be directly and immediately affected by the proposed application. *See* KPC Rule §1-4-1.

As set forth *supra* Part III.A, Petitioners’ members and supporters include residents of the adjacent Wainani and Kiahuna golf village developments, whose peaceable enjoyment of their residences will be substantially disturbed by the intensification of land uses consequent to approval of Applicant’s subdivision application. Settled Hawai‘i case law recognizes nearby and adjacent land-

owners hold a “concrete interest” in proceedings on proposed developments so as to satisfy standing requirements, including requirements for mandatory intervenor status. *See County of Hawai‘i v. Ala Loop Homeowners*, 123 Hawai‘i 391, 419-20, 235 P.3d 1103, 1131 (2010) (recognizing adjoining landownership as a form of standing, but not a private right of action); *Mabuiki v. Planning Comm’n*, 65 Haw. 506, 654 P.2d 874 (1982) (affirming a decision to permit development nearby land in the special management area could only have an adverse impact on an adjacent landowner); *Town v. Land Use Comm’n*, 55 Haw. 538, 524 P.2d 84 (1974) (concluding adjacent and nearby property owners had a property interest in changing the land use entitlements and adjacent and nearby landowners have legal rights as a specific and interested party in a contested case proceeding to change land use designations or entitlements); *East Diamond Head Ass’n v. Zoning Bd. Appeals*, 52 Haw. 518, 479 P.2d 796 (1971) (adjoining property owner has standing to protect property from “threatening neighborhood change”); *Dalton v. City & County of Honolulu*, 51 Haw. 400, 462 P.2d 199 (1969) (property owners across the street from a proposed project have a concrete interest in scenic views, sense of space and density of population).

IV. Issues, impacts, and other feasible protections for Petitioners’ rights.

A. Issues sought to be raised to the Commission

Petitioners seek to raise the following issues through intervention in the Commission’s decision-making on the application, including its approval of any *Ka Pa‘akai* analysis or report.

The subdivision committee’s tentative approval needs to be rescinded because of the Applicant’s failure to satisfy LUC condition 7 and the Application needs to be re-submitted by the current property owner, and entity legally responsible for the subdivision development.

There were three burial mounds on the property, some of which have been destroyed with the bulldozing and the blasting method of excavation the new property owner is utilizing. Hammerquist Decl. Additionally, there are many historic properties, including a heiau, extant on the property that have not been recognized by the Applicant’s archaeological consultants. *Id.* Burial caves also exist on the property and are being destroyed by Applicant’s blasting/ excavation. *Id.*

Intensification of land uses through subdivision will deter and prevent the exercise of Kānaka Maoli traditional and customary practices on the parcel and nearby, including at nearshore areas. (Kaohelauii Decl.) Some of these impacts are consequent to increased population density, beach users, transient vacation rentals, and vehicular traffic, all of which crowd cultural practitioners and deter them from exercising their rights. Kaohelauii Decl.

Applicant represented that it has met all of the conditions of its district boundary

amendment imposed by the State Land Use Commission, however these conditions include specific studies and assessments of listed native species. Hammerquist Decl. These native species potentially inhabit the property and the biological studies to determine their presence was not done prior to extensive groundbreaking activity as specifically required by condition seven of the Land Use Commission (LUC) in their 1978 Decision & Order: Condition No. 7 1978 DBA Decision & Order

“7. That Petitioner commission and complete a comprehensive archaeological and biological study with actual inventories of archaeological sites and flora and fauna on the subject property, and that the Petitioner preserves any archaeological sites which archaeologist conducting such archaeological study believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers which the biologist conducting the biological study believes to be worthy of preservation. The Petitioner may commission such archaeological and biological study to any archaeologist and biologist or firm connected therewith who is qualified to conduct such a study to satisfy the foregoing condition. The Petitioner may apply to the County of Kauai for rezoning of the subject property before the completion of the archaeological and biological study; provided that no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed. Actual work on any portion of the subject property may be commenced by Petitioner upon certification by the archaeologist and biologist that the area for which work is to commenced does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation.”

Failing to perform a biological review by a qualified biologist and failing to complete archeologic review until more than a month after significant groundbreaking activity was begun with bulldozers, front-end loaders and drills, undermines the accuracy or credibility of any post construction/ groundbreaking activity. activity which are irreplaceable resources for Kānaka Maoli traditional and customary practices, have been inadequate. Hammerquist Decl. re Tetrattech report. Native species, including the Kauaʻi cave spider, are kupuna and aumakua and it violates Petitioners’ members’ traditional and customary practices to kill them or harm their habitat. Kaohelauii Decl.

B. Impacts on Petitioners’ rights and interests

The effect of any Commission decision could violate Petitioners’ rights and harm their interests. Kaohelauii Decl. and Hammerquist Decl. Applicant has not, and is not able to, fully represent

Petitioners' rights and interests as discussed *infra* Part V.

C. No other relief is available for Petitioners' issues

Petitioners have attempted to seek relief through public testimony to this Commission, writing letters and seeking audiences with various agencies and the Office of the Mayor, by attempting to talk to Applicant's consultants, and by filing a complaint to the Circuit Court of the Fifth Circuit in Civil No. 5CCV-22-0000036. Okinaka May 10, 2022 Decl. and Hammerquist Decl. The circuit court denied our ex-parte motion for a ten day stay and the Applicant continues to blast/excavate the property despite our efforts to inform them of project impacts. *Id.*

V. **No grounds exist to deny this Petition and the Petition should be granted**

A. Petitioners share no position with existing parties to the proceedings.

Petitioners share no position with existing parties - the Applicant or the Planning Department, which are both proponents of the application. Although the Planning Department is also duty bound to protect public trust resources and native Hawaiian traditional and customary rights, their representation of these protected resources and rights are inadequate and do not substitute for that of Petitioners. *See Hoopai v. Civil Service Comm'n*, 106 Hawai'i 205, 217, 103 P.3d 365, 377 (2004) ("[Proposed intervenors] need only show that the Commission's representation of [its] interests may have been inadequate"). A "lack of adequate representation" also exists where a prospective intervenor would make a "more vigorous presentation" of a side of an argument than the government defendant because the regulation – the validity of which is being challenged – would benefit members of the prospective intervenor group. *New York Public Interest Res. Grp. v. Regents of Univ. of New York*, 516 F.2d 350, 352 (2d. Cir. 1975). Petitioners have more on-the-ground information and would make a more vigorous presentation of their rights, interests, and positions than any existing party. As lineal descendants, Kānaka Maoli traditional and customary practitioners, and Kaua'i residents who live and utilize the affected areas, Petitioners hold different interests from existing parties.

B. Intervention will not unduly delay or broaden proceedings.

Inclusion of the Petitioners would not unduly delay proceedings. The standard is not one under which any potential delay weighs against granting intervention. "Additional parties always take additional time which may result in delay, but this does not mean that intervention should be denied." 7C Wright, Miller & Kane. *Federal Prac. & Procedure*, Civil 2d. 1913 at 381-82 (2d ed. 1986). Rather, judicial bodies may consider intervention improper only where it "will 'unduly delay' the

adjudication.” *Id.*; see also *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 265 F.2d 364, 367 N.1 (D.C. Cir. 1959) (“Efficient and expeditious hearing should be achieved not by excluding parties who have a right to participate, but by controlling the proceedings so that all participants are required to adhere to the issues and to refrain from introducing cumulative or irrelevant evidence”). The Petitioners’ interests are all pertinent to this proceeding, particularly the Commission’s consideration of Applicant’s *Ka Pa‘akai* report, and their intervention would not inject collateral, new issues, wholly unrelated to the underlying matter. See *Blackfeld Hawaii Corp. v. Travelodge Int’l, Inc.*, 3 Haw. App. 61, 641 P.2d 981 (1983); *Taylor Comm. Grp v. Southwestern Bell Tel. Co.*, 172 F.3d 385, 389 (5th Cir. 1999); *United States v. S. Florida Water Management Dist.*, 922 F. 2d 704, 711-712 (11th Cir. 1991).

Additionally, the Petitioners are organizations represented by directors and this arrangement would serve to increase the efficiency and timeliness of the Petitioners’ intervention so as not to unduly delay proceedings.

C. Intervention is needed to develop a full record for the Commission.

The Commission has yet to consider *Ka Pa‘akai* analyses, which require that the Commission become informed on Kānaka Maoli traditional and customary practices that would be affected by the Commission’s actions. *Id.*, 91 Hawai‘i at 47, 7 P.3d at 1084 (footnotes omitted). Issues Petitioners raise concerning traffic, intensification of land uses, and aesthetic and scenic view impacts also impact Kānaka Maoli traditional and customary practices in the area. Hammerquist Decl. For instance, Billy Kaohelaulii conducts traditional fishing practices near the project area and would be thwarted in his - and his co-fishers’ abilities’ - to conduct these practices by vehicular traffic and parking issues caused by the new development. Kaohelaulii Decl. For many of the same reasons, Petitioners’ intervention would assist in, development of a complete record for the Commission to make its required determinations about Hawaiian cultural practices, the subdivision’s impacts, and feasible protections for these practices, amongst other issues that would improve the quality of life in Kōloa.

D. Petitioners’ intervention would serve the public interest

The Applicant is proposing a 280 unit condominium primarily composed of short term vacation rentals and over lands that hold ancient kupuna iwi, burial caves, heiau, and listed and native species. All of these are part of Hawai‘i’s unique cultural heritage and constitute public trust resources. Hawai‘i const. art. XI, §1; HRS §6E-13(b) (recognizing the public trust within historic resources). Petitioners’ also represent adjacent and nearby property owners who seek to ensure that

the subdivision laws and article XII, §7 of the Hawai'i Constitution are correctly applied to protect and preserve a peaceable way of life in Kōloa for all of its residents and for Kānaka Maoli traditional and customary practitioners. In addition, Petitioners' have an interest in upholding the integrity of environmental laws, which benefits the public at large. Petitioners' intervention will also serve to ensure that public facilities are not burdened by Applicants' proposed special use, by, at minimum, providing testimony and evidence to help shape conditions imposed on the permit, if such permit is granted.

Petitioners therefore will provide a much needed community voice in the proceedings.

VI. CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Commission grant their petition for intervention in the above-captioned proceedings.

DATED: Kōloa, Hawai'i August 2, 2022

Bridget Hammerquist, President
FRIENDS OF MĀHĀ'ULEPU

DATED: Kōloa, Hawai'i August 2, 2022

Elizabeth Okinaka, Founder
SAVE KŌLOA

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of) Subdivision Application No. S-2021-07
)
YELLOW HALE, LLC,) CERTIFICATE OF SERVICE
)
)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing was filed, hand-delivered or sent via U.S. mail, postage prepaid pursuant to Kauai Planning Commission Rule §1-3-3 to the following:

5425 PAU A LAKA LLC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

MP ELKO II, LLC
1136 Union Mall Ste 301
Honolulu, Hawaii 96813

KAUANOE O KŌLOA Phases 1 through 4
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

KAUAI HALE, INC.
1136 Union Mall Ste 301
Honolulu, Hawaii 96813

EARTHWORKS PACIFIC, INC.
4180 Hoala Street
Lihue, Hawaii 96766

MP FINANCIAL GROUP, LTD.
1136 Union Mall Ste 301
Honolulu, Hawaii 96813

DATED: Kōloa, Hawaii

August 2, 2022

Bridget Hammerquist, President
FRIENDS OF MĀHĀ‘ULEPU

FRIENDS OF MĀHĀ‘ULEPU, a nonprofit corporation

By Bridget Hammerquist, President

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SAVE KŌLOA, an unincorporated association

By Elizabeth Okinaka, Co-Founder

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808.635.7520

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of	) Subdivision Application No. S-2021-07
)
YELLOW HALE, LLC, a domestic limited lia-	) PETITIONERS' FRIENDS OF
bility company, for approval of a proposed 2-lot	) MĀHĀ‘ULEPU AND SAVE KŌLOA'S
consolidation and re-subdivision of real prop-	) SUPPLEMENT TO PETITION TO
erty located at Kōloa, Kaua‘i Tax Map Key (4)	) INTERVENE, FILED AUGUST 2, 2022;
2-8-014:032 and 2-8-014:041	) DECLARATION OF KAMAL C. HASSAN;
	) EXHIBITS 8-9; CERTIFICATE OF SERVICE
)
)
)
)
)

PETITIONERS' FRIENDS OF MĀHĀ‘ULEPU AND SAVE KŌLOA'S SUPPLEMENT TO
PETITION TO INTERVENE, FILED AUGUST 2, 2022

Petitioners FRIENDS OF MĀHĀ‘ULEPU, a non-profit corporation and SAVE KŌLOA, an unincorporated association, (collectively, "Petitioners"), pursuant to Hawai‘i Revised Statutes (HRS) chapter 91, and the Rules of Practice and Procedure of the Kaua‘i County Planning Commission (Commission Rules) §§ 1-3-1 and 1-4-1 through 1-4-6, respectfully submit this supplement to their petition to intervene in the above-captioned proceedings initiated by Applicant YELLOW HALE, LLC, a domestic limited liability company (Applicant), filed August 2, 2022 (petition). The petition seeks a contested case on Commission proceedings on Applicant's sub-division application of a proposed 2-lot consolidation and re-subdivision at Kōloa, Kaua‘i Tax Map

EXHIBIT "07"

Key (4) 2-8-014:032 in order to construct its market-rate project for 280 condominiums to be used primarily as short term vacation rentals with 2 additional separate residences constructed on site (project). This supplement is submitted to address oral comments from Planning Director Kaaina Hull on Petitioners' filing on August 2, 2022 in regard to timeliness and the procedural posture of both the petition and the underlying action of the Planning Commission.

I. SUPPLEMENTAL INFORMATION

A. Notice of August 10, 2021 committee meeting on application was not "published pursuant to law."

On August 2, 2022, the Planning Director informed Petitioners' representative that the petition was too late to be considered because the matter had been heard a long time ago and the petition should have been filed before that hearing. Declaration of Kamal C. Hassan (Hassan Decl.)

¶4. Commission Rule § 1-4-3 provides:

Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

On August 10, 2021, the Commission's two-person Subdivision Committee (subdivision committee) tentatively approved part one of Applicant's two-part subdivision application. The first part of the application achieves subdividing out a part of the parcel consisting in Kiahuna Plantation Drive. The remainder of the parcel would become part of an existing parcel, TMK (4) 2-8-014:032, and would later be subdivided into two parcels in the second part of Applicant's subdivision applications. However, Petitioners were not required to submit their petition to intervene prior to the subdivision committee meeting because this meeting had no notice published pursuant to law.

Public notice pursuant to HRS §92-7(b) or Commission Rule §1-6-5 is not required until six days prior to the Commission meeting. Therefore, the only way a petition for intervention could be filed seven days prior to the Commission meeting would for persons to have received notice in the Commission's July 9, 2021 publication of public notice for its consideration of a bill amending an ordinance at its August 10, 2021 meeting. The July 9, 2021 publication did not notice its consideration of the subdivision application. Hassan Decl. ¶5; Exh. 8. To construe the Commission rule to require petitions to be filed prior to published notice would be impermissibly absurd. *Williams v. Hawaii Medical Service Ass'n*, 71 Haw. 545, 545-46, 798 P.2d 442, 442-43 (1990) ("Courts will not construe rules in a manner which produces an absurd result.").

- B. The August 10, 2022 meeting did not constitute an “Agency Hearing” on the subdivision application because it was limited to a review by the Subdivision Committee who rendered a tentative approval with the matter to be heard on a future date by the Planning Commission. not a final approval or agency action.

Commission Rule §1-1-2 provides in relevant part:

(7) "Hearing"

(i) "Agency Hearing" refers only to such hearing held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS, including but not limited to Class IV, Use, and Variance Permits pursuant to the Comprehensive Zoning Ordinance of the County of Kaua'i and other applicable laws.

The subdivision committee's August 10, 2021 meeting was not an “agency hearing” because it was not “held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS.” The two-person subdivision committee could not constitute the Commission. HRS §91-14(a) provides in relevant part:

Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law.

The subdivision committee's “tentative approval” was not a final decision and order nor was it a preliminary ruling that deprived appellate of adequate relief. Hassan Decl. ¶6, Exh. 9 (Aug. 10, 2021 minutes at 19). As discussed *infra* Part I.C, the Commission would be estopped from asserting the subdivision committee decision was an appealable preliminary ruling by reason of the statements of the planning director and committee members. *See e.g.* Commission Rule §1-2-8(b) (describing the planning director's duties as the Commission clerk).

Because the August 10, 2021 meeting was not an “agency hearing”, Petitioners were not required to file their petition seven days prior to that meeting. Commission Rule §1-4-3 (“petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law.”).

- C. Commission is estopped from asserting the August 10, 2022 meeting was the substantive Agency Hearing for intervention purposes

The Commission's agenda for the August 10, 2021 meeting listed the subdivision application under "Tentative Subdivision Map Approval." The Commission clerk (Planning Director Kaaina Hull) and the two members comprising the subdivision committee referred, multiple times, to the “tentative” nature of the subdivision application approval, with subsequent fact gathering and

pending Commission's deliberations, prior to any final action by the Commission. Exh. 09, August 10 transcript. The Commission clerk stressed that the application "is just for essentially a road subdivision." Exh 9 August 10 transcript. He affirmed "it is not a final approval by any means of the subdivision." *Id.* at 20. He characterized the committee's work as a "technically just reviewing to say that it can be subdivided in the manner that is being proposed" and "that does not equate final approval or ultimate approval for the subdivision until they resolve all the agency requirements." *Id.* at 21. After the subdivision committee met, the Commission accepted their report on the tentative subdivision approval and not the final, informed action. Subdivision committee minutes include the following relevant statements:

Mr. Hull: I'll just add to Committee Chair DeGracia's report that you know, there was a fair amount of written testimony that came in. There was some oral testimony which was received today concerning one of the subdivision applications that particularly pertains to Yellow Hale, LLC. Again, as I reiterated to the Subdivision Committee, the petition that was up for review, was for a road subdivision to essentially subdivide a road out of the area. It is not for the 280-some odd units, that was previously proposed several years ago, and did receive approval then. This again, is just for essentially a road subdivision. Having said that though, you know, if there are concerns, and there seem to be concerns about the subdivision, this application is for tentative approval, meaning that all the necessary documents to be reviewed are in place and the Department did make an assessment to determine the documents are in place. But now essentially, it's up to the applicant to go and meet all the requirement and solicit the comments from various agencies, including but not limited to State Department of Health, the Department of Public Works, and then as well as the State Historic Preservation Division concerning, among other things, historic or archeological assets in the area. And they ultimately have to come back to you folks for a final action once they've addressed these concerns commented on by the various state and county agencies. So while the Committee did take action on a tentative approval, it is not a final approval by any means of the subdivision.

Mr. DeGracia: Thank you for making that clear.

[. . . .]

Mr. Hull: The new information, no, I'll say the information that they're waiting on from State Historic Preservation Division pertains to this specific subdivision. Now the State Historic Preservation Division has done an analysis previously of the site for the permits. And they are doing an analysis again for this subdivision. But they're waiting for that information to be transmitted to them as far as whether or not they find their archeological inventory survey up to snuff, if you will in assessing the assets that are out there or the lack of assets, whichever it is. So, they have received official comments from HSPD [*sic*] is pertaining to that. But ultimately, it's up the Commission if anyone wants to defer to wait for those official comments to come in. But whenever those comments do come in, ultimately the applicant just has to work with HSPD to resolve any of their concerns and issues for HSPD to agree for final action by the Planning Commission on a subdivision approval.

[. . . .]

Mr. Hull: Yes, so in this tentative subdivision, you're technically just reviewing to say that it can be subdivided in the manner that is being proposed. And so, there is lot size standards

and what have you that Kenny as the planner has reviewed to make sure it meets all the subdivision design standards and say it can move forward pursuant to these design standards. But before final action is even taken, they still must resolve all of the agency requirements. And so, all that's being essentially submitted to you folks today is, "are you in concurrence and meets all the design "standards pursuant to the Kauai County Code?" And for the design standards we're saying it does. But again, that does not equate final approval or ultimate approval for the subdivision until they resolve all the agency requirements. [. . . .]

Ms. Barzilai [Deputy County Attorney]: Madam Chair, excuse me, it's, Laura. So, what really is before you right now is the approval of Commissioner DeGracia's report from this morning from Subdivision Committee and not your actual, it is part and parcel of your actual approval of all of those items, but the appropriate motion would be approval or rejection of Commissioner DeGracia's report from this morning.

Exh. 09 at 19-22. Committee members and the Commission clerk took the position that the committee report was merely tentative, pending further agency input and Commission action. The Planning Director's comment that the instant petition is too late is improper in light of his earlier position that the committee report was merely tentative.

[A] party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action.

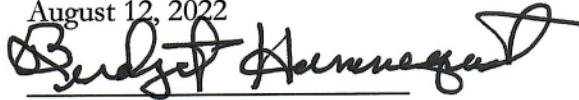
Rosa v. CWJ Contractors, Ltd., 4 Haw. App. 210, 216, 664 P.2d 745, 751 (1983) quoting 28 Am. Jur. 2d Estoppel and Waiver § 68, at 694-95 (1966) (footnotes omitted). "A party is estopped from playing 'fast and loose' with the court or blowing 'hot and cold' during the course of litigation." *Id.* quoting *Godoy v. Hawaii County*, 44 Haw. 312, 354 P.2d 78 (1960) (other citations omitted). "The doctrines of res judicata and collateral estoppel also apply to matters litigated before an administrative agency." *State v. Higa*, 79 Hawai'i 1, 8, 897 P.2d 928, 935 (1995) (quoted case omitted). The same equitable principles must apply to the Planning Director's representations to the public about the nature and effect of the subdivision committee's actions.

II. CONCLUSION

The foregoing described reasons additional to those provided in the petition that the petition is timely filed on August 2, 2022 prior to the Commission's deliberations of the application. Petitioners respectfully request the Commission grant their petition for intervention in the above-captioned proceedings.

DATED: Kōloa, Hawai'i

August 12, 2022



Bridget Hammerquist, President
FRIENDS OF MĀHĀ'ULEPU

DATED: Kōloa, Hawai'i

August 12, 2022



Elizabeth Okinaka, Founder
SAVE KŌLOA

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of) Subdivision Application No. S-2021-07
)
YELLOW HALE, LLC, a domestic limited lia-) DECLARATION OF KAMAL C. HASSAN
bility company, for approval of a proposed 2-lot)
consolidation and re-subdivision of real prop-)
erty located at Kōloa, Kaua'i Tax Map Key (4))
2-8-014:032 and 2-8-014:041)

DECLARATION OF KAMAL C. HASSAN

I, KAMAL C. HASSAN, declare under penalty of law that the following is true and correct.

1. I make this declaration based upon my personal knowledge, information and belief.
2. I am a member of Petitioner FRIENDS OF MĀHĀ'ULEPŪ, a non-profit corporation (Petitioner) in the above-captioned proceedings.
3. On August 2, 2022, I went to the Kaua'i Planning Department to file the "PETITIONERS' FRIENDS OF MĀHĀ'ULEPU AND SAVE KŌLOA PETITION TO INTERVENE; DECLARATION OF BRIDGET HAMMERQUIST; DECLARATION OF ELIZABETH OKINAKA; DECLARATION OF LLEWELYN (BILLY) KAOHELAULII; EXHIBITS 1 - 7; FILING FEE; CERTIFICATE OF SERVICE" (petition).
4. When I attempted to file the petition, the desk clerk sought assistance from the Planning Director, Kaaina Hull. Hull stated the petition was too late to be considered because the matter had been heard a long time ago and the petition should have been filed before that hearing.
5. Attached as Exhibit "8" a true and correct copy of the public notice of the Kaua'i Planning Commission's meeting on August 10, 2021, published in *The Garden Isle* on July 9, 2021.
6. Attached as Exhibit "9" is a true and correct copy of the Kaua'i Planning Commission's minutes from its August 10, 2021 meeting

DECLARANT FURTHER SAYETH NAUGHT

DATED: Koloa, Hawai'i

August 12, 2022


KAMAL C. HASSAN
DECLARANT



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COUNTY OF KAUAI PLANNING COMMISSION – 4444 Rice Street, Suite A473, Lihue, Kauai, Hawaii, 96766, tel: (808) 241-4050, fax: (808) 241-6699, email: planningdepartment@kauai.gov. Pursuant to the provisions of State Land Use Commission Rules and Regulations, Special Management Area Use Rules, and Kauai County Code, Chapter 8, as amended, Hawaii Revised Statutes Chapter 91, and the Rules of Practice and Procedure of the County of Kauai Planning Commission, notice is hereby given that the County of Kauai Planning Commission ("Commission") will hold an agency hearing with a public hearing and an opportunity for public testimony on Tuesday, August 10, 2021, at 9:00 a.m. by Microsoft Teams Audio: +1-469-848-0234, Conference ID 705 277 252# to hear testimony and comments from all interested persons regarding the following:

1. ZA-2021-4: A bill for an ordinance amending Chapter 10, Article 5A, Kaua'i County Code 1987, as amended, relating to the Lihue Town Core Urban Design. The proposal amends Section 10.5A of the Kaua'i County Code to designate the Lihue Mill site within the Lihue Town Core, Special Planning Area "D" (SPA-D), also known as the "Rice Street Neighborhood Design District," with the location further identified as Tax Map Keys (TMKs) (4) 3-8-004:007 and (4) 3-8-005:009.

All persons may present testimony for or against any application as public witnesses. Such testimony should be made in writing and presented to the Department prior to the hearing. Late written testimony may be submitted up to seven days after the close of the hearing in cases where the Commission does not take action on the same day as the hearing. Any party may be represented by counsel if he or she so desires. Also, individuals may appear on their own behalf, a member of a partnership may represent the partnership, and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association. Petitions for intervenor status must be submitted to the Commission and the applicant at least seven days prior to the date of the hearing advertised herein and shall be in conformance with Chapter 4 of the Rules of Practice and Procedure of the Planning Commission. A copy of the proposal will be emailed to any interested person who requests a copy. Please submit your request to the Planning Department. KAUAI PLANNING COMMISSION, Donna Apisa, Chairperson, By Kaaina S. Hull, Clerk of the Commission.

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS AND COMMISSIONS AT (808) 241-4917 OR ASEGRETI@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(TGI1333093 7/9/21)

"...

Mr. DeGracia: Today's Subdivision Committee consisted of myself and Commissioner Chiba. For New Business there was Tentative Subdivision Application Number S-20-21-5 which is Kukui'ula Development Company, LLC which was approved. And there's also Tentative Subdivision Application Number S-20-21-6 for Key Kauai Carport, LLC which was approved. A Tentative Subdivision Application, Number S-2021-7, Yellow Hale, LLC which was approved. And there was also a Final Subdivision Application Number S-2021-3, Alan and Karen Nesbitt Trust which was also approved today.

Mr. Hull: I'll just add to Committee Chair DeGracia's report that you know, there was a fair amount of written testimony that came in. There was some oral testimony which was received today concerning one of the subdivision applications that particularly pertains to Yellow Hale, LLC. Again, as I reiterated to the Subdivision Committee, the petition that was up for review, was for a road subdivision to essentially subdivide a road out of the area. It is not for the 280-some odd units, that was previously proposed several years ago, and did receive approval then. This again, is just for essentially a road subdivision. Having said that though, you know, if there are concerns, and there seem to be concerns about the subdivision, this application is for tentative approval, meaning that all the necessary documents to be reviewed are in place and the Department did make an assessment to determine the documents are in place. But now essentially, it's up to the applicant to go and meet all the requirement and solicit the comments from various agencies, including but not limited to State Department of Health, the Department of Public Works, and then as well as the State Historic Preservation Division concerning, among other things, historic or archeological assets in the area. And they ultimately have to come back to you folks for a final action once they've addressed these concerns commented on by the various state and county agencies. So while the Committee did take action on a tentative approval, it is not a final approval by any means of the subdivision.

Mr. DeGracia: Thank you for making that clear.

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Mr. Hull: The new information, no, I'll say the information that they're waiting on from State Historic Preservation Division pertains to this specific subdivision. Now the State Historic Preservation Division has done an analysis previously of the site for the permits. And they are doing an analysis again for this subdivision. But they're waiting for that information to be transmitted to them as far as whether or not they find their archeological inventory survey up to snuff, if you will in assessing the assets that are out there or the lack of assets, whichever it is. So, they have received official comments from HSPD pertaining to that. But ultimately, it's up the Commission if anyone wants to defer to wait for those official comments to come in. But whenever those comments do come in, ultimately the applicant just has to work with HSPD to resolve any of their concerns and issues for HSPD to agree for final action by the Planning Commission on a subdivision approval.

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...

Ms. Barzilaj: Madam Chair, excuse me, it's, Laura. So, what really is before you right now is the approval of Commissioner DeGracia's report from this morning from Subdivision Committee and not your actual, it is part and parcel of your actual approval of all of those items, but the appropriate motion would be approval or rejection of Commissioner DeGracia's report from this morning.

Vice Chair Cox: Thank you, Laura, for the reminder of that. Yes, the motion would be for acceptance of the report.

Ms. Nogami-Streufert: So, this is for the acceptance of the report, not for the approval of the report?

Vice Chair Cox: I think I heard it both ways.

Ms. Barzilaj: It is for the approval of the report as submitted by Commissioner DeGracia.

Ms. Nogami-Streufert: Okay, I move to approve this Subdivision report.

Vice Chair Cox: Do we have a second?

Ms. Otsuka: I second.

Mr. Chiba: I second.

Vice Chair Cox: Okay, we should do a roll call.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair oh, sorry, Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Vice Chair Cox: Aye.

Mr. Hull: Motion passes 6:0, Madam Chair."

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of) Subdivision Application No. S-2021-07
YELLOW HALE, LLC,)
) CERTIFICATE OF SERVICE
)
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing was filed, hand-delivered or sent via U.S. mail, postage prepaid pursuant to Kauai Planning Commission Rule §1-3-3 to the following:

5425 PAU A LAKA LLC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

MP ELKO II, LLC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

KAUANOE O KŌLOA Phases 1 through 4
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

KAUAI HALE, INC.
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

EARTHWORKS PACIFIC, INC.
4180 Hoala Street
Lihue, Hawaii 96766

MP FINANCIAL GROUP, LTD.
1136 Union Mall Ste 301
Honolulu, Hawaii 96813

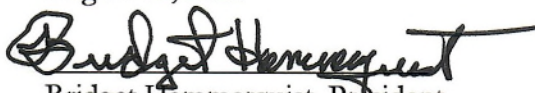
The undersigned further certifies that on this date a copy of the Petition to Intervene filed, August 2, 2022 was served, hand-delivered or sent via U.S. mail, postage prepaid pursuant to Kauai Planning Commission Rule §1-3-3 to the following:

MP ELKO II, LLC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

KAUAI HALE, INC.
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

DATED: Kōloa, Hawaii

August 12, 2022


Bridget Hammerquist, President
FRIENDS OF MĀHĀ'ULEPU

COUNTY OF KAUAI PLANNING COMMISSION – 4444 Rice Street, Suite A473, Lihue, Kauai, Hawaii, 96766, tel: (808) 241-4050, email: planningdepartment@kauai.gov.

NOTICE IS HEREBY GIVEN of an **agency hearing with a public hearing and an opportunity for public testimony** from all interested persons to be held by the Kaua‘i Planning Commission pursuant to the provisions of Special Management Area Rules, Kauai County Code, Chapter 8, as amended, Hawaii Revised Statutes (HRS) Chapter 92 and 91, and the Rules of Practice and Procedure of the County of Kauai Planning Commission. The hearing will be held regarding the following:

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27), USE PERMIT (U-2006-26), and PROJECT DEVELOPMENT USE PERMIT PDU-2006-25 to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po‘ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres.

Meeting Līhu‘e Civic Center, Moikeha Building, Meeting Room 2A-2B,
Location: 4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i

* Interested parties should look to the Planning Commission Agenda for July 11, 2023 for final determination of location.

Date: July 11, 2023

Time: 9:00 a.m. or shortly thereafter

Oral testimony will be taken on specific agenda items, in-person 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.

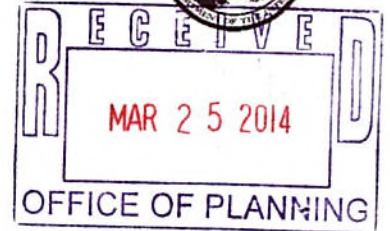
Publication Date: June 9, 2023

EXHIBIT "08"



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96850



MAR 24 2014

75339

ORIGINAL

In Reply Refer To:
2014-TA-0142

Mr. Jesse K. Souki
Office of Planning
State of Hawai'i
235 South Beretania Street
Honolulu, Hawai'i 96786

Subject: Technical Assistance for Motion to Amend Conditions Nos. 5 and 7 through 22 of Decision and Order, TMK 2-8-12: 05, 07, 08, POR. 19, 20, 21, 26-36; 2-8-12: 77; 2-8-29: 1-94, Poipu, Kaua'i

Dear Mr. Souki:

The U.S. Fish and Wildlife Service (Service) received your letter dated January 28, 2014, regarding the effects of a Motion to Amend by Moana Corporation (Kiahuna Mauka Partners, LLC (KMP)) which proposes to delete conditions numbers 5 and 7 through 22 of Decision and Orders dated July 7, 1977 and August 5, 1997. The deletions are proposed by KMP on the basis of administrative efficiency that the said conditions have been met fully or substantially met, and are no longer applicable, or can and will be enforced by the County of Kaua'i and thus no longer required to be enforced by the Land Use Commission.

We reviewed the Motion to Amend pursuant to the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The information you provided and pertinent information in our files, indicate the endangered Kaua'i cave wolf spider (*Adelocosa anops*) and endangered Kaua'i cave amphipod (*Spelaeorchestia koloana*) are in the vicinity of TMK 2-8-14: 05, 07, 08, POR. 19, 20, 21, 26-36; 2-8-15: 77; 2-8-29: 1-94. Critical habitat has been federally designated for these species on approximately 6-acres of land surrounding and including the Kiahuna Makai Cave on April 9, 2003 (68 FR 17430-17470). Adjacent properties have also been designated critical habitat for these cave species. For the conservation and protection of the endangered Kaua'i cave wolf spider and Kaua'i cave amphipod we are providing the following recommendations to assist you in the preparation of the State's response to the Land Use Commission's hearing on the Motion. The Service's position has not changed from our last correspondence with KMP on October 26, 2006, reiterating that the absence of the cave spider or amphipods from the accessible Kiahuna Makai Cave does not indicate that they do not exist within the mesocaverns of the surrounding areas. Therefore, we are unable to concur with KMP's request to delete Condition No. 7 of Decision and Orders dated July 7, 1977 and August



EXHIBIT "09"

OP EXHIBIT C

5, 1997 due to the fact that building in the areas surrounding the cave that contain these mesocaverns could result in take of the cave spider or amphipod. We have no comment on Conditions Nos. 5 and 8-22 since they do not pertain to ESA listed species and therefore do not fall under our jurisdiction.

The Kaua'i cave wolf spider and the Kaua'i cave amphipod are obligate cave-dwelling arthropods restricted to the Koloa basin of the island of Kaua'i where lava tubes and other cave bearing rock substrate are present. Urban, agricultural development and quarrying operations within the area threatens the habitat of these cave arthropods. Another threat comes from non-native insect species that may prey upon and also compete for limited food resources. Human visitation and use of caves are threats including urban and commercial pesticide use. Environmental threats such as extended droughts also threaten these species by altering the high-humidity environment to which these arthropods are adapted and facilitating invasion by non-native species.

These species live in inaccessible mesocaverns (voids and inaccessible passages) as well as large cave passages making estimates difficult. Few of the known caves in the Koloa District provide appropriate habitat for these arthropods which are typically only found in the dark and stagnant air zones (two of five cave zones typified by low air movement, elevated relative humidity, and reduced temperature fluctuations) of caves and require high humidity conditions (Bousfield and Howarth 1979; Hadley *et al.* 1981; Ahearn and Howarth 1982). The limited number of occupied caves greatly limits our knowledge of the life history requirements of these arthropods.

The Service has conducted nine surveys in the Kiahuna Makai Cave between the years of 1998 and 2003. The Service has not been able access to conduct further surveys of Kiahuna Makai Cave since 2003. The last survey of the site on September 17, 2003, no cave spiders or amphipods were observed. However, this cave is important for both animals because historic occurrences in the 1990s. The Service designated critical habitat for both species in Kiahuna Makai Cave due to its importance in the overall recovery of these species. It is probable that the endangered Kaua'i cave wolf spider and the Kaua'i cave amphipod are still present on the property in voids and passages inaccessible by humans.

All areas designated as critical habitat are deemed essential to the conservation of these species providing for a widely distributed pattern of the highest quality habitat left in the Koloa Basin. In the case of the cave dwelling animals, areas designated provide occupied and unoccupied habitat for protection against catastrophic events by allowing a wider distribution throughout the Koloa Basin. Designated surrounding mesocaverns incorporate the areas where the majority of the cave animals are likely to occur, providing refugia from fluctuating conditions in caves and are essential to the conservation and recovery of the species.

Previous discussions between the Service and KMP identified KMP's intent to develop the property surrounding the Kiahuna Makai Cave. We recommend that KMP applies for an incidental take permit, because development of the area could result in take of listed species. As part of the incidental take permit process, KMP will need to develop a habitat conservation plan (HCP). Through this process, private landowners are able to carry out otherwise lawful activities

(i.e., home building) while protecting and conserving listed species in compliance with the ESA. Landowners are assured that if “unforeseen circumstances” arise, we will not require the commitment of additional restrictions on the use of land or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the permittee.

Any projects occurring where endangered and threatened animal species exist must avoid take of federally listed species under the ESA. The ESA defines “take” as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harass” is further defined as an intentional or negligent act or omission which created the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering. The term “harm” means an act which actually injures or kills listed species. Such acts may include significant habitat modification or degradation where there is a likelihood of adverse impacts to these species by significantly impacting essential behavioral patterns. In addition, if a project contains a Federal nexus (*i.e.*, Federal permit or Federal monies), private landowners or project proponents need to consult with the Service under section 7 of the ESA.

In addition to contacting the Service regarding the development of an HCP, guidelines have been developed by KMP in discussion with the Service in 2003 to minimize impacts to the cave spider and amphipods and their habitats. They are: 1) the Kiahuna Makai Cave will not be collapsed, 2) plantings of milo and other suggested planting will be planted on top of the cave foot print, 3) the cave location will not be published on public maps, 4) a disclosure about critical habitat and the Kaua‘i cave wolf spider and the Kaua‘i cave amphipod will be given to any successor owners, 5) a 50-foot no build zone will be established above Kiahuna Makai Cave areas to make sure no structures are built on top of the cave. Areas in the critical habitat designated lands with exposed rock or places where the soil layer is less than a foot deep will not be graded, paved, or filled or underlying caves collapsed, 6) the cactus and haole koa now occupying lands surrounding and above the cave will be removed by hydroaxel/slash busters, and 7) if during construction a subsequent cave is found, the owners will stop work around the newly found cave and immediately notify the Service which will provide guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of guidelines or actions developed during consultation with the Service.

The guidelines are still needed to minimize impacts to cave habitats that have been, and continue to be, degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, collapsing and filling of caves, and other activities associated with development and agriculture. In addition, a 50-foot no-build buffer zone around the cave will not guarantee avoidance of take of the cave animals. However, avoiding areas with exposed rock or places where the soil layer is less than a foot deep will greatly minimize the chance of adversely affecting cave animals either by direct loss or injury to individuals or by altering existing habitat which diminishes its quality or function. Although not stated in the 2003 guidelines, the use of pesticides, herbicides, and other chemicals around the cave and on the property should also be used with extreme caution, as liquid substances and smoke or fumes can percolate through the cracks and crevices of cave habitats effecting cave spiders and amphipods.

Although guidelines to minimize development impacts have been established, the Services does not support the deletion of Condition No. 7 in the Decision and Orders dated July 7, 1977 and August 5, 1997 due to the possible presence of the Kaua'i cave spider and Kaua'i cave amphipod in the voids or passage ways on the property that are inaccessible to humans. These species are only known to occur in the Koloa basin on the island of Kaua'i and further restricted to areas where above and below ground alterations to lava tubes and other cave bearing rock substrates have not occurred.

We appreciate your efforts to conserve endangered species. If you have questions regarding this response, please contact Joy Hiromasa Browning, Fish and Wildlife Biologist (phone: 808-792-9400 or email: Joy_Browning@fws.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Nadig', with a stylized, cursive flourish at the end.

Aaron Nadig
Acting Assistant Field Supervisor:
O'ahu, Kaua'i, NWHI, Am. Samoa



GEOLABS, INC.

Geotechnical Engineering and Drilling Services

December 17, 2021
W.O. 8267-00

Mr. Colin Thompson
Meridian Pacific, Ltd.
P.O. Box 384947
Waikoloa, HI 96738

Subject: Review of Mass Grading Plans
Lot 1 Kauanoe O Koloa
Koloa, Kauai, Hawaii
TMK: (4) 2-8-014: Por. 32

Reference: Report by Geolabs, Inc. dated July 13, 2021
entitled "Geotechnical Engineering Exploration,
Kauanoe O Koloa Development,
Poipu, Kauai, Hawaii,
T.M.K.: (4) 2-8-014: Por. 32"

Dear **Mr. Thompson:**

We reviewed the subject Mass Grading Plans, Sheet Nos. C-0.01 through C-3.01 (total of 15 sheets) transmitted to our office on November 18, 2021, for the above project. The purpose of this review is to render an opinion regarding the conformance of the plans reviewed to the general intent of the recommendations presented in our reports. Our review was generally limited to the geotechnical aspects of the plans.

Based on our review of the plans, it is our opinion that the plans are in general conformance with the intent of the recommendations provided in our reports for the above project.

It is imperative to retain Geolabs for geotechnical engineering services during the project construction. This is to confirm the subsurface conditions assumed in our report and to expedite suggestions for design changes that may be required in the event that the subsurface conditions at these locations differ from those assumed and anticipated. Our recommendations provided in the above report are contingent upon such observations.

94-429 Koaki Street, Suite 200 • Waipahu, Hawaii 96797
Telephone: (808) 841-5064 • E-mail: hawaii@geolabs.com

Hawaii • California

EXHIBIT "10"

EXHIBIT	31	DATE:	10/04/22
DEPONENT NAME:	Sayi gusa Jodi		

EXHIBIT	31
DEPONENT NAME:	Hull, Ka'aina
DATE:	09/31/22

Meridian Pacific, Ltd.
W.O. 8267-00
December 17, 2021

Page 2

We appreciate the opportunity to be of continued service to you on this project. If you have any questions or need additional information, please contact our office.

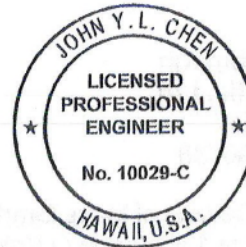
Respectfully submitted,

GEOLABS, INC.

John Y.L. Chen

By

John Y.L. Chen, P.E.
Vice President



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION.

JC:

h:\8200 Series\8267-00.plreview.jc1

John Y.L. Chen

SIGNATURE

4-30-22
EXPIRATION DATE
OF THE LICENSE

GEOTECHNICAL ENGINEERING EXPLORATION

KAUANOE O KOLOA DEVELOPMENT

POIPU, KAUAI, HAWAII

T.M.K.: (4) 2-8-014: POR. 32

W.O. 8267-00 JULY 13, 2021

Prepared for

MERIDIAN PACIFIC, LTD.



GEOLABS, INC.

Geotechnical Engineering and Drilling Services

GEOTECHNICAL ENGINEERING EXPLORATION

KAUANOE O KOLOA DEVELOPMENT

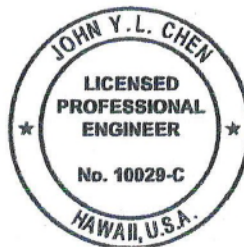
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T.M.K.: (4) 2-8-014: POR. 32

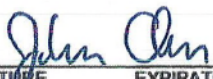
W.O. 8267-00 JULY 13, 2021

Prepared for

MERIDIAN PACIFIC, LTD.



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION.

 4-30-22
SIGNATURE EXPIRATION DATE
OF THE LICENSE



GEOLABS, INC.
Geotechnical Engineering and Drilling Services
94-429 Koaki Street, Suite 200 • Waipahu, HI 96797

Hawaii • California



GEOLABS, INC.

Geotechnical Engineering and Drilling Services

July 13, 2021

W.O. 8267-00

Mr. Colin Thompson
Meridian Pacific, Ltd.
P.O. Box 384947
Waikoloa, HI 96738

Dear Mr. Thompson:

Geolabs, Inc. is pleased to submit our report entitled "Geotechnical Engineering Exploration, Kauano'e O Koloa Development, Poipu, Kauai, Hawaii, TMK: (4) 2-8-014: Por. 32," prepared for the proposed development project.

Our work was performed in general accordance with the scope of services outlined in our fee proposal dated February 18, 2021.

Please note that the soil and rock samples recovered during our field exploration (remaining after testing) will be stored for a period of two months from the date of this report. The samples will be discarded after that date unless arrangements are made for a longer sample storage period. Please contact our office for alternative sample storage requirements, if appropriate.

Detailed discussion and specific design recommendations are contained in the body of this report. If there is any point that is not clear, please contact our office.

Very truly yours,

GEOLABS, INC.

John Y.L. Chen, P.E.
Vice President

JC:TO:as

GEOTECHNICAL ENGINEERING EXPLORATION
KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII
T.M.K.: (4) 2-8-014: POR. 32
W.O. 8267-00 JULY 13, 2021

TABLE OF CONTENTS

	Page
SUMMARY OF FINDINGS AND RECOMMENDATIONS.....	iii
1. GENERAL.....	1
1.1 Project Considerations.....	1
1.2 Purpose and Scope.....	2
2. SITE CHARACTERIZATION.....	4
2.1 Regional Geology.....	4
2.2 Existing Site Conditions.....	5
2.3 Subsurface Conditions.....	5
3. DISCUSSION AND RECOMMENDATIONS.....	7
3.1 Shallow Foundations.....	8
3.2 Foundation Probing and Grouting.....	10
3.3 Slabs-On-Grade.....	11
3.4 Retaining Structures.....	13
3.4.1 Retaining Structure Foundations.....	13
3.4.2 Lateral Earth Pressures.....	14
3.4.3 Drainage.....	15
3.5 Swimming Pools.....	15
3.6 Site Grading.....	16
3.6.1 Site Preparation.....	17
3.6.2 Fills and Backfills.....	18
3.6.3 Fill Placement and Compaction Requirements.....	18
3.6.4 Excavations.....	18
3.7 Pavement Design.....	19
3.8 Infiltration Tests.....	20
3.9 Corrosion Potential.....	22
3.10 Drainage.....	22
3.11 Design Review.....	23
3.12 Construction Monitoring.....	23
4. LIMITATIONS.....	25
CLOSURE.....	27

TABLE OF CONTENTS

	Page
PLATES	
Project Location Map.....	Plate 1
Site Plan	Plate 2
APPENDIX A	
Field Exploration	Plates A-1 and A-2
Soil Log Legend.....	Plate A-0.1
Soil Classification Log Key	Plate A-0.2
Rock Log Legend	Plate A-0.3
Logs of Borings.....	Plates A-1 thru A-10
APPENDIX B	
Laboratory Tests.....	Page B-1
Laboratory Test Data.....	Plates B-1 thru B-17
APPENDIX C	
Infiltration Test Results	Plates C-1 and C-2
APPENDIX D	
Eurofins TestAmerica Analytical Report (14 Sheets)	
APPENDIX E	
Photographs of Core Samples.....	Plates E-1 thru E-5

**GEOTECHNICAL ENGINEERING EXPLORATION
KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII
T.M.K.: (4) 2-8-014: POR. 32
W.O. 8267-00 JULY 13, 2021**

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Our field exploration generally encountered relatively thin surface fills and/or residual soils over the weathered basalt formation, extending to the maximum depth explored of about 16 feet below the existing ground surface. Groundwater (static water level) was not encountered in the drilled borings at the project site. However, artesian water heads and/or spring conditions were intersected in five of the borings drilled, at depths of about 6 to 14 feet below the existing ground at the time of our exploration. The artesian/spring water levels will likely vary due to the nearby reservoir, rainfall, seasonal precipitation, surface water runoff, and other factors.

We recommend using shallow spread and/or continuous strip footings bearing on the compacted structural fill materials for support of the proposed building units, with an allowable bearing pressures of up to 3,000 psf. The bearing pressure may be increased to 6,000 psf for footings bearing directly on the weathered basalt rock. Where the footing subgrade is within transition of fill and basalt rock, we recommend over-excavating footing subgrade in basalt rock at least 12 inches for cushion fill, to provide uniform support.

To reduce the potential for loss of foundation support resulting from the collapse of cavities below foundations, consideration may be given to implementing a program of cavity probing and grouting of the building foundations during construction.

Based on the results of our field exploration, the on-site material has moderately to highly expansion potential when subjected to moisture fluctuations. We recommend providing a minimum of 2 feet of non-expansive, select granular fill material below the slabs-on-grade footings, to reduce the potential for appreciable structural distress resulting from expansive clayey soils. Where the weathered basalt formation is encountered, we recommend that the over-excavation be extended to a minimum depth of 12 inches or top of the in-situ weathered basalt formation, whichever is greater.

Due to the moderate to high expansion site characteristic, we recommend placing the pavement sections on a minimum 12-inch of non-expansive select granular fill material.

The text of this report should be referred to for detailed discussions and specific geotechnical recommendations.

END OF SUMMARY OF FINDINGS AND RECOMMENDATIONS

SECTION 1. GENERAL

This report presents the results of our geotechnical engineering exploration performed for the *Kauanoë O Koloa Development* project in the Poipu area on the Island of Kauai, Hawaii. The project location and general vicinity are shown on the Project Location Map, Plate 1.

This report summarizes the findings and geotechnical recommendations resulting from our field exploration, laboratory testing, and engineering analyses for the project. These findings and geotechnical recommendations are intended for the design of building foundations, slabs-on-grade, retaining structures, site grading, and pavements only. The findings and recommendations presented herein are subject to the limitations noted at the end of this report.

1.1 Project Considerations

Based on the information provided, we understand that the proposed development project encompasses approximately 25 acres located in the Poipu area on the Island of Kauai, Hawaii. The project includes construction of 279 buildings consisting of 2-bedroom to 4-bedroom units. The development construction will be divided into four phases, including roadways, underground utilities, open parking lots, swimming pool, club house, and other maintenance facilities.

Details of the site grading plans were not available at the time this report was prepared. Based on a topographic survey map provided, the existing ground surface elevations range from about +94 feet to +138 feet Mean Sea Level (MSL) at the southern and northern portions of the project site, respectively.

Based on our field observation during the site reconnaissance and field exploration, large cobbles and boulders were scattered throughout the project site footprint with weathered basalt rock exposed near the existing ground surface. Therefore, we anticipate some hard rock excavation, as well as rock crushing operation to generate select granular fills in support of the site grading construction.

SECTION 1. GENERAL

1.2 Purpose and Scope

The purpose of our exploration was to obtain an overview of the surface and subsurface conditions to develop an idealized soil and/or rock data set to formulate geotechnical engineering recommendations for the design of the project. The work was performed in general accordance with our fee proposal dated February 18, 2021. The scope of work for this exploration included the following tasks and work efforts:

1. Research and review of available in-house soils and boring data in the project vicinity.
2. Conducting a site reconnaissance by our representative for general site conditions and boring stakeout.
3. Observing the trail clearing operation conducted by others in support of our drill rig and water truck access.
4. Coordination of One-Call utility clearances by our geologist.
5. Mobilization and demobilization of a truck-mounted drill rig and two operators from Honolulu to the project site and back.
6. Drilling and sampling of eight borings to depths of approximately 10 to 15 feet below the existing ground surface. In addition, two borings were drilled to a depth of about 5 feet below the ground surface for the infiltration testing.
7. Performance of two in-situ LID tests for the infiltration characteristics.
8. Coordination of the field exploration, logging of the borings, and in-situ infiltration testing by our field engineer/geologist.
9. Laboratory testing of selected samples obtained during the field exploration as an aid in classifying the materials and evaluating their engineering properties.
10. Analyses of the field and laboratory data to formulate geotechnical engineering recommendations for the design of the development project.
11. Preparation of this formal report (one electronic pdf file) summarizing our work on the project and presenting our findings and geotechnical engineering recommendations.
12. Coordination of our overall work on the project by our engineer.

SECTION 1. GENERAL

13. Quality assurance of our work and client/design team consultation by our principal engineer.
14. Miscellaneous work efforts, such as drafting, word processing, and clerical support.

Detailed descriptions of our field exploration methodology and the Logs of Borings are presented in Appendix A. Results of the laboratory tests performed on selected soil samples are presented in Appendix B. Results of the field infiltration testing performed at selected locations are presented in Appendix C. Results of the corrosion tests performed by Eurofins TestAmerica Laboratories, Inc. are presented in Appendix D. Photographs of the core samples retrieved during our field exploration are presented in Appendix E.

END OF GENERAL

SECTION 2. SITE CHARACTERIZATION

2.1 Regional Geology

The Island of Kauai is composed of a single dissected basaltic shield volcano built by the extrusion of lavas of the Waimea Canyon Volcanic Series beginning about 5 to 6 million years ago. The eruption of the Waimea Volcanic Series ended about 2½ million years ago and was followed by a long period of erosion. Following the cessation of this main volcano shield-building phase, about 1½ million years ago, there was renewed volcanic activity with the extrusion of basaltic lavas of the post-erosional Koloa Volcanic Series and the concurrent deposition of the thick alluvial sediments of the Palikea Formation.

Rock formations of the Koloa Volcanic Series are generally characterized as thick lava flows composed of dense basalt extruded from groups of vents aligned in north-south trends at various locales. Associated with the Koloa Volcanic Series lava flows are some deposits of pyroclastic materials (volcanic ash and cinders), which usually form cinder cones surrounding the vent. Rock formations of the Koloa Volcanic Series cover most of the eastern half of the Island of Kauai, including the project site.

During the Pleistocene Epoch, many sea level changes occurred as a result of widespread glaciation in the continental areas of the world. As the great continental glaciers accumulated, the level of the ocean fell since less water was available to fill the oceanic basins. Conversely, as the glaciers receded or melted, global sea levels rose because more water was available. The landmass of Kauai remained essentially stable during these changes, and the fluctuations were eustatic in nature. These glacio-eustatic fluctuations resulted in stands of the sea, which were both higher and lower relative to the present sea level of the Island of Kauai.

The project area is generally composed of basaltic rock built by extrusion of the lavas of the Koloa Volcanic Series. The basalt rock formation observed in the Koloa area appear to be representative of the pahoehoe lava flow type, which spread and ponded as it approached the ocean from inland areas. Pahoehoe lavas are typically characterized

SECTION 2. SITE CHARACTERIZATION

by a smoother, billowy surface and internal structure of vesicular (porous) rock with limited clinker materials.

2.2 Existing Site Conditions

The project site is an approximately 25-acre parcel located in the Poipu area on the Island of Kauai, Hawaii. The project site is bounded by Kiahuna Plantation Drive to the north and east, Kiahuna Golf Course to the west, and P'au A Laka Street to the south.

At the time of our field exploration, the site was densely vegetated with tall grasses, small shrubs, and occasional cactus plants. We observed a previously existing dirt road that transverse the northern section of the site was overgrown by grasses.

Basaltic rock outcrops from lavas of the Koloa Volcanic Series were widely exposed at the surface of the project site with small boulder piles abound throughout and drainage structures along the perimeter of the project site.

Based on the topographic map provided, the project site is generally sloping down from north to south with broad undulations. Ground surface elevations ranged from +94 to +138 feet MSL at an average gradient of approximately fifty horizontal to one vertical (50H:1V), with noticeable isolated steeper areas in the northern and southern sections of the project site in approximate 2H:1V.

2.3 Subsurface Conditions

We explored the subsurface conditions by drilling and sampling eight borings, designated as Boring Nos. 1 through 8, extending to the maximum depth drilled of about 16 feet below the existing ground surface. Six bulk samples of the near-surface soils were obtained to evaluate the pavement support characteristics of the near-surface soils. In addition, two boreholes, designated as I-1 and I-2, were drilled to a depth of about 5 feet below the existing ground surface for infiltration testing. The approximate boring locations are shown on the Site Plan, Plate 2.

It should be noted that a total of 15 borings with four LID test boreholes were initially planned for this field exploration program. Due to the difficult access and on-going protest activity at the time of our field exploration, three borings and two LID test boreholes

SECTION 2. SITE CHARACTERIZATION

were eliminated, as recommended by the development owner. Considerations were given to provide supplementary field verification by Geolabs' representative, to confirm the interpretation of the subsurface profile made in this report based on the limited field exploration.

Based on our field exploration, the subsurface conditions at the site consisted of relatively thin surface fills and/or residual soils over weathered basalt formation. In general, the surface fill materials consist of clayey/silty soils with some boulders/cobbles extending to a depth of less than about 3 feet below the existing ground surface. Stiff residual soils consisting of clayey/silty soils with varying amounts of cobbles were encountered under the surface fills, extending to a depth up to about 3.5 feet below the existing ground surface. The basalt formation encountered in the borings consisted of hard unweathered to slightly weathered basalt rock with various fractured conditions and interbedded with dense clinker layers, extending to the maximum depth explored of about 16 feet below the existing ground surface.

Our laboratory tests indicate that the near-surface clayey/silty soils exhibit moderate to high shrink-swell characteristics when subjected to fluctuations in the soil moisture contents.

Groundwater (static water level) was not encountered in the drilled borings at the project site. However, artesian water heads and/or spring conditions were intersected in five of the borings drilled, at depths of about 6 to 14 feet below the existing ground at the time of exploration. The artesian/spring water levels will likely vary due to the nearby reservoir, rainfall, seasonal precipitation, surface water runoff, and other factors.

END OF SITE CHARACTERIZATION

SECTION 3. DISCUSSION AND RECOMMENDATIONS

Based on our field exploration, the project site generally consisted of relatively thin surface fills and/or residual soils over weathered basalt formation extending to the maximum depth explored of about 16 feet below the existing ground surface. Groundwater (static water level) was not encountered in the drilled borings at the project site. However, artesian water heads and/or spring conditions were intersected in five of the borings drilled, at depths of about 6 to 14 feet below the existing ground at the time of exploration. The artesian/spring water levels will likely vary due to the nearby reservoir, rainfall, seasonal precipitation, surface water runoff, and other factors

We recommend using shallow spread and/or continuous strip footings bearing on compacted structural fill materials or directly on the weathered basalt rock for support of the proposed building units, with allowable bearing pressures of up to 3,000 or 6,000 pounds per square foot (psf), respectively. In general, we recommend embedding the footings a minimum of 18 inches below the lowest adjacent grades.

To reduce the potential for loss of foundation support resulting from the collapse of cavities below foundations, consideration may be given to implementing a program of cavity probing and grouting of the building foundations during construction.

Based on the results of our field exploration, the on-site material has a moderate to high expansion potential when subjected to moisture fluctuations. We recommend providing a minimum 2 feet of non-expansive, select granular fill material below the slabs-on-grade footings, to reduce the potential for appreciable structural distress resulting from expansive clayey/silty soils. Where the weathered basalt formation is encountered, we recommend that the over-excavation be extended to a minimum depth of 12 inches or top of the in-situ weathered basalt formation, whichever is greater.

Detailed discussions and recommendations for these items and other geotechnical aspects of the project are presented in the following sections.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

3.1 Shallow Foundations

Based on the subsurface conditions encountered at the site, we recommend using shallow spread and/or continuous strip footings to support the proposed building units. We recommend an allowable bearing pressure of up to 3,000 psf for the design of foundations bearing on compacted select granular fill materials needed to achieve the design finished grades. The bearing pressure may be increased to 6,000 psf for footings bearing directly on the weathered basalt rock.

These bearing values are for dead-plus-live loads and may be increased by one-third ($\frac{1}{3}$) for transient loads, such as those caused by wind or seismic forces. In general, we recommend embedding the footings a minimum of 18 inches below the lowest adjacent grades.

Cavities and/or voids are commonly encountered in the basalt formation that characterizes the project site. To reduce the potential for loss of foundation support resulting from the collapse of cavities below foundations, we recommend implementing a program of cavity probing and grouting for the new building unit foundations. Foundation probing and grouting requirements are further discussed in the following "Foundation Probing and Grouting" section.

Where footings are located adjacent to other below-grade structures, utility trenches or easements, the footings should extend to a depth below a 45-degree imaginary plane projected upward from the bottom edge of the structure or utility trench, or the footings should extend to a depth as deep as the inverts of the utility lines. This requirement is necessary to avoid surcharging adjacent below-grade structures with additional structural loads and to reduce the potential for appreciable foundation settlement. Footings constructed near tops of slopes or on sloping ground should be embedded deep enough to provide a minimum horizontal setback distance of 6 feet measured from the outside edge of the bottom of footings to the face of the slope.

The bottom of footing excavations in fill materials should be recompact to at least 90 percent relative compaction to provide a relatively firm and smooth bearing surface prior to placing reinforcing steel and/or concrete. Soft and/or loose materials encountered at the

SECTION 3. DISCUSSION AND RECOMMENDATIONS

bottom of footing excavations should be over-excavated until dense materials are exposed in the footing excavation. The over-excavation should be backfilled with select granular fill materials moisture-conditioned to above the optimum moisture content and compacted to a minimum of 90 percent relative compaction. Alternatively, the bottom of the footing may extend down to bear directly on the underlying competent material.

Where the footing subgrade is within transition of fill and basalt rock, we recommend over-excavating footing subgrade in basalt rock at least 12 inches for cushion fill, to provide uniform support.

Lateral loads acting on the structures may be resisted by friction developed between the bottom of the foundation and the bearing soil and by passive earth pressure acting against the near-vertical faces of the foundation system. A coefficient of friction of 0.35 may be used for footings bearing on compacted select granular fill materials. Resistance due to passive earth pressure may be estimated using an equivalent fluid pressure of 350 pounds per square foot per foot of depth (pcf) assuming that the soils around the footings are well compacted. The passive resistance in the upper 12 inches of the soil should be neglected unless covered by pavements or slabs.

The select granular fill material should be compacted to a minimum of 90 percent relative compaction. Relative compaction refers to the in-place dry density of soil expressed as a percentage of the maximum dry density of the same soil established in accordance with ASTM D1557. Optimum moisture is the water content (percentage by dry weight) corresponding to the maximum dry density.

If foundations are designed and constructed in strict accordance with the recommendations presented herein, we estimate total settlements of the foundations to be less than 1 inch. Differential settlements between adjacent footings supported on similar materials may be on the order of about 0.5 inch or less.

We recommend that a Geolabs representative observe the footing excavations and subgrade preparation prior to the placement of reinforcing steel and concrete to confirm the foundation bearing conditions and the required embedment depths. Observation of the foundation excavations and preparation operations should be

SECTION 3. DISCUSSION AND RECOMMENDATIONS

designated as "Special Inspection" items in accordance with Section 1704 of the International Building Code (2012).

3.2 Foundation Probing and Grouting

We anticipate that the proposed new foundations will be supported on basaltic materials. Based on our experience in the vicinity of the project site, cavities and/or voids are commonly present in the basaltic lava flows. To reduce the potential for loss of foundation support resulting from the collapse of cavities below foundations, consideration may be given to implementing a program of cavity probing and grouting of the building foundations during construction.

Based on the relatively light structural loads anticipated for the proposed structures, we believe the risk of potential collapse of cavities below the foundations would be relatively low. Therefore, we believe probing and grouting may generally be omitted for the new residential structures planned at the site. However, if a higher degree of assurance against potential collapse of cavities below foundations is desired, a foundation probing and grouting program may be implemented.

Where probing and grouting program is omitted, we recommend the foundation subgrade be proof-rolled with heavy equipment, such as a 10-ton vibratory drum roller or a Caterpillar D-9 bulldozer (or similar), for a minimum of eight passes to assist in detecting and possibly collapsing near-surface voids.

Where probing and grouting program is implemented, we recommend probe holes be drilled at 10-foot on centers for the continuous strip footings and/or thickened-edge wall foundations. In addition, probe holes should be drilled at each isolated spread footing (or column) location. The probe holes should be at least 3 inches in diameter and should extend to a depth of at least 10 feet below the planned bottom of foundation.

If cavities and/or voids are encountered or suspected during the probing operation, additional probe holes should be drilled at closer spacing to help delineate the vertical and lateral extent of the cavity and/or void. The probe holes and cavities discovered should be backfilled with Controlled Low Strength Material (CLSM) with a slump of about 6 to 9 inches. The CLSM should be injected at low to moderate pressures. As an

SECTION 3. DISCUSSION AND RECOMMENDATIONS

alternate to CLSM, sand-cement grout with a slump of about 6 to 9 inches also may be used for the grouting operations.

Because of the potential for encountering cavities and/or voids at the site, we recommend obtaining unit prices for additional probing and grouting during bidding. In addition, the probe drill should be available on-site until the probing and grouting operations are completed. The contractor should also be made aware that a longer lag time between probing/grouting operations and foundation construction might be required in the construction schedule.

A Geolabs representative should observe the foundation probing and grouting program to monitor the presence of cavities and to allow additional recommendations to be made if excess grout take and/or changed conditions are observed.

3.3 Slabs-On-Grade

Based on the results of our field exploration, the on-site material has a moderate to high expansion potential when subjected to moisture fluctuations. We recommend providing a minimum of 2 feet of non-expansive, select granular fill material below the slabs-on-grade footings, to reduce the potential for appreciable structural distress resulting from expansive clayey soils. The non-expansive select granular fill should extend beyond the perimeter of the slab-on-grade a minimum of 2 feet (or extend to the outside edge of the concrete sidewalk surrounding the slab-on-grade, if applicable). Where the weathered basalt formation is encountered, we recommend that the over-excavation be extended to a minimum depth of 12 inches or top of the in-situ weathered basalt formation, whichever is greater.

The slab subgrades should be kept moist prior to placement of concrete. To reduce the potential for drying of the subgrade soils and to reduce the costs of form construction, we recommend casting the slab edges "neat" against the soils/rock formation. The slab edges should incorporate a sufficient amount of top and bottom longitudinal steel reinforcement. The top and bottom steel reinforcement bars should be connected by stir-ups. The ends of the stir-ups should extend into the floor slab area and should be tied to the welded wire mesh. A structural engineer should be consulted for

SECTION 3. DISCUSSION AND RECOMMENDATIONS

design details of this thickened-edge which is intended to function as a perimeter wall footing.

For interior building slabs (not subjected to vehicular traffic or machinery vibration), we recommend placing a minimum 4-inch thick layer of cushion fill consisting of open-graded gravel (ASTM C33, No. 67 gradation) below the slabs. The open-graded gravel cushion fill would provide uniform support of the slabs and would serve as a capillary moisture break. To reduce the potential for appreciable future moisture infiltration through the slab and subsequent damage to floor coverings, we recommend placing an impervious moisture barrier on top of the open-graded gravel cushion fill layer. Flexible floor coverings, such as carpet or sheet vinyl, should be considered because they can better mask minor slab cracking. In addition, we recommend designing interior walls to incorporate some flexibility in accommodating a small amount of possible ground movements.

Where the slabs will be subjected to vehicular traffic (such as driveways) or machinery vibration, we recommend providing a 6-inch layer of aggregate subbase below the slabs in lieu of the 4-inch thick gravel cushion fill layer. The moisture barrier also may be omitted for these slabs. The aggregate subbase should consist of crushed basaltic aggregates compacted to a minimum of 95 percent relative compaction. Where slabs are intended to function as rigid pavements, a minimum slab thickness of 5 inches may be used for preliminary design purposes. Provisions should be made for proper load transfer across the slab joints that will be subject to vehicular traffic.

We envision exterior concrete flatwork would be constructed at the project site. Exterior flatwork required for the project should be underlain by a minimum 12-inch thick layer of non-expansive, select granular material. The subgrade soils below the flatwork should be scarified to a depth of about 8 inches, moisture-conditioned to at least 2 percent above the optimum moisture content, and recompact to a minimum of 90 percent relative compaction. The non-expansive, select granular material should be compacted to a minimum of 90 percent relative compaction. To reduce the potential for substantial shrinkage cracks developing in the concrete slabs, crack control joints should be provided

SECTION 3. DISCUSSION AND RECOMMENDATIONS

at intervals equal to the width of the walkways with expansion joints provided at right-angle intersections.

It should be emphasized that the areas adjacent to the slabs should be backfilled tightly against the slab edges with low expansion, relatively impervious soils, or cast neat against to the vertical cut face. It is critical to maintain proper grade adjacent to the concrete slab, to divert water away from the slabs and to reduce the potential for water ponding around the slabs and foundations. The individual homeowners and Homeowner's Associations should be notified to maintain the design grade and swale for proper drainage around the house and townhouse building footprints.

A Geolabs representative should monitor slab-on-grade foundation excavations prior to placing the reinforcing steel and/or concrete to confirm the foundation bearing conditions and the required embedment depths and observe backfill placement to evaluate the compaction quality of the fill material. Observation of the foundation excavations should be designated a "Special Inspection" item in accordance with International Building Code (2012).

3.4 Retaining Structures

We envision that retaining structures may be required for the proposed development. The following general guidelines may be used for design of the retaining structures at the project site.

3.8.1 Retaining Structure Foundations

In general, retaining structure foundations should be designed in accordance with the recommendations presented in the "Shallow Foundations" section. In addition, retaining wall foundations should be at least 18 inches wide and should be embedded a minimum of 24 inches below the lowest adjacent finished grades. For sloping ground conditions, the footing should extend deeper to obtain a minimum 6-foot setback distance measured horizontally from the outside edge of the footing to the face of the slope. Wall footings oriented parallel to the direction of the slope should be constructed in stepped footings.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

3.8.2 Lateral Earth Pressures

Retaining structures should be designed to resist the lateral earth pressures due to the adjacent soils and surcharge effects. We recommend the following lateral earth pressures for design of retaining structures, expressed in equivalent fluid pressures of pounds per square foot per foot of depth (pcf), as presented in the following table.

LATERAL EARTH PRESSURES FOR DESIGN OF RETAINING STRUCTURES			
<u>Backfill Condition</u>	<u>Earth Pressure Component</u>	<u>Active (pcf)</u>	<u>At-Rest (pcf)</u>
Level Backfill	Horizontal	40	60
	Vertical	None	None
Maximum 2H:1V Sloping Backfill	Horizontal	58	75
	Vertical	28	38

The values provided above assume that select granular fill will be used to backfill behind the retaining wall structures. It is assumed that the backfill behind the retaining structures will be compacted to between 90 and 95 percent relative compaction per ASTM D1557. Over-compaction of the retaining structure backfill should be avoided.

In general, an active condition may be used for gravity retaining walls and walls that are free to deflect by as much as 0.5 percent of the wall height. If the tops of the walls are not free to deflect beyond this degree or are restrained, such as swimming pool walls, the walls should be designed for the at-rest condition. These lateral earth pressures do not include hydrostatic pressures that might be caused by groundwater trapped behind the walls.

Surcharge stresses due to areal surcharges, line loads, and point loads within a horizontal distance equal to the depth of the wall should be considered in the design. For uniform surcharge stresses imposed on the loaded side of the wall, a rectangular distribution with a uniform pressure equal to 33 percent of the vertical surcharge pressure acting on the entire height of the wall, which is free to deflect (cantilever),

may be used in the design. For walls that are restrained, a rectangular distribution equal to 50 percent of the vertical surcharge pressure acting over the entire height of the wall may be used for the design. Additional analyses during design may be needed to evaluate the surcharge effects of point loads and line loads.

3.8.3 Drainage

The retaining structures should be well-drained to reduce the build-up of hydrostatic pressures. A typical drainage system would consist of a 12-inch wide zone of permeable material, such as No. 3B Fine gravel (ASTM C33, No. 67 gradation), placed directly around a perforated pipe (perforations facing down) at the base of the wall discharging to an appropriate outlet or weepholes. As an alternative, a prefabricated drainage product, such as MiraDrain or EnkaDrain, may be used instead of the drainage material. The prefabricated drainage product also should be hydraulically connected to a perforated pipe at the base of the wall.

The backfill behind the permeable drainage zone may consist of compacted on-site materials or free-draining compacted fills, where specified by the designer. Unless covered by concrete slabs, the upper 12 inches of backfill should consist of low-expansion, relatively impervious materials to reduce the potential for excessive water infiltration behind the walls.

3.5 Swimming Pools

In general, we believe the swimming pool foundations and swimming pool walls may be designed in accordance with the recommendations and parameters presented in the "Shallow Foundations" and "Retaining Structures" sections, respectively. Concrete pool decks should be designed in general accordance with the recommendations presented in the "Slabs-on-Grade" section. Due to the nature of the pool deck, the moisture barrier may be omitted under the pool deck slab.

We recommend placing a minimum 12-inch layer of non-expansive select granular fill material below the pool bottom slab and pool deck to provide uniform support. Prior to placing the 12-inch layer of select granular fill material, the subgrade soils should be scarified to a depth of about 8 inches, moisture-conditioned to above the optimum

SECTION 3. DISCUSSION AND RECOMMENDATIONS

moisture, and compacted to a minimum of 90 percent relative compaction, if practical. Soft and yielding areas encountered in the subgrade soils should be over-excavated to expose firm material, and the resulting excavation should be backfilled with well-compacted fill.

As mentioned previously, artesian and/or spring water heads were intercepted in several of the borings drilled. The artesian and/or spring water levels varied from 5.8 to 14.2 feet below the existing ground surface. To help mitigate artesian/spring water level, we recommend installing a subdrain trench to intercept and daylight away from the swimming pool walls.

In general, the subdrain trench may be at least 18 inches wide and 5 feet deep, consisting of 6-inch diameter perforated pipes with perforations facing down. The perforated pipes should be surrounded and underlain by at least 6 inches of drainage material, such as No. 3B Fine gravel (ASTM C33, No. 67 gradation) or equivalent. A non-woven filter fabric, such as Mirafi 180N or equivalent, should wrap around the drainage material. The subdrain trenches should be capped with granular fill and should daylight into appropriate drainage structures for proper discharge.

A Geolabs representative should observe the excavation of the subdrain trench to monitor the actual depth of the seepage water seam (if any) and the subsurface conditions exposed, and to allow additional recommendations to be made if excess seepage water and/or changed conditions are observed.

3.6 Site Grading

We envision that site grading work may consist of cuts and fills of about 5 to 10 feet thick, to achieve the design finished grades for the project. Based on the observed ground conditions at the existing ground surface, we recommend implementing the following site preparation procedures during the earthwork construction.

Items of site grading that are addressed in the subsequent subsections include the following:

1. Site Preparation
2. Fills and Backfills

SECTION 3. DISCUSSION AND RECOMMENDATIONS

3. Fill Placement and Compaction Requirements
4. Excavations

A Geolabs representative should monitor the site grading operations to observe whether undesirable materials are encountered during the excavation and scarification process and to confirm whether the exposed soil conditions are similar to those assumed in this report.

3.6.1 Site Preparation

At the on-set of earthwork, the area within the contract grading limits should be cleared and grubbed thoroughly. Surface vegetation and other unsuitable materials should be removed and disposed of properly off-site. Soft and yielding areas encountered during clearing and grubbing below areas designated to receive fill and/or future improvements should be over-excavated to expose firm material and the resulting excavation should be backfilled with well-compacted fill. The excavated soft soils should be properly disposed of off-site and/or used in landscape areas, where appropriate.

The surface fill layer consisting of expansive clays encountered within the building footprint, exterior flatwork, and pavement limits should be removed and replaced with non-expansive, select granular fill materials, where appropriate.

Loose and/or soft soils, where encountered, should be over-excavated to expose firm and/or dense materials, and the resulting excavation should be backfilled with well-compacted fills. The contractor should exercise caution while clearing and grubbing near-collapsed lava tube features and/or cavities, which may represent potential lava tubes or cavities that may further collapse under the load of heavy construction equipment.

Areas to be filled and finished subgrades in cut areas should be proof-rolled with a minimum 10-ton (static weight) vibratory drum roller for a minimum of eight passes to help detect and collapse near-surface cavities and/or voids. The vibratory drum roller also should be operated at a speed of about 300 feet per minute.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

The proof-rolling operations should be performed in the presence of a Geolabs representative. Yielding areas, loose areas, or cavities disclosed during clearing and proof-rolling operations should be over-excavated and backfilled with compacted fill materials. Contract documents should include additive and deductive unit prices for over-excavating collapsed lava tube features (and other features) and backfilling with compacted fill to account for variations in the over-excavation and backfill quantities.

3.6.2 Fills and Backfills

In general, fill materials should consist of non-expansive select granular fill. Select granular fill should consist of well-graded granular materials less than 3 inches in largest dimension. Imported materials should be well graded from coarse to fine with particles no greater than 3 inches in largest dimension. The material should have a laboratory California Bearing Ratio (CBR) value of 20 or higher and a swell potential of 1 percent or less when tested in accordance with ASTM D1883. It should also contain between 10 and 30 percent particles passing the No. 200 sieve. Geolabs should observe and/or test imported fill materials for suitability prior to being transported to the site.

3.6.3 Fill Placement and Compaction Requirements

Fills and backfills should be placed in level lifts not exceeding 8 inches in loose thickness, moisture-conditioned to above the optimum moisture content, and compacted to a minimum of 90 percent relative compaction. In areas where the finished grades will be subjected to vehicular traffic, the compaction requirement of the subgrade should be increased to a minimum of 95 percent relative compaction. Relative compaction refers to the in-place dry density of soil expressed as a percentage of the maximum dry density of the same soil established in accordance with ASTM D1557. Optimum moisture is the water content (percentage by dry weight) corresponding to the maximum dry density.

3.6.4 Excavations

As mentioned above, weathered basaltic rock was encountered at relatively shallow depths. It should be noted that the laboratory unconfined compressive

SECTION 3. DISCUSSION AND RECOMMENDATIONS

strength of the basalt rock ranged from approximately 7,000 to 14,000 pounds per square inch (psi). The contractor for the project should be cautioned that the excavation of the basalt rock formation may require chipping and/or the use of hoerams.

The above discussions regarding the rippability of the surface materials are based on the available subsurface information, our laboratory testing, and our experience in the project vicinity. The contractors should be encouraged to examine the site conditions and the subsurface data to make their own reasonable and prudent interpretation.

3.7 Pavement Design

We envision flexible pavements will be required for open parking areas and concrete pavements for building unit driveways for the project. In general, we anticipate the vehicle loading for majority of the flexible pavements would consist of primarily passenger vehicles and light trucks with occasional heavy trucks. Therefore, we have assumed generally light to medium traffic loading conditions for pavement design purposes.

Based on our field exploration, the on-site soils exhibit moderate to high expansion characteristic. Therefore, we recommend placing the pavement sections on a minimum 12-inch thick layer of non-expansive, select granular fill material placed with at least 95 percent relative compaction. On this basis, the following pavement structural section may be considered for this project:

Flexible Pavement Section (Parking Lots)

2.0-Inch Asphaltic Concrete

6.0-Inch Aggregate Base Course (95 Percent Relative Compaction)

8.0-Inch Total Pavement Thickness on Moist Compacted Subgrade

Rigid Pavements (Driveways)

5.0-Inch Portland Cement Concrete

6.0-Inch Aggregate Subbase (95 Percent Relative Compaction)

11.0-Inch Total Pavement Thickness on Moist Compacted Subgrade

SECTION 3. DISCUSSION AND RECOMMENDATIONS

In general, the pavement subgrade soils below the non-expansive select granular fill should be scarified to a minimum depth of about 8 inches, moisture-conditioned to above the optimum moisture content, and recompact to a minimum of 95 percent relative compaction. Relative compaction refers to the in-place dry density of soil expressed as a percentage of the maximum dry density of the same soil established in accordance with ASTM D1557. Optimum moisture is the water content (percentage by dry weight) corresponding to the maximum dry density.

Aggregate base course and subbase course should meet the material requirements for Base Course and Subbase Course as specified in Sections 31 and 30, respectively, of the Standard Specifications for Public Works Construction, Kauai County, September 1986. Geolabs should test imported fill materials for conformance with these recommendations prior to delivery to the project site for the intended use.

Paved areas should be sloped and drainage gradients maintained to carry surface water off-site. Surface water ponding should not be allowed on-site during or after construction. When concrete curbs are used to isolate landscaping in or adjacent to the pavement areas, we recommend extending the curbs a minimum of 2 inches into the soils below the aggregate base or subbase layer to reduce the potential for migration of excessive landscape water into the pavement section. Alternatively, a subdrain system could be constructed to collect the excess water from landscaping irrigation. For long-term performance, we recommend constructing a subdrain system adjacent to the paved/landscaped areas.

3.8 Infiltration Tests

We envision that the project may require on-site stormwater runoff management. We conducted falling head infiltration tests at two selected locations in the vicinity of drilled borings at the site to evaluate the infiltration characteristics of the subsurface materials encountered. These tests were performed in general accordance with the procedures in Appendix C of the State of Maryland, Department of the Environment "Stormwater Design Manual, Volumes I and II" (rev. 2009). These procedures are consistent with other state's procedures and may generally be considered an industry standard.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

The field infiltration tests were performed by drilling boreholes utilizing a 4-inch solid stem auger to a selected test depth of about 5 feet below the existing ground surface. Upon reaching the test depth, a 4-inch diameter PVC solid casing was set to the bottom of the drilled borehole to allow infiltration only through the soil exposed on the bottom of the borehole. Falling head infiltration tests were performed to determine the average infiltration rates of the underlying subsurface materials. Each test consisted of four trials of filling the casing with 24 inches of water and taking periodic readings until the water drained out or up to one hour. The infiltration rates are then calculated based on the results of the fourth and/or last trial for each test location. The calculated infiltration rates at each test location are summarized in the table below.

FIELD INFILTRATION TESTING RESULTS		
<u>Testing Location</u>	<u>Testing Depth</u> (feet)	<u>Average Measured</u> <u>Infiltration Rate</u> (inches/hour)
I-1	5.0	0.1
I-2	5.0	21.8

It should be noted that the infiltration values presented above are the rates of infiltration through the soil exposed at the bottom of the tested boreholes, which may not represent the actual infiltration condition within a typical infiltration chamber footprint or an open basin. Borehole I-1 encountered dense basalt rock formation extending near the bottom of the borehole, providing little to no permeability to the water. Based on the results of the field infiltration testing, the average infiltration rates at these locations are generally greater than 0.5 inches per hour, indicating that an infiltration/detention system and similar methods of stormwater management would be feasible for this facility. Due to the high variability of the subsurface conditions, the absorption capacity of the selected stormwater disposal system should be confirmed by conducting additional infiltration tests during construction. A Geolabs representative should observe the excavation for the detention/infiltration chambers and/or detention basins to confirm the anticipated infiltration substrata conditions.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

3.9 Corrosion Potential

Laboratory corrosion tests, including pH value, minimum resistivity, chloride content and sulfate content, were performed on selected samples obtained during our field exploration to evaluate the corrosivity of the near-surface soils at the project site. The test results are summarized and presented on Plate B-17 of Appendix B. Detailed results of the Chloride Content (EPA 300.0) and Sulfate Content (EPA 300.0) tests performed by Eurofins TestAmerica Laboratories, Inc. are presented in Appendix D.

Based on the results of laboratory corrosivity tests, the near-surface soils at the project site exhibit a minimum resistivity value of approximately 13,000 to 14,000 ohm-cm, indicating that the near-surface soils are mildly corrosive (Corrosion Rating of 5) to buried metallic structures. Therefore, we recommend properly designing near-surface metallic substructures (such as piping) for protection against the potential for corrosion.

The method used to control the corrosion of underground concrete pipelines and structures is dependent, in part, on the chloride content and sulfate content found in the soil. In general, soils with a chloride content of less than 500 parts per million (ppm), sulfate content of less than 2,000 ppm, and a pH of greater than 5.0 may be considered "non-corrosive" to underground concrete pipelines and structures.

Based on the relatively low values of chloride content and sulfate content tested on the in-situ materials, we believe that the near-surface soils at the project site may be considered "non-corrosive" and either Type I or Type II (Type I/II) cement may be used for the concrete in contact with the ground. It may be appropriate to consult with a professional corrosion engineer to review the test results and provide detailed recommendations for corrosion protection.

3.10 Drainage

The finished grades outside the building units should be sloped to shed water away from the foundations and slabs and to reduce the potential for ponding. Excessive landscape watering near the foundations and slabs should also be avoided. Planters next to foundations (within 3 feet) should be avoided or have concrete bottoms and drains to reduce the potential for excessive water infiltration into the subsurface.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

To reduce the potential for excessive water infiltration into the subsurface, the foundation excavations should be properly backfilled against the walls or slab edges immediately after setting the concrete. In addition, drainage swales should be provided as soon as possible and should be maintained to drain surface water runoff away from the foundations and slabs.

3.11 Design Review

Preliminary and final drawings and specifications for the proposed construction should be forwarded to Geolabs for review and written comments prior to bid advertisement and/or construction. This review is needed to evaluate the conformance of the plans and specifications with the intent of the earthwork and foundation recommendations provided herein. If this review is not made, Geolabs cannot assume responsibility for misinterpretation of our recommendations.

3.12 Construction Monitoring

Due to the variability of the subsurface conditions, it is recommended to retain Geolabs for geotechnical engineering services during construction of the project. The following are critical items of construction monitoring that require "Special Inspection":

- Observation of the shallow foundation excavations
- Observation of foundation probing and grouting
- Observation of 12-inch select granular fill material placement
- Observation of subgrade preparation
- Observation of fill placement and compaction
- Observation and testing of pavement subgrade preparation

A Geolabs representative should monitor other aspects of earthwork construction to observe compliance with the intent of the design concepts, specifications, and/or recommendations and to expedite suggestions for design changes that may be required in the event that subsurface conditions differ from those anticipated at the time this report was prepared. The recommendations presented herein are contingent upon such observations.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

If the actual exposed subsurface soil conditions encountered during construction differ from those assumed or considered in this report, Geolabs should be contacted to review and/or revise the geotechnical recommendations presented herein.

END OF DISCUSSION AND RECOMMENDATIONS

SECTION 4. LIMITATIONS

The analyses and recommendations submitted herein are based in part upon information obtained from the field borings and bulk samples. Variations of the subsurface conditions between and beyond the field borings and bulk samples may occur, and the nature and extent of these variations may not become evident until construction is underway. If variations then appear evident, it will be necessary to re-evaluate the recommendations presented herein.

The field boring locations indicated herein are approximate, having been estimated by using a handheld Global Positioning System (GPS) to field-locate selected locations from referenced points shown on the Site Plan transmitted by Meridian Pacific, Ltd. on February 12, 2021. Elevations of the borings were estimated from contours and spot elevations on the same plan. The field boring locations and elevations should be considered accurate only to the degree implied by the methods used.

The stratification breaks shown on the graphic representations of the borings depict the approximate boundaries between soil types and, as such, may denote a gradual transition. Water level data from the borings were measured at the times shown on the graphic representations and/or presented in the text of this report. These data have been reviewed and interpretations made in the formulation of this report. It must be noted that fluctuations may occur due to variation in rainfall, temperature, and other factors.

This report has been prepared for the exclusive use of Meridian Pacific, Ltd. and their project consultants for specific application to the design of the *Kauano'e O Koloa Development, Poipu, Kauai, Hawaii* project in accordance with generally accepted geotechnical engineering principles and practices. No warranty is expressed or implied.

This report has been prepared solely for the purpose of assisting the architect and engineers in the design of the proposed project. Therefore, this report may not contain sufficient data, or the proper information, to serve as a basis for detailed construction cost estimates.

SECTION 4. LIMITATIONS

The owner/client should be aware that unanticipated soil conditions are commonly encountered. Unforeseen subsurface conditions, such as perched groundwater, soft deposits, hard layers or cavities, may occur in localized areas and may require additional probing or corrections in the field (which may result in construction delays) to attain a properly constructed project. Therefore, a sufficient contingency fund is recommended to accommodate these possible extra costs.

This geotechnical engineering exploration conducted at the project site was not intended to investigate the potential presence of hazardous materials existing at the project site. It should be noted that the equipment, techniques, and personnel used to conduct a geo-environmental exploration differ substantially from those applied in geotechnical engineering.

END OF LIMITATIONS

CLOSURE

The following plates and appendices are attached and complete this report:

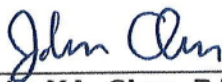
Project Location Map.....	Plate 1
Site Plan.....	Plate 2
Field Exploration	Appendix A
Laboratory Tests	Appendix B
Infiltration Tests.....	Appendix C
TestAmerica Analytical Report	Appendix D
Photographs of Core Samples	Appendix E

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Respectfully submitted,

GEOLABS, INC.

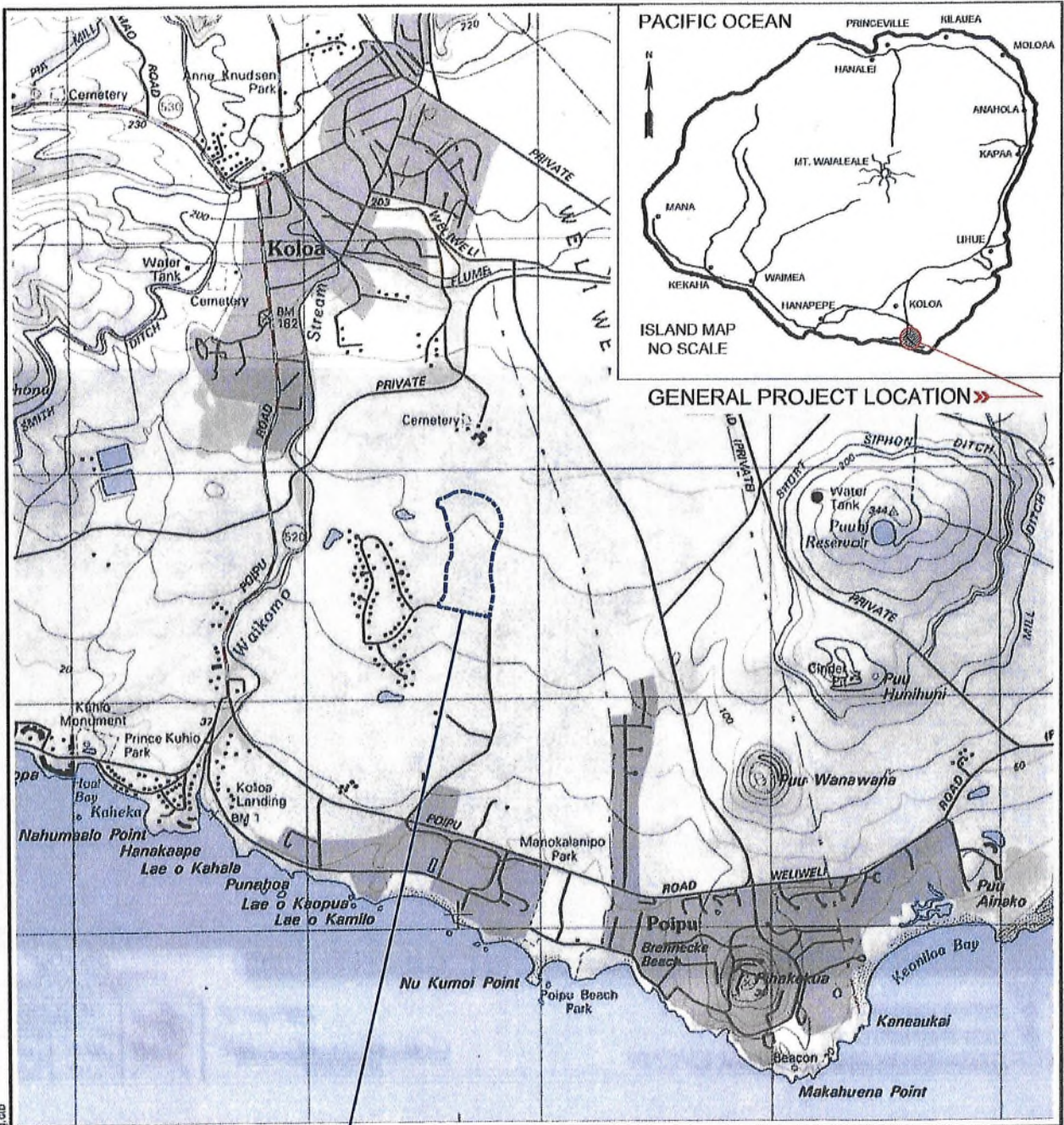
By


John Y.L. Chen, P.E.
Vice President

JC:TO:as

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PLATES



PROJECT LOCATION

PROJECT LOCATION MAP KAUANOE O KOLOA DEVELOPMENT POIPU, KAUAI, HAWAII



GRAPHIC SCALE



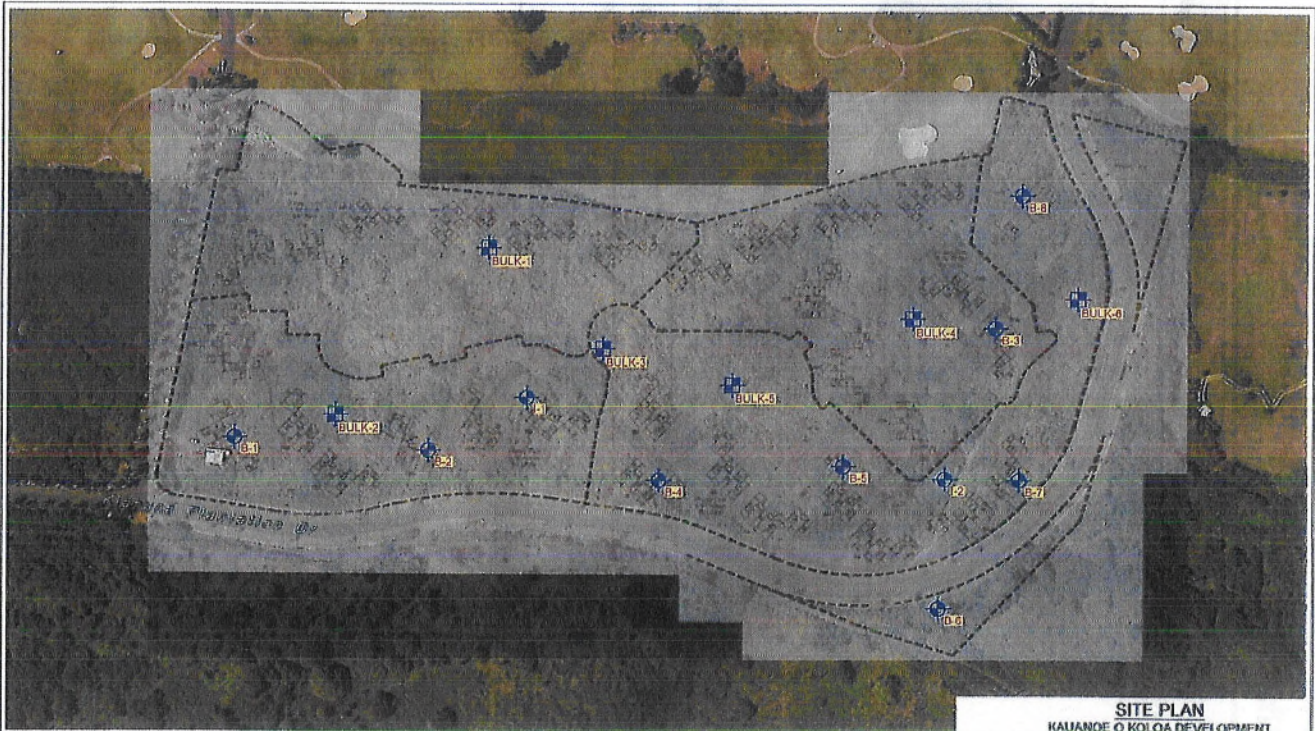
GEOLABS, INC.

Geotechnical Engineering

DATE	DRAWN BY	PLATE
JULY 2021	ASP	1
SCALE	W.O.	
1" = 2,000'	8267-00	

CAO User: ASP/AS/ONUP File Last Updated: July 12, 2021 12:07:40pm Plot Date: July 12, 2021 - 12:58:43pm
File: T:\Drafter\Wong\8267-00_Kauanoae_O_Koloa_Development\8267-00PLM.dwg 1:0 PLM
Printer: DWS To PDF-Geo.pc3 Plotstyle: GEO-No-Dithering.ctb

REFERENCE: MAP CREATED WITH TOPO!® ©2010 NATIONAL GEOGRAPHIC, ©2007 TELE ATLAS, REL. 1/2007.



LEGEND:

-  APPROXIMATE BORING LOCATION
-  APPROXIMATE BULK SAMPLE LOCATION

REFERENCE: SITE PLAN TRANSMITTED BY MERIDIAN PACIFIC, LTD. ON FEBRUARY 13, 2001 AND OVERLAIN ONTO
GOOGLE EARTH™ IMAGE, ©2011 GOOGLE, INC. IMAGE DATED DECEMBER 16, 2013



SITE PLAN
KAUANOE O KOLOA DEVELOPMENT
POPU, KAUAI, HAWAII



GEOLABS, INC.		
Geotechnical Engineering		
DATE	DRAWN BY	PLATE
JULY 2001	ASP	
SCALE	W.D.	
1" = 150'	8267-00	2

APPENDIX A

APPENDIX A

Field Exploration

We explored the subsurface conditions at the project site by drilling and sampling eight borings, designated as Boring Nos. 1 through 8, extending to the maximum depth explored of about 16 feet below the existing ground surface. In addition, six bulk samples of the near-surface soils were obtained to evaluate the pavement support characteristics of the near-surface soils. In addition, two boreholes, designated as I-1 and I-2, were drilled to a depth of about 5 feet below the existing ground surface for the access of the infiltration testing. The approximate boring locations are shown on the Site Plan, Plate 2. The borings were drilled using a truck-mounted drill rig equipped with continuous flight augers and coring tools.

Our geologist classified the materials encountered in the borings by visual and textural examination in the field in general accordance with ASTM D2488, Standard Practice for Description and Identification of Soils, and monitored the drilling operations on a near-continuous (full-time) basis. These classifications were further reviewed visually and by testing in the laboratory. Soils were classified in general accordance with ASTM D2487, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System), as shown on the Soil Log Legend, Plate A-0.1. Deviations made to the soil classification in accordance with ASTM D2487 are described on the Soil Classification Log Key, Plate A-0.2. Graphic representations of the materials encountered are presented on the Logs of Borings, Plates A-1 through A-10.

Relatively "undisturbed" soil samples were obtained in general accordance with ASTM D3550, Ring-Lined Barrel Sampling of Soils, by driving a 3-inch OD Modified California sampler with a 140-pound hammer falling 30 inches. In addition, some samples were obtained from the drilled borings in general accordance with ASTM D1586, Penetration Test and Split-Barrel Sampling of Soils, by driving a 2-inch OD standard penetration sampler using the same hammer and drop. The blow counts needed to drive the sampler the second and third 6 inches of an 18-inch drive are shown as the "Penetration Resistance" on the Logs of Borings at the appropriate sample depths. The penetration resistance shown on the Logs of Borings indicates the number of blows required for the specific sampler type used. The blow counts may need to be factored to obtain the Standard Penetration Test (SPT) blow counts.

Core samples of the rock materials encountered at the project site were obtained by using diamond core drilling techniques in general accordance with ASTM D2113, Diamond Core Drilling for Site Investigation. Core drilling is a rotary drilling method that uses a hollow bit to cut into the rock formation. The rock material left in the hollow core of the bit is mechanically recovered for examination and description. Rock cores were described in general accordance with the Rock Description System, as shown on the Rock Log Legend, Plate A-0.3. The Rock Description System is based on the publication "Suggested Methods for the Quantitative Description of Discontinuities in Rock Masses" by the International Society for Rock Mechanics (March 1977).

Appendix A

Field Exploration

Recovery (REC) may be used as a subjective guide to the interpretation of the relative quality of rock masses, where appropriate. Recovery is defined as the actual length of material recovered from a coring attempt versus the length of the core attempt. For example, if 3.7 feet of material is recovered from a 5.0-foot core run, the recovery would be 74 percent and would be shown on the Logs of Borings as REC = 74%.

The Rock Quality Designation (RQD) is also a subjective guide to the relative quality of rock masses. RQD is defined as the percentage of the core run in rock that is sound material in excess of 4 inches in length without any discontinuities, discounting any drilling, mechanical, and handling induced fractures or breaks. If 2.5 feet of sound material is recovered from a 5.0-foot core run in rock, the RQD would be 50 percent and would be shown on the Logs of Borings as RQD = 50%. Generally, the following is used to describe the relative quality of the rock based on the "Practical Handbook of Physical Properties of Rocks and Minerals" by Robert S. Carmichael (1989).

<u>Rock Quality</u>	<u>RQD</u> (%)
Very Poor	0 – 25
Poor	25 – 50
Fair	50 – 75
Good	75 – 90
Excellent	90 – 100

The excavation characteristic of a rock mass is a function of the relative hardness of the rock, its relative quality, brittleness, and fissile characteristics. A dense rock formation with a high RQD value would be very difficult to excavate and probably would require more arduous methods of excavation.
















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Soil Log Legend

UNIFIED SOIL CLASSIFICATION SYSTEM (USCS)

MAJOR DIVISIONS			USCS	TYPICAL DESCRIPTIONS	
COARSE-GRAINED SOILS MORE THAN 50% OF MATERIAL RETAINED ON NO. 200 SIEVE	GRAVELS MORE THAN 50% OF COARSE FRACTION RETAINED ON NO. 4 SIEVE	CLEAN GRAVELS LESS THAN 5% FINES	 GW	WELL-GRADED GRAVELS, GRAVEL-SAND MIXTURES, LITTLE OR NO FINES	
		GRAVELS WITH FINES MORE THAN 12% FINES	 GP	POORLY-GRADED GRAVELS, GRAVEL-SAND MIXTURES, LITTLE OR NO FINES	
		SANDS 50% OR MORE OF COARSE FRACTION PASSING THROUGH NO. 4 SIEVE	CLEAN SANDS LESS THAN 5% FINES	 SW	WELL-GRADED SANDS, GRAVELLY SANDS, LITTLE OR NO FINES
			SANDS WITH FINES MORE THAN 12% FINES	 SP	POORLY-GRADED SANDS, GRAVELLY SANDS, LITTLE OR NO FINES
	FINE-GRAINED SOILS 50% OR MORE OF MATERIAL PASSING THROUGH NO. 200 SIEVE	SILTS AND CLAYS LIQUID LIMIT LESS THAN 50	SM	 SM	SILTY SANDS, SAND-SILT MIXTURES
			SC	 SC	CLAYEY SANDS, SAND-CLAY MIXTURES
			ML	 ML	INORGANIC SILTS AND VERY FINE SANDS, ROCK FLOUR, SILTY OR CLAYEY FINE SANDS OR CLAYEY SILTS WITH SLIGHT PLASTICITY
			CL	 CL	INORGANIC CLAYS OF LOW TO MEDIUM PLASTICITY, GRAVELLY CLAYS, SANDY CLAYS, SILTY CLAYS, LEAN CLAYS
SILTS AND CLAYS LIQUID LIMIT 50 OR MORE	OL	 OL	ORGANIC SILTS AND ORGANIC SILTY CLAYS OF LOW PLASTICITY		
	MH	 MH	INORGANIC SILT, MICACEOUS OR DIATOMACEOUS FINE SAND OR SILTY SOILS		
	CH	 CH	INORGANIC CLAYS OF HIGH PLASTICITY		
	OH	 OH	ORGANIC CLAYS OF MEDIUM TO HIGH PLASTICITY, ORGANIC SILTS		
HIGHLY ORGANIC SOILS			 PT	PEAT, HUMUS, SWAMP SOILS WITH HIGH ORGANIC CONTENTS	

NOTE: DUAL SYMBOLS ARE USED TO INDICATE BORDERLINE SOIL CLASSIFICATIONS

LEGEND

-  (2-INCH) O.D. STANDARD PENETRATION TEST
-  (3-INCH) O.D. MODIFIED CALIFORNIA SAMPLE
-  SHELBY TUBE SAMPLE
-  GRAB SAMPLE
-  CORE SAMPLE
-  WATER LEVEL OBSERVED IN BORING AT TIME OF DRILLING
-  WATER LEVEL OBSERVED IN BORING AFTER DRILLING
-  WATER LEVEL OBSERVED IN BORING OVERNIGHT

- LL LIQUID LIMIT (NP=NON-PLASTIC)
- PI PLASTICITY INDEX (NP=NON-PLASTIC)
- TV TORVANE SHEAR (tsf)
- UC UNCONFINED COMPRESSION OR UNIAXIAL COMPRESSIVE STRENGTH
- TXUU UNCONSOLIDATED UNDRAINED TRIAXIAL COMPRESSION (ksf)

Plate

A-0.1



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Soil Classification Log Key (with deviations from ASTM D2488)

GEOLABS, INC. CLASSIFICATION*

GRANULAR SOIL (- #200 <50%)

- **PRIMARY** constituents are composed of the largest percent of the soil mass. Primary constituents are capitalized and bold (i.e., **GRAVEL, SAND**)
- **SECONDARY** constituents are composed of a percentage less than the primary constituent. If the soil mass consists of 12 percent or more fines content, a cohesive constituent is used (**SILTY** or **CLAYEY**); otherwise, a granular constituent is used (**GRAVELLY** or **SANDY**) provided that the secondary constituent consists of 20 percent or more of the soil mass. Secondary constituents are capitalized and bold (i.e., **SANDY GRAVEL, CLAYEY SAND**) and precede the primary constituent.
- **accessory descriptions** compose of the following:
with some: >12%
with a little: 5 - 12%
with traces of: <5%
accessory descriptions are lower cased and follow the Primary and Secondary Constituents (i.e., **SILTY GRAVEL with a little sand**)

COHESIVE SOIL (- #200 ≥50%)

- **PRIMARY** constituents are based on plasticity. Primary constituents are capitalized and bold (i.e., **CLAY, SILT**)
- **SECONDARY** constituents are composed of a percentage less than the primary constituent, but more than 20 percent of the soil mass. Secondary constituents are capitalized and bold (i.e., **SANDY CLAY, SILTY CLAY, CLAYEY SILT**) and precede the primary constituent.
- **accessory descriptions** compose of the following:
with some: >12%
with a little: 5 - 12%
with traces of: <5%
accessory descriptions are lower cased and follow the Primary and Secondary Constituents (i.e., **SILTY CLAY with some sand**)

EXAMPLE: Soil Containing 60% Gravel, 25% Sand, 15% Fines. Described as: **SILTY GRAVEL** with some sand

RELATIVE DENSITY / CONSISTENCY

Granular Soils			Cohesive Soils			
N-Value (Blows/Foot)		Relative Density	N-Value (Blows/Foot)		PP Readings (tsf)	Consistency
SPT	MCS		SPT	MCS		
0 - 4	0 - 7	Very Loose	0 - 2	0 - 4		Very Soft
4 - 10	7 - 18	Loose	2 - 4	4 - 7	< 0.5	Soft
10 - 30	18 - 55	Medium Dense	4 - 8	7 - 15	0.5 - 1.0	Medium Stiff
30 - 50	55 - 91	Dense	8 - 15	15 - 27	1.0 - 2.0	Stiff
> 50	> 91	Very Dense	15 - 30	27 - 55	2.0 - 4.0	Very Stiff
			> 30	> 55	> 4.0	Hard

MOISTURE CONTENT DEFINITIONS

Dry: Absence of moisture, dry to the touch

Moist: Damp but no visible water

Wet: Visible free water

ABBREVIATIONS

WOH: Weight of Hammer

WOR: Weight of Drill Rods

SPT: Standard Penetration Test Split-Spoon Sampler

MCS: Modified California Sampler

PP: Pocket Penetrometer

GRAIN SIZE DEFINITION

Description	Sieve Number and / or Size
Boulders	> 12 inches (305-mm)
Cobbles	3 to 12 inches (75-mm to 305-mm)
Gravel	3-inch to #4 (75-mm to 4.75-mm)
Coarse Gravel	3-inch to 3/4-inch (75-mm to 19-mm)
Fine Gravel	3/4-inch to #4 (19-mm to 4.75-mm)
Sand	#4 to #200 (4.75-mm to 0.075-mm)
Coarse Sand	#4 to #10 (4.75-mm to 2-mm)
Medium Sand	#10 to #40 (2-mm to 0.425-mm)
Fine Sand	#40 to #200 (0.425-mm to 0.075-mm)

Plate

A-0.2

*Soil descriptions are based on ASTM D2488-09a, Visual-Manual Procedure, with the above modifications by Geolabs, Inc. to the Unified Soil Classification System (USCS).



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Rock Log Legend

ROCK DESCRIPTIONS

	BASALT		CONGLOMERATE
	BOULDERS		LIMESTONE
	BRECCIA		SANDSTONE
	CLINKER		SILTSTONE
	COBBLES		TUFF
	CORAL		VOID/CAVITY

ROCK DESCRIPTION SYSTEM

ROCK FRACTURE CHARACTERISTICS

The following terms describe general fracture spacing of a rock:

Massive:	Greater than 24 inches apart
Slightly Fractured:	12 to 24 inches apart
Moderately Fractured:	6 to 12 inches apart
Closely Fractured:	3 to 6 inches apart
Severely Fractured:	Less than 3 inches apart

DEGREE OF WEATHERING

The following terms describe the chemical weathering of a rock:

Unweathered:	Rock shows no sign of discoloration or loss of strength.
Slightly Weathered:	Slight discoloration inwards from open fractures.
Moderately Weathered:	Discoloration throughout and noticeably weakened though not able to break by hand.
Highly Weathered:	Most minerals decomposed with some corestones present in residual soil mass. Can be broken by hand.
Extremely Weathered:	Saprolite. Mineral residue completely decomposed to soil but fabric and structure preserved.

HARDNESS

The following terms describe the resistance of a rock to indentation or scratching:

Very Hard:	Specimen breaks with difficulty after several "pinging" hammer blows. Example: Dense, fine grain volcanic rock
Hard:	Specimen breaks with some difficulty after several hammer blows. Example: Vesicular, vugular, coarse-grained rock
Medium Hard:	Specimen can be broken by one hammer blow. Cannot be scraped by knife. SPT may penetrate by ~25 blows per inch with bounce. Example: Porous rock such as clinker, cinder, and coral reef
Soft:	Can be indented by one hammer blow. Can be scraped or peeled by knife. SPT can penetrate by ~100 blows per foot. Example: Weathered rock, chalk-like coral reef
Very Soft:	Crumbles under hammer blow. Can be peeled and carved by knife. Can be indented by finger pressure. Example: Saprolite

Plate

A-0.3



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KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Log of
Boring

1

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 100 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
UC			93	82						ML	Brown with some gray CLAYEY SILT with some cobbles (basaltic), very stiff, moist (residual soil)
UC			92	65							grades to vugular locally
UC			100	93							Boring terminated at 16 feet
	</										

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KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**2**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 108 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
LL=27 PI=NP	11	106	98	78	50/3"					ML	Brown to mottled brownish gray SANDY SILT with some gravel (basaltic) and cobbles, very stiff, moist (residual soil)
UC			98	92			5				Gray BASALT , slightly to moderately fractured, unweathered to slightly weathered, hard to very hard (pahoe hoe basalt)
UC							10				Brownish gray vesicular BASALT , moderately fractured, slightly weathered, medium hard to hard (pahoe hoe basalt) Boring terminated at 10 feet
							15				
							20				
							25				

Date Started: April 19, 2021

Date Completed: April 19, 2021

Logged By: S. LaTronic

Total Depth: 10 feet

Work Order: 8267-00

Water Level: 7.5 ft. 04/19/2021 1555 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)


Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 2

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/19/21

		GEOLABS, INC. Geotechnical Engineering		KAUANOE O KOLOA DEVELOPMENT POIPU, KAUAI, HAWAII			Log of Boring 3			
Laboratory			Field				Approximate Ground Surface Elevation (feet): 124 *			
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)	Depth (feet)	Sample	USCS	Description
UC	33	74			13				MH	Brown CLAYEY SILT with some gravel (basaltic) and a little cobbles, medium stiff, moist (recent alluvium)
	32				19				MH	Brown with traces of gray CLAYEY SILT with a little gravel (basaltic), very stiff, moist (residual soil)
			75	0			5			grades to weathered basalt
			100	85						Gray with traces of brown vesicular/vugular BASALT , slightly to moderately fractured, unweathered to slightly weathered, hard to very hard (pahoe-hoe basalt)
							10			grades to dense
										Boring terminated at 11 feet
							15			
							20			
							25			

Date Started: April 21, 2021		Water Level: 5.8 ft. 04/21/2021 1400 HRS		Plate A - 3
Date Completed: April 21, 2021		8.6 ft. 04/21/2021 1345 HRS		
Logged By: S. Latronic		Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)		
Total Depth: 11 feet		Drilling Method: 4" Solid-Stem Auger & HQ Coring		
Work Order: 8267-00		Driving Energy: 140 lb. wt., 30 in. drop		

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**4**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet) : 116 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
LL=33 PI=2	28		11	0	50/5"					MH	Brown CLAYEY SILT with some gravel (basaltic), moist (fill)
										ML	Gray BOULDERS (BASALTIC) , very dense, dry (fill) Orangish brown SANDY SILT with some gravel (basaltic), very stiff, moist (weathered clinker)
UC			59	16			5				Gray vugular BASALT , closely fractured, slightly weathered, hard (a'a basalt)
										GM	Gray and brown subangular SILTY GRAVEL (BASALTIC), moist (clinker)
			28	7			10				Gray vugular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (a'a basalt)
										GM	Brown and gray subangular SILTY GRAVEL (BASALTIC), moist (clinker)
							15				Gray vugular BASALT , closely fractured, slightly weathered, hard (a'a basalt)
											Boring terminated at 16 feet
							20				
							25				

Date Started: April 21, 2021

Date Completed: April 21, 2021

Logged By: S. Latronic

Total Depth: 16 feet

Work Order: 8267-00

Water Level:  Not Encountered 04/21/2021 1700 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)


Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 4

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

		GEOLABS, INC. Geotechnical Engineering		KAUANOE O KOLOA DEVELOPMENT POIPU, KAUAI, HAWAII				Log of Boring 5	
Laboratory			Field				Approximate Ground Surface Elevation (feet): 120 *		
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)	Depth (feet)	Sample	USCS
Description									
UC			100	96					Dark grayish brown CLAYEY SILT , moist (residual soil) Gray vesicular BASALT , slightly fractured, unweathered to slightly weathered, hard to very hard (pahoe-hoe basalt)
UC			100	83			5		
UC							10		grades with tan silt in vertical fractures locally
Boring terminated at 11 feet									
							15		
							20		
							25		
Date Started: April 22, 2021			Date Completed: April 22, 2021			Water Level: 7.0 ft. 04/22/2021 0950 HRS 8.1 ft. 04/22/2021 1030 HRS			Plate A - 5
Logged By: S. Latronic			Total Depth: 11 feet			Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)			
Work Order: 8267-00			Driving Energy: 140 lb. wt., 30 in. drop			Drilling Method: 4" Solid-Stem Auger & HQ Coring			

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**6**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 127 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
UC			95	58						MH	Brownish gray CLAYEY SILT with some gravel (basaltic) and a little cobbles, moist (fill)
UC			85	47			5				Gray vesicular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (pahoehoe basalt)
UC							10				grades to vugular locally
							15				grades to severely fractured locally
							20				Boring terminated at 11.5 feet
							25				

Date Started: April 22, 2021

Date Completed: April 22, 2021

Logged By: S. Latronic

Total Depth: 11.5 feet

Work Order: 8267-00

Water Level:  Not Encountered 04/22/2021 1220 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 6

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/19/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring

7

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 124 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
UC	25	72			27					MH	Brown with some gray CLAYEY SILT with some gravel (basaltic), stiff to very stiff, moist (residual soil)
	12		89	73	50/5"		5				Gray vugular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (a'a basalt)
			77	35							Gray with some brown vugular BASALT , severely fractured, moderately weathered, medium hard to hard (a'a basalt) grades with clinkers
UC							10				Gray vugular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (a'a basalt)
UC			100	71			15				Boring terminated at 15 feet
							20				
							25				

Date Started: April 21, 2021

Date Completed: April 21, 2021

Logged By: S. Latronic

Total Depth: 15 feet

Work Order: 8267-00

Water Level: ▼ 12.3 ft. 04/21/2021 1225 HRS

▼ 14.2 ft. 04/21/2021 1150 HRS

Drill Rig: CME-55D

(Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 7

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**8**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 126 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
LL=55 PI=24 Direct Shear	33	66			2					MH	Brown CLAYEY SILT with some gravel (basaltic), moist (fill)
										MH-OH	Brown with traces of gray CLAYEY SILT with some organics, very soft, dry to moist (fill)
			87	45						MH	Grayish brown CLAYEY SILT with some decomposed gravel, very stiff, moist (residual soil)
			100	63			5				Gray vesicular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (pahoeohoe basalt)
			100	57			10				grades to severely fractured locally
							15				Boring terminated at 15 feet
							20				
							25				

Date Started: April 21, 2021

Date Completed: April 21, 2021

Logged By: S. Latronic

Total Depth: 15 feet

Work Order: 8267-00

Water Level: Not Encountered 04/21/2021 0955 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 8

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/19/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**I-1**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 112 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
										MH	Brown CLAYEY SILT with some gravel (basaltic) and a little cobbles, moist (residual soil)
											Gray to brownish gray BASALT , unweathered to slightly weathered, hard to very hard (pahoehoe basalt)
											grades to closely fractured locally
							5				Boring terminated at 5 feet
							10				
							15				
							20				
							25				

Date Started: April 22, 2021	Water Level: Not Encountered 04/22/2021 0845 HRS	Plate A - 9
Date Completed: April 22, 2021		
Logged By: S. Latronic	Drill Rig: (Energy Transfer Ratio = 77.2%)	
Total Depth: 5 feet	Drilling Method: CME-55D	
Work Order: 8267-00	Driving Energy: 4" Solid-Stem Auger	

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**I-2**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 123 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
			58	51							Brown CLAYEY SILT with some gravel (basaltic) and a little cobbles, very stiff, moist (residual soil)
											Gray BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (pahoehoe basalt) grades to severely fractured locally
							5				Boring terminated at 5 feet
							10				
							15				
							20				
							25				

Date Started: April 21, 2021	Water Level: ▼ Not Encountered 04/21/2021 1545 HRS	Plate A - 10
Date Completed: April 21, 2021		
Logged By: S. Latronic	Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)	
Total Depth: 5 feet	Drilling Method: 4" Solid-Stem Auger & HQ Coring	
Work Order: 8267-00	Driving Energy: 140 lb. wt., 30 in. drop	

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

APPENDIX B

APPENDIX B

Laboratory Tests

Moisture Content (ASTM D2216) and Unit Weight (ASTM D2937) determinations were performed on selected samples as an aid in the classification and evaluation of soil properties. The test results are presented on the Logs of Borings at the appropriate sample depths.

Three Atterberg Limits tests (ASTM D4318) were performed on selected soil samples to evaluate the liquid and plastic limits. The test results are summarized on the Logs of Borings at the appropriate sample depths. Graphic presentation of the test results are provided on Plate B-1.

Two Sieve Analysis tests (ASTM D6913) were performed on selected soil samples to evaluate the gradation characteristics of the soils and to aid in soil classification. Graphic presentation of the grain size distributions are provided on Plate B-2.

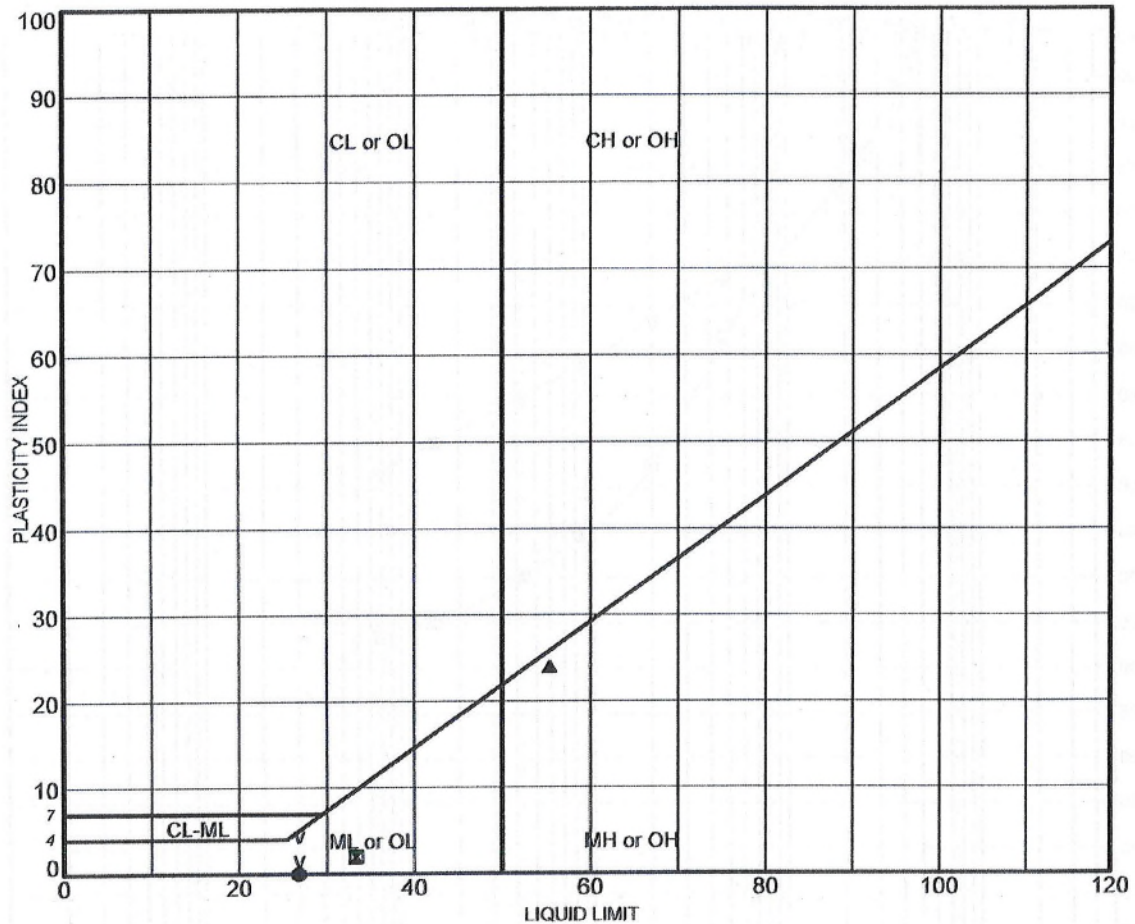
One Direct Shear test (ASTM D3080) was performed on a selected sample to evaluate the shear strength characteristic of the material tested. The test results are presented on Plate B-3.

Sixteen Uniaxial Compression tests (ASTM D7012, Method C) were performed on selected intact core runs to evaluate the unconfined compressive strength of the basalt formations encountered. The test results are presented on Plate B-4.

Six laboratory California Bearing Ratio tests (ASTM D1883) were performed on bulk samples of the near-surface soils to evaluate the pavement support characteristics of the soils. The test results are presented on Plates B-5 through B-10.

Six Modified Proctor compaction tests (ASTM D1557) were performed on bulk samples of the near-surface soils and potential borrow material to evaluate the dry density and moisture content relationships. The test results are presented on Plates B-11 through B-16.

Two sets of Corrosion tests, including pH (ASTM G51), Minimum Resistivity (ASTM G57), Chloride Content (EPA 300.0), and Sulfate Content (EPA 300.0), were performed by our office and Eurofins TestAmerica Laboratories, Inc. on selected soil samples obtained from our field exploration. The test results are summarized on Plate B-17.



	Sample	Depth (ft)	LL	PL	PI	Description
●	B-2	1.5-2.3	27	35	NP	Brownish gray sandy silt (ML) with some gravel
■	B-4	6.0-6.9	33	31	2	Orangish brown sandy silt (ML) with some gravel
▲	B-8	1.5-3.0	55	31	24	Brown with traces of gray clayey silt (MH) with some organics

NP = NON-PLASTIC

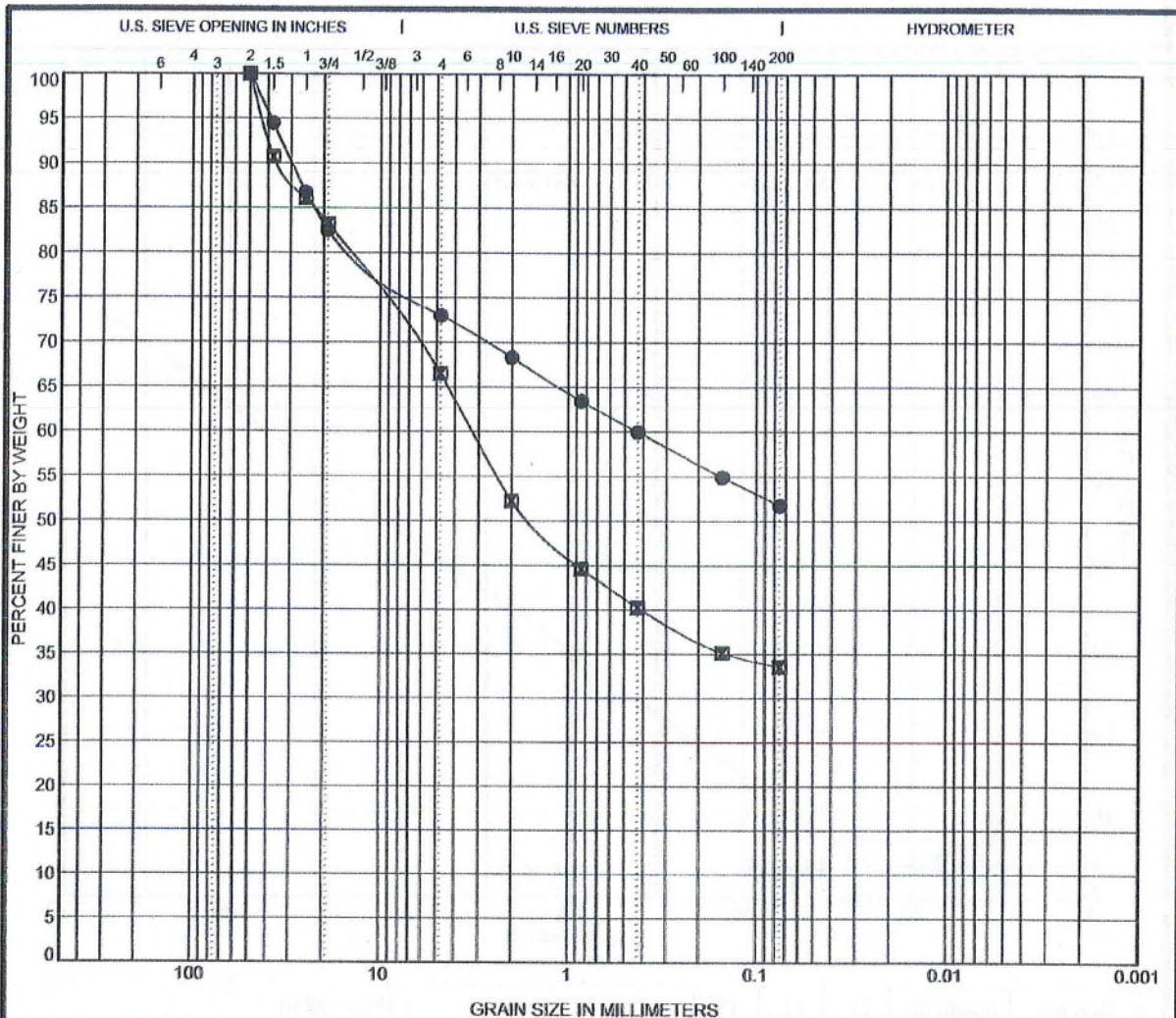


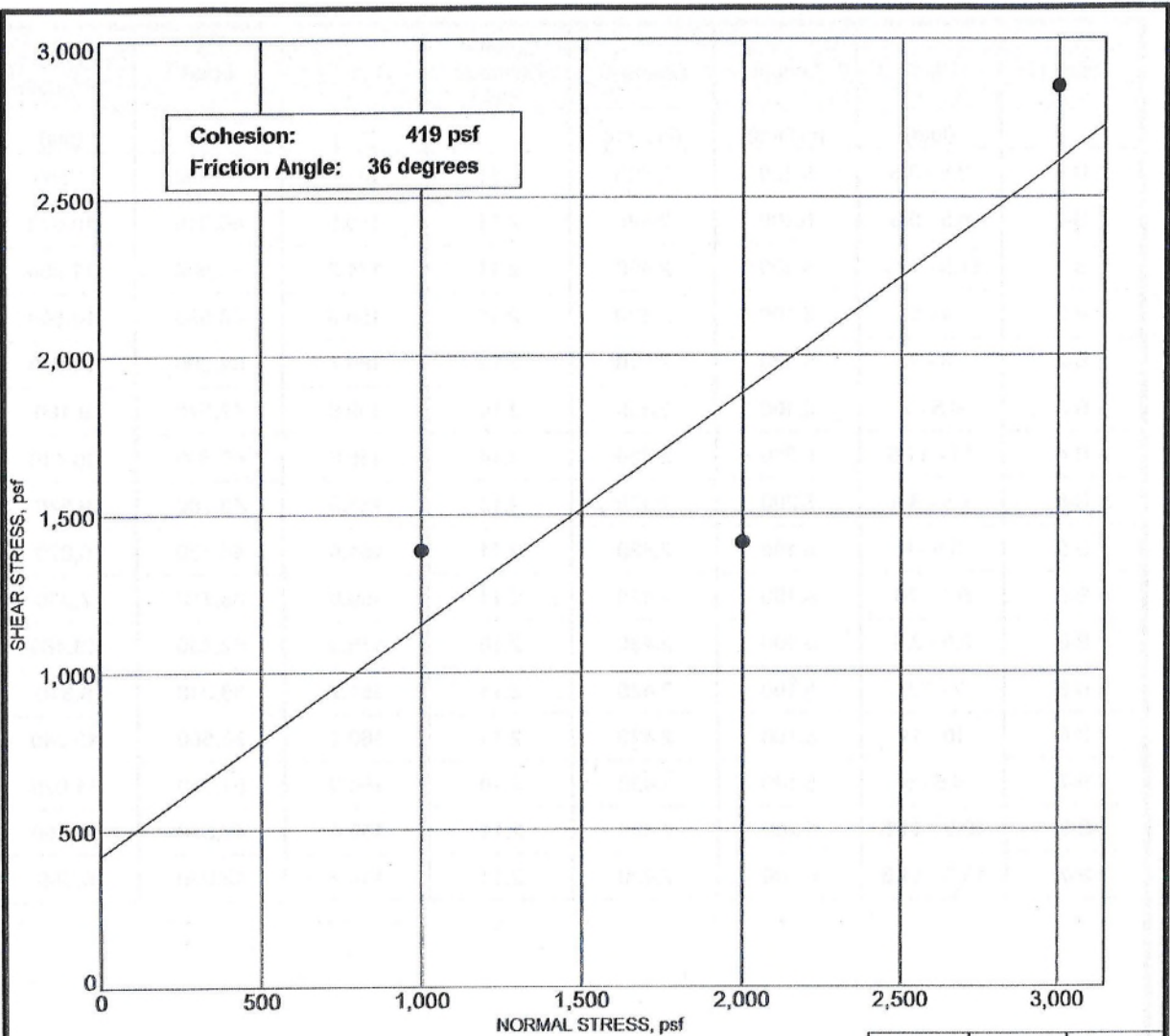
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ATTERBERG LIMITS TEST RESULTS - ASTM D4318

KAUANOE O KOLOA DEVELOPMENT
 POIPIU, KAUAI, HAWAII

Plate
B - 1





Sample: B-8
Depth: 3.0 - 3.9 feet
Description: Grayish brown clayey silt with some decomposed gravel

	Sample #1	Sample #2	Sample #3
INITIAL	Moisture Content, %	31.0	36.2
	Dry Density, pcf	70.7	74.8
	Height, inches	1.00	1.00
FINAL	Moisture Content, %	43.2	41.5
	Dry Density, pcf	69.4	77.4
	Height, inches	1.019	0.967
	Diameter, inches	2.42	2.42
	Deformation Rate, inch/minute	0.0024	0.0023
	Normal Stress, psf	1000	2000
	Peak Shear Stress, psf	1387	1411
	Shear Displacement, inches	0.43	0.41



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DIRECT SHEAR TEST - ASTM D3080

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 3

Location	Depth	Length	Diameter	Length/ Diameter Ratio	Density	Load	Compressive Strength
	(feet)	(inches)	(inches)		(pcf)	(lbs)	(psi)
B-1	2.5 - 3.5	5.100	2.420	2.11	152.0	38,550	8,380
B-1	8.5 - 9.5	5.100	2.420	2.11	160.0	46,340	10,070
B-1	11.5 - 12.5	5.100	2.420	2.11	171.2	54,520	11,850
B-2	4 - 5	5.100	2.420	2.11	159.3	48,550	10,560
B-2	8 - 9	5.130	2.410	2.13	168.7	64,200	14,070
B-3	6.5 - 7	5.100	2.430	2.10	159.6	42,570	9,180
B-4	11 - 11.5	5.200	2.430	2.14	149.6	48,300	10,410
B-5	1.5 - 3.5	5.200	2.420	2.15	154.5	43,780	9,520
B-5	5.5 - 6	5.100	2.420	2.11	151.0	45,380	9,870
B-5	9.5 - 10	5.100	2.420	2.11	150.9	33,730	7,330
B-6	2.5 - 3.5	5.100	2.430	2.10	165.3	62,430	13,460
B-6	7 - 7.5	5.100	2.420	2.11	151.7	38,210	8,310
B-6	10 - 11	5.100	2.420	2.11	160.4	58,580	12,740
B-7	4.5 - 5	5.100	2.430	2.10	156.9	51,350	11,070
B-7	10.5 - 11.5	5.200	2.430	2.14	153.4	47,570	10,260
B-7	13.5 - 14.5	5.100	2.420	2.11	148.3	43,020	9,350

ASTM D7012 (METHOD C)

Note: Samples were not prepared in accordance with ASTM D4543. Therefore, results reported may differ from results obtained from a test specimen that meets the requirements of Practice D4543



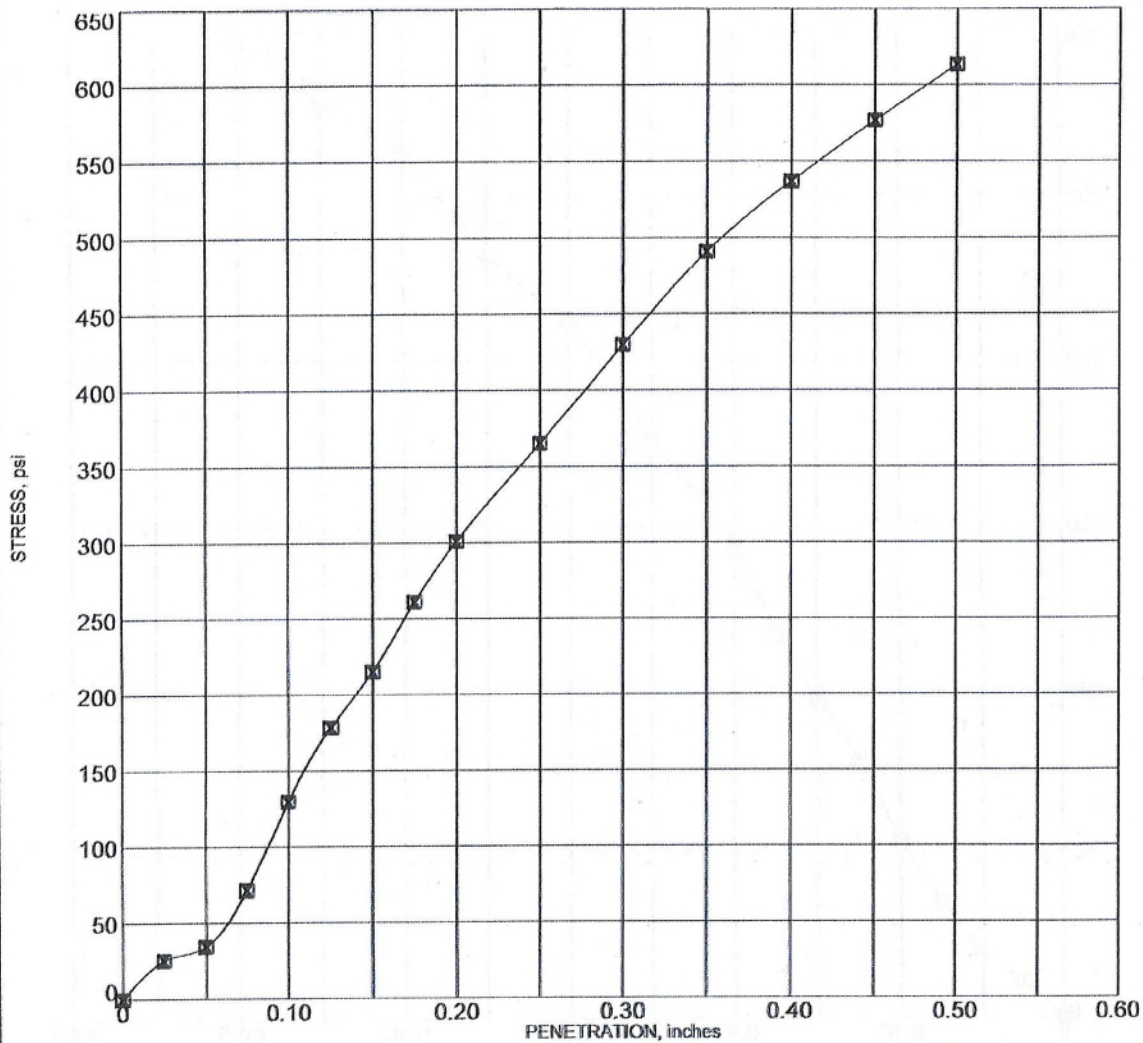
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UNIAXIAL COMPRESSIVE STRENGTH TEST

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 4



Sample: BULK-1
 Depth: 0.0 - 1.0 feet
 Description: Brown silty clay with some gravel

Corr. CBR @ 0.1"	12.9
Corr. CBR @ 0.2"	20.1
Swell (%)	1.66

Molding Dry Density (pcf)	90.9	Hammer Wt. (lbs)	10
Molding Moisture (%)	25.4	Hammer Drop (inches)	18
Days Soaked	5	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

© CBR 8267-00.GPJ GEOLABS.GDT 7/1/21

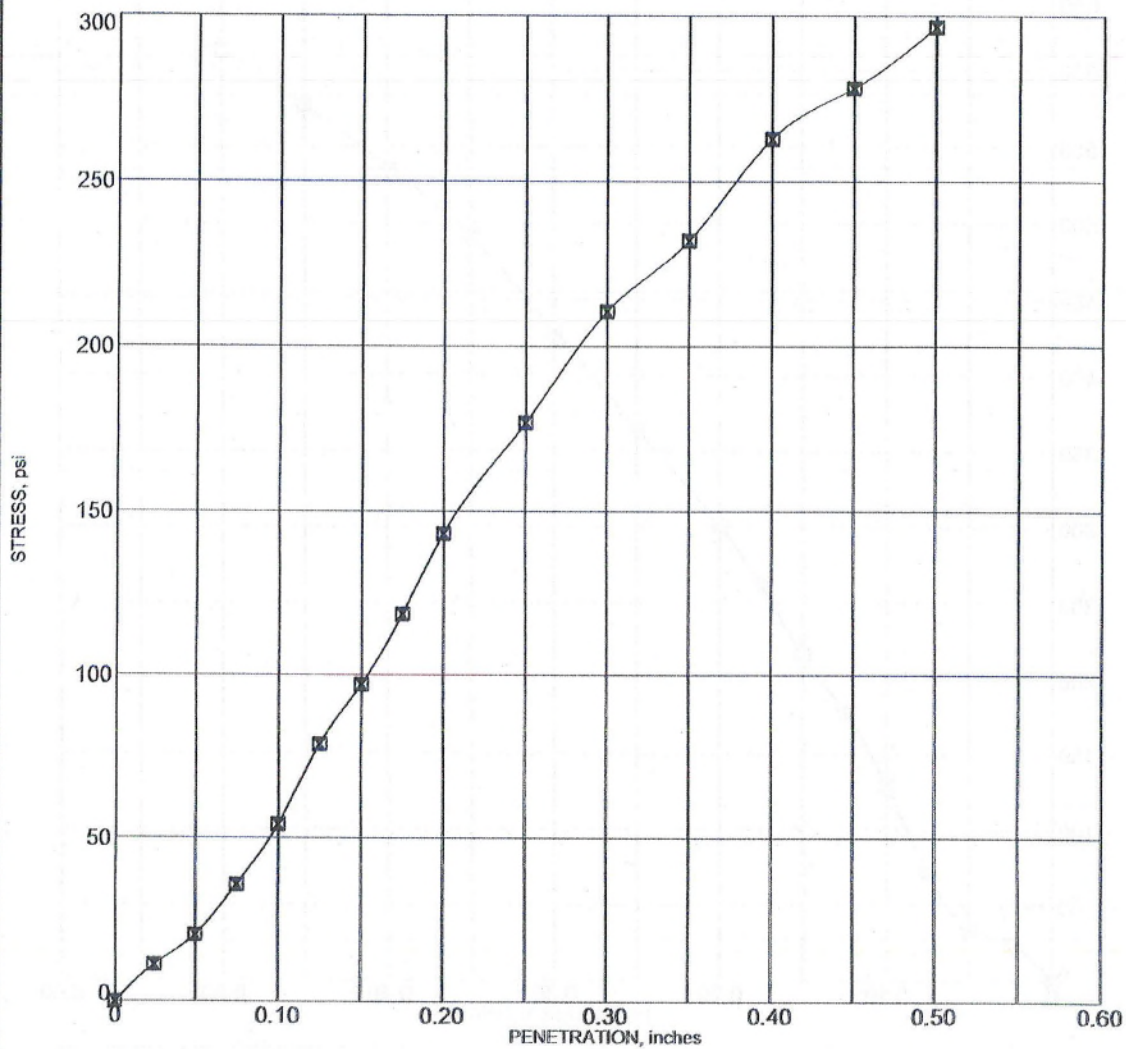


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CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
 B - 5



Sample: BULK-2
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay with some gravel and rootlets

Corr. CBR @ 0.1"	5.4
Corr. CBR @ 0.2"	9.5
Swell (%)	2.36

Molding Dry Density (pcf)	81.3	Hammer Wt. (lbs)	10
Molding Moisture (%)	31.1	Hammer Drop (inches)	18
Days Soaked	5	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

G.C.B.R. 8267-00.GPJ GEOLABS.GDT 7/12/21



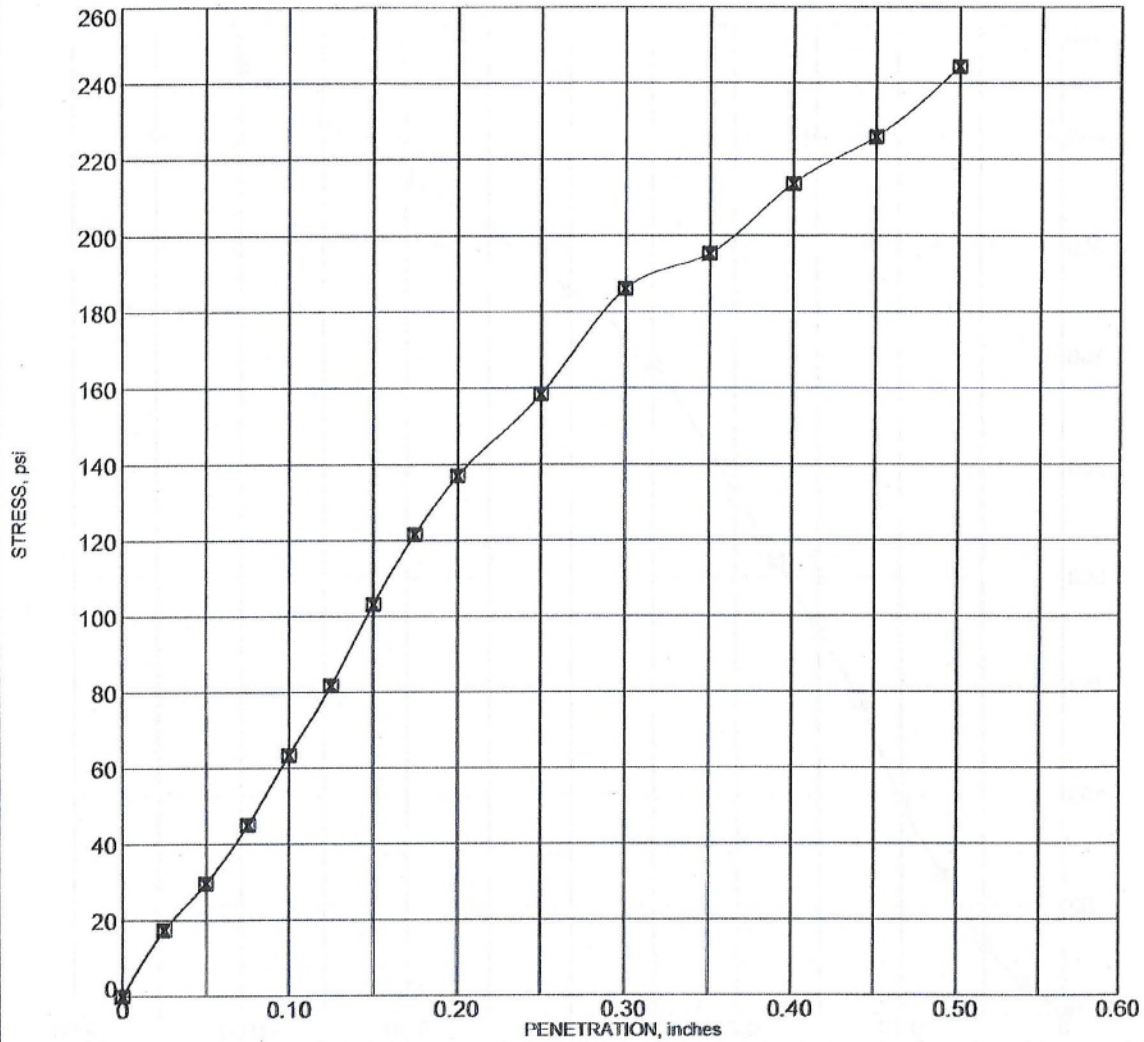
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CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 6



Sample: BULK-3
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay with some gravel and rootlets

Corr. CBR @ 0.1"	6.3
Corr. CBR @ 0.2"	9.1
Swell (%)	2.53

Molding Dry Density (pcf)	82.4	Hammer Wt. (lbs)	10
Molding Moisture (%)	31.4	Hammer Drop (inches)	18
Days Soaked	6	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

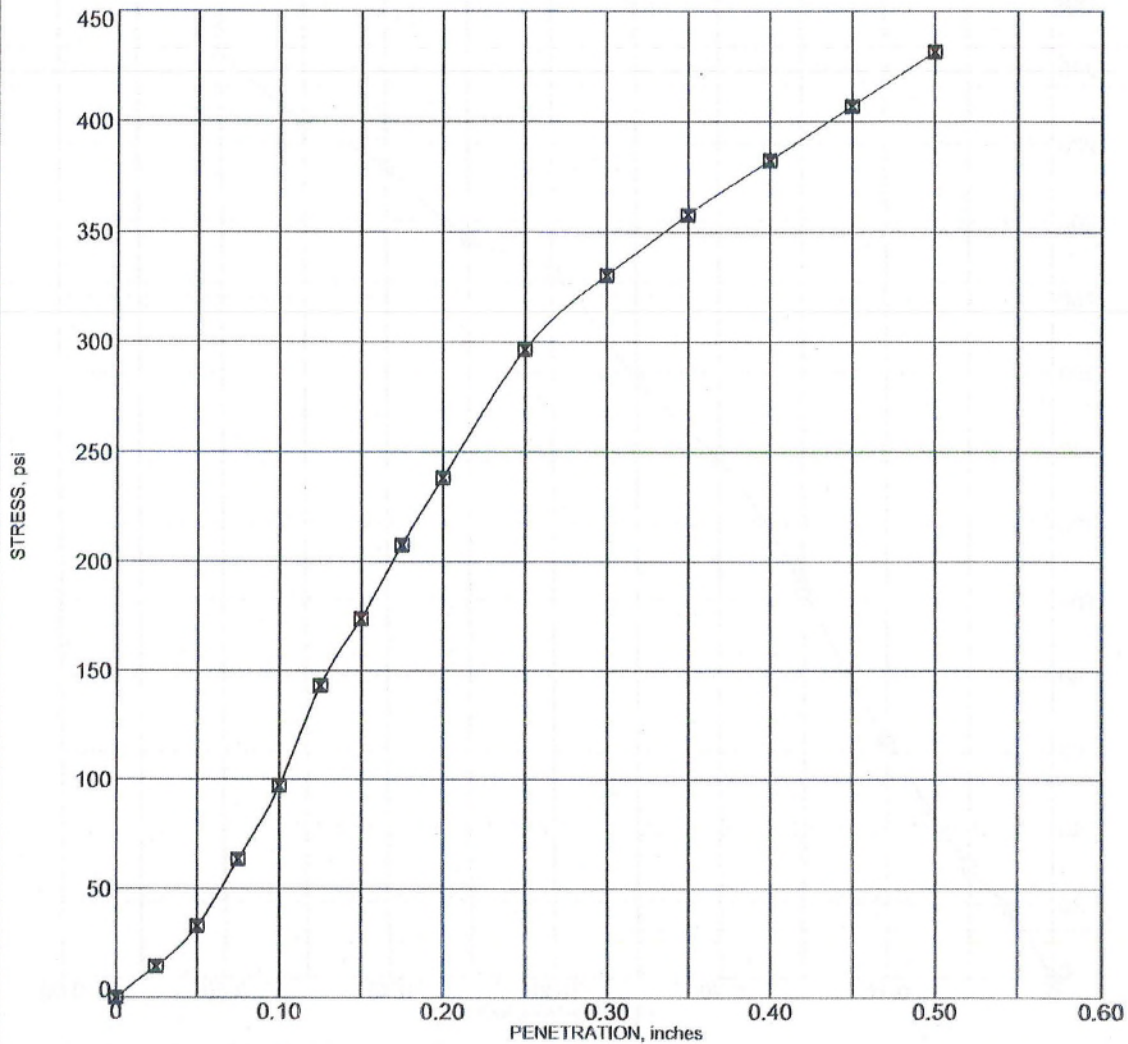


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CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 7



Sample: BULK-4
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay (CL) with some gravel and rootlets

Corr. CBR @ 0.1"	18.4
Corr. CBR @ 0.2"	19.6
Swell (%)	1.05

Molding Dry Density (pcf)	90.2	Hammer Wt. (lbs)	10
Molding Moisture (%)	28.5	Hammer Drop (inches)	18
Days Soaked	6	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

G.C.B.R. 8267-00.GPJ GEOLABS.GDT 7/12/21

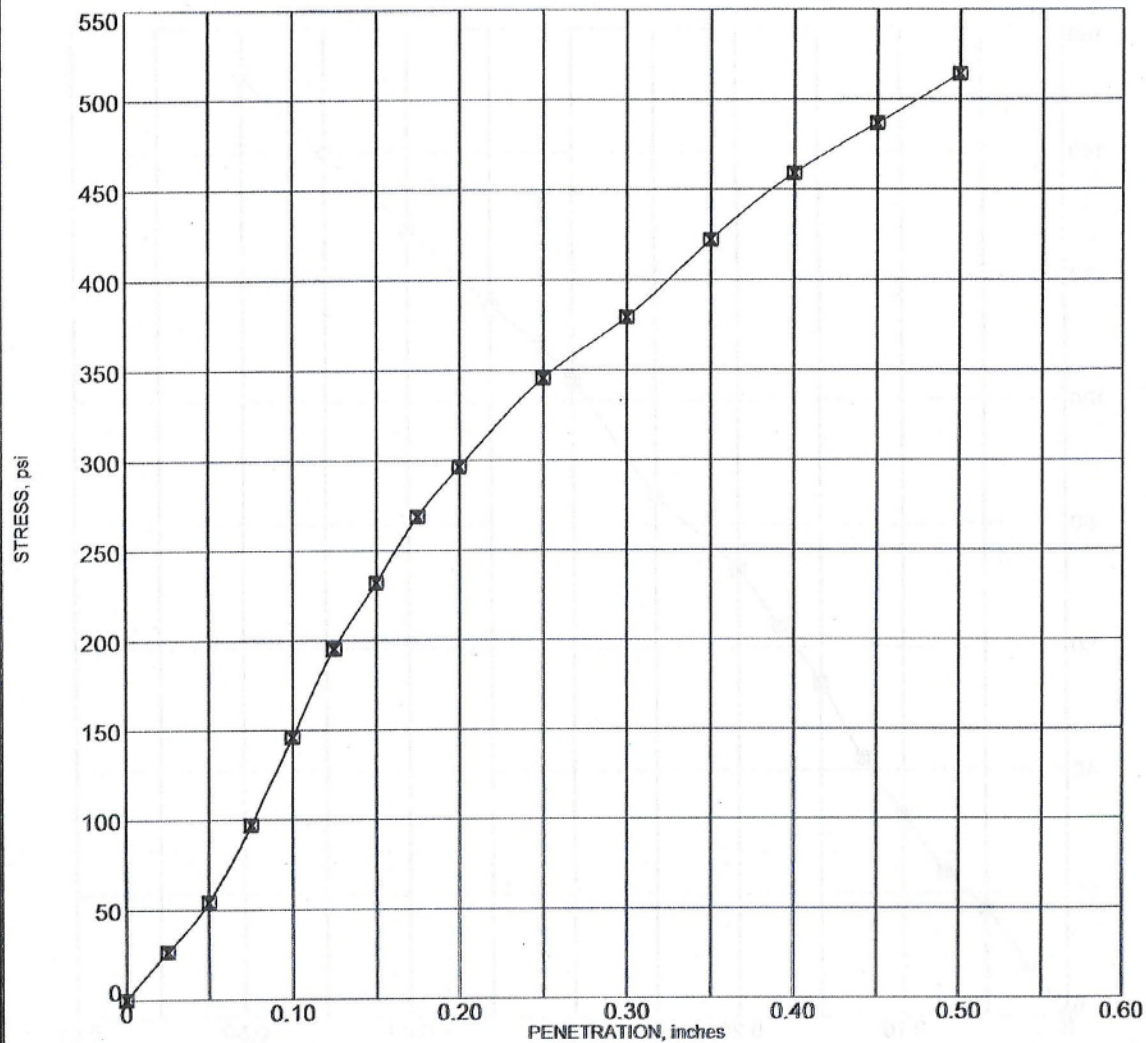


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CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
 B - 8



Sample: BULK-5
 Depth: 0.0 - 1.0 feet
 Description: Brown clayey gravel (GC) with some sand

Corr. CBR @ 0.1"	18.2
Corr. CBR @ 0.2"	21.0
Swell (%)	1.20

Molding Dry Density (pcf)	85.4	Hammer Wt. (lbs)	10
Molding Moisture (%)	32.9	Hammer Drop (inches)	18
Days Soaked	5	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

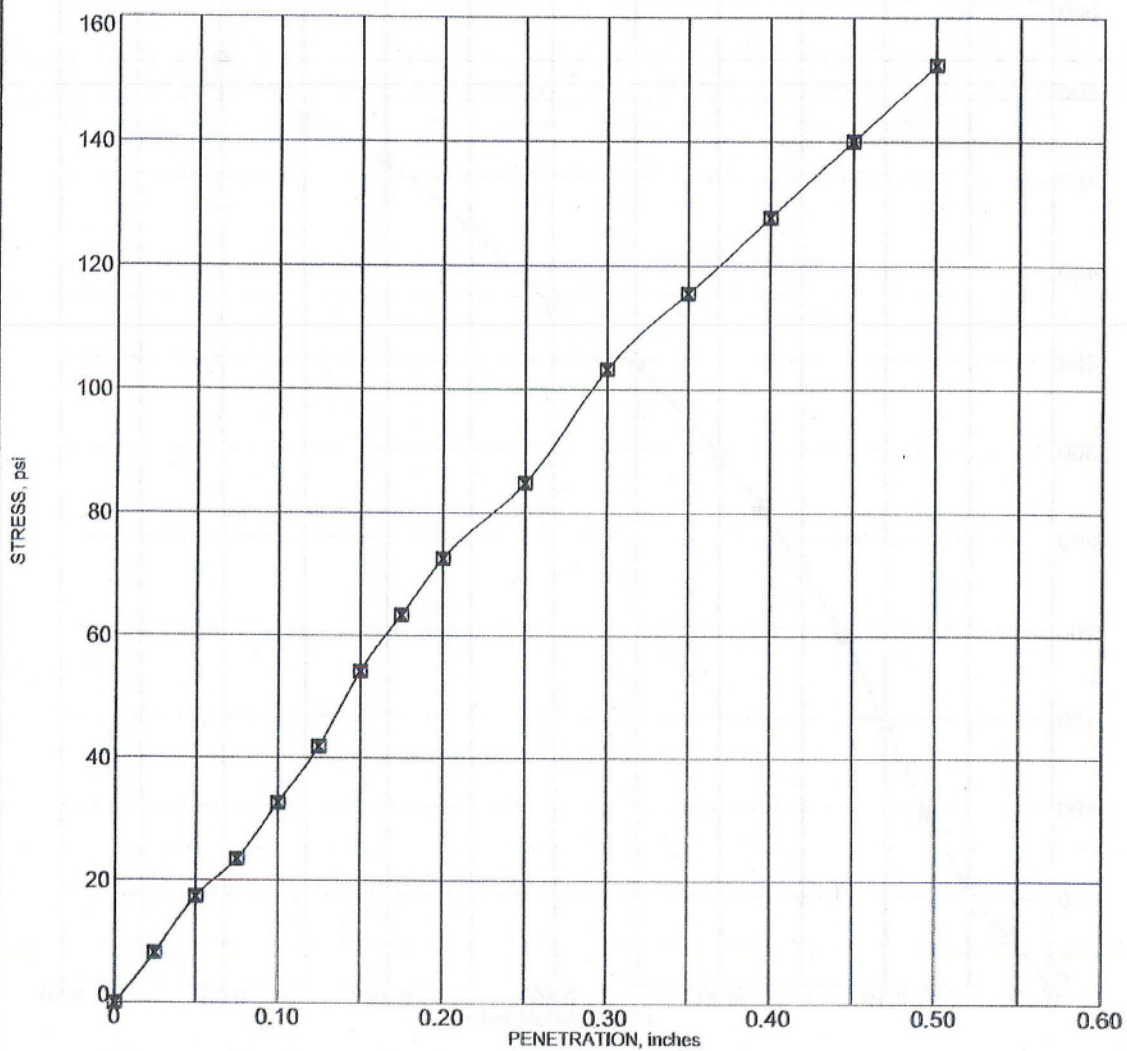


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CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
 B - 9



Sample: BULK-6
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay with some gravel and rootlets

Corr. CBR @ 0.1"	3.3
Corr. CBR @ 0.2"	4.8
Swell (%)	1.40

Molding Dry Density (pcf)	78.4	Hammer Wt. (lbs)	10
Molding Moisture (%)	37.4	Hammer Drop (inches)	18
Days Soaked	5	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

G. CBR 8267-00.GPJ GEOLABS.GDT 7/12/21

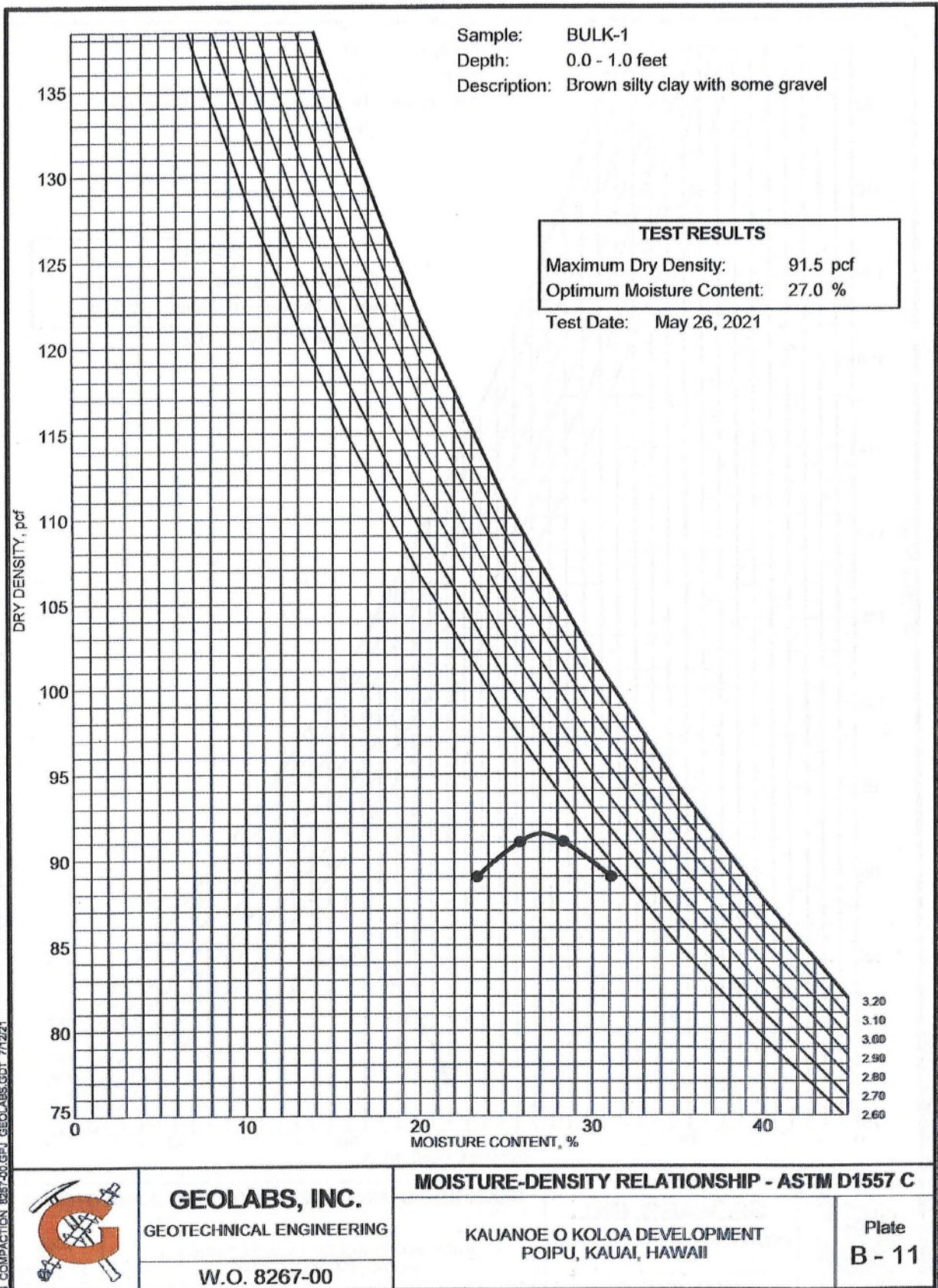


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CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 10

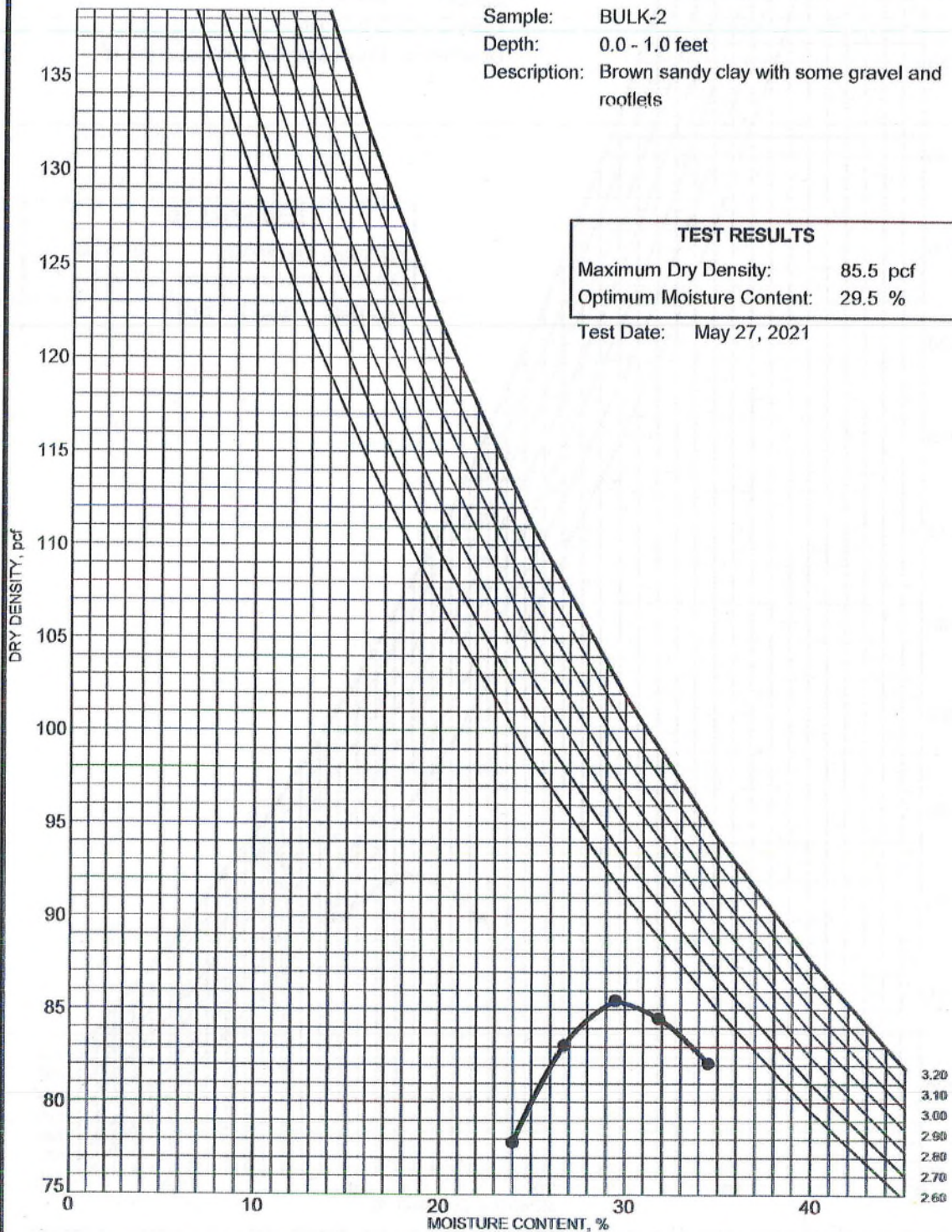


Sample: BULK-2
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay with some gravel and rootlets

TEST RESULTS

Maximum Dry Density: 85.5 pcf
 Optimum Moisture Content: 29.5 %

Test Date: May 27, 2021



3. COMPACTOR 8267-00.GPJ, 08E0485.GBT, 7/12/21



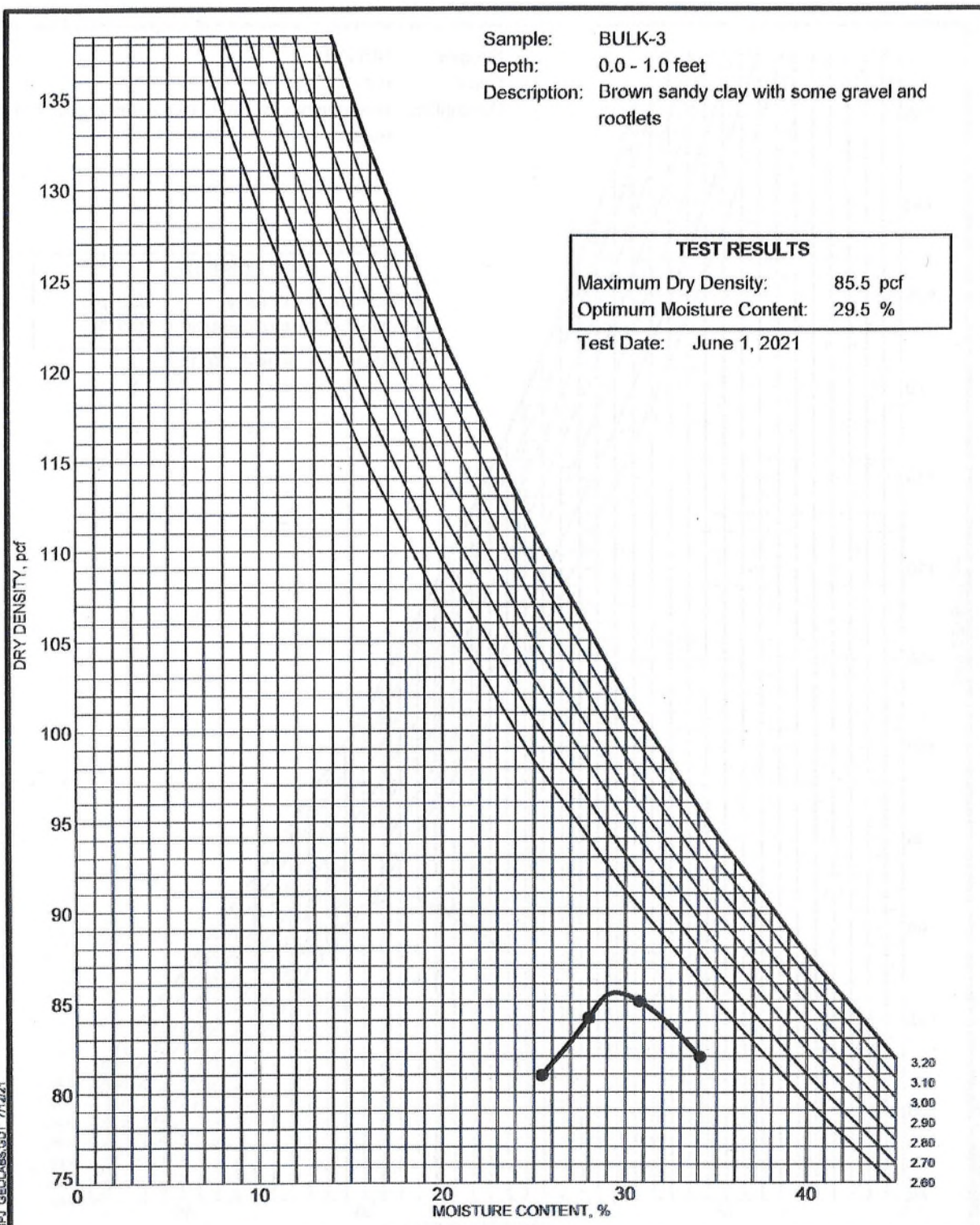
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W.O. 8267-00

MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 C

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 12



Sample: BULK-3
Depth: 0.0 - 1.0 feet
Description: Brown sandy clay with some gravel and rootlets

TEST RESULTS
Maximum Dry Density: 85.5 pcf
Optimum Moisture Content: 29.5 %
Test Date: June 1, 2021

G COMPACTOR 8267-00.GPJ GEOLABS.GDT 7/1/21

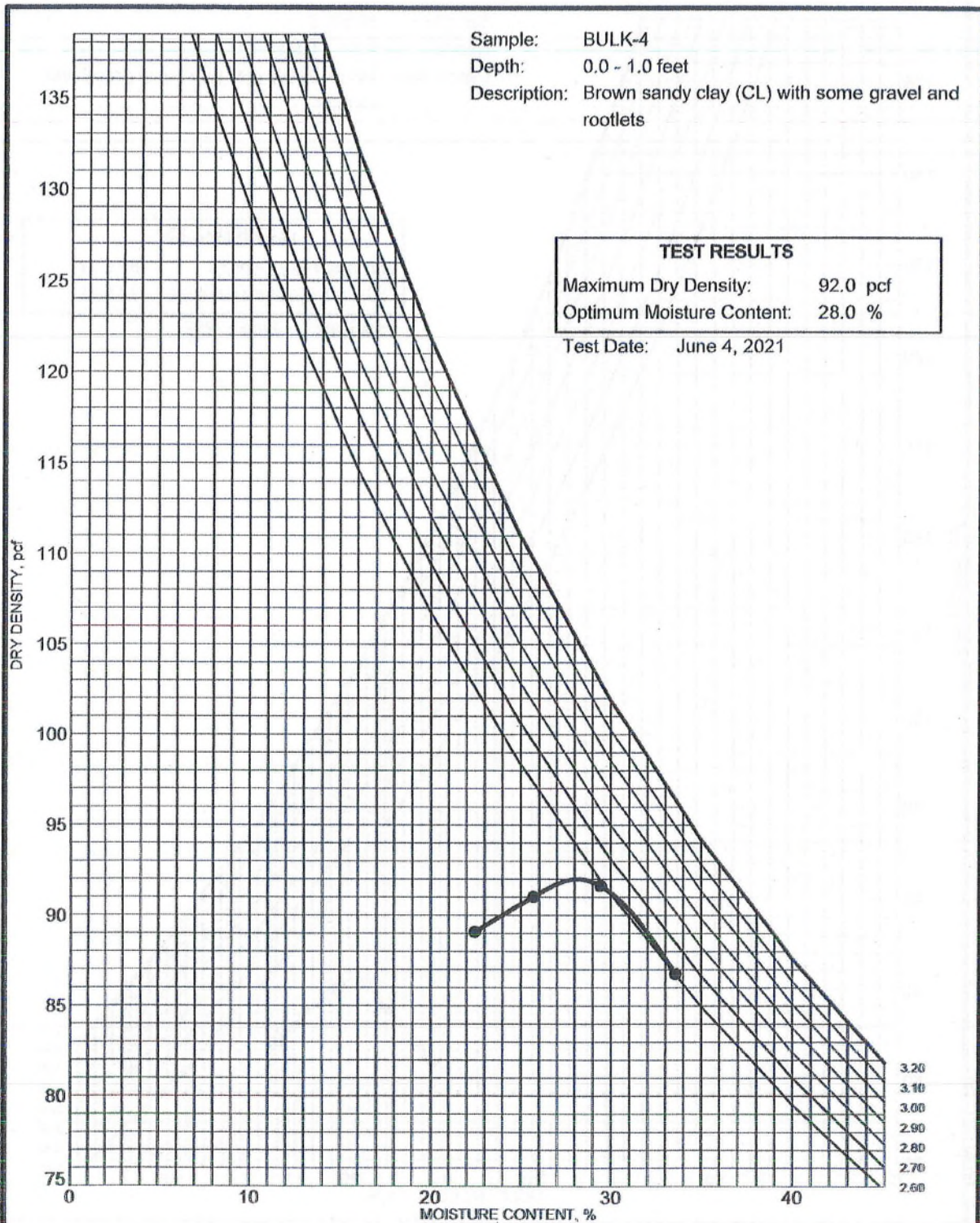


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MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 B

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 13



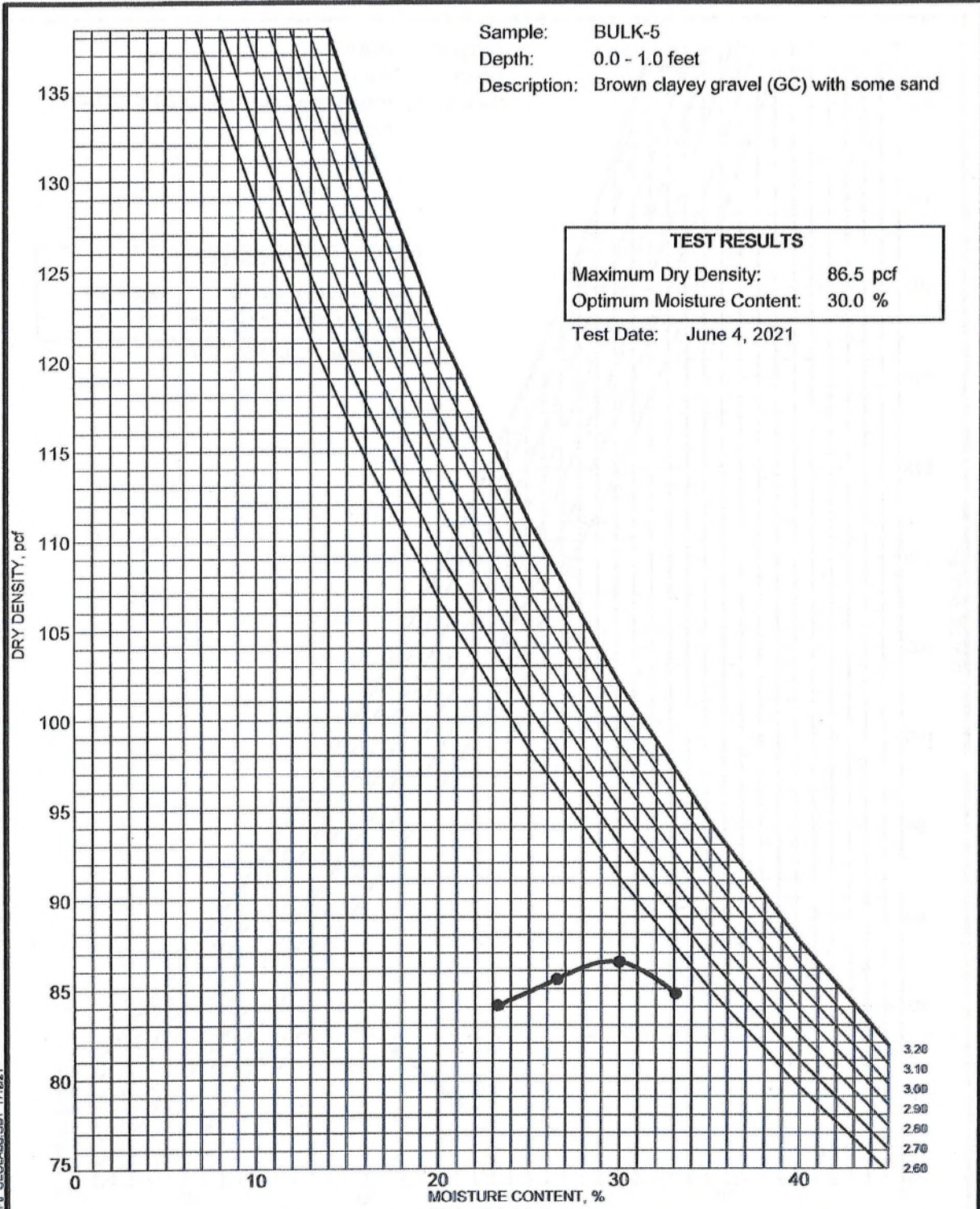
3. COMPACTION 8267-00.GPJ, GEOLABS.GDT 7/12/21



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W.O. 8267-00

MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 B

KAUANOE O KOLOA DEVELOPMENT POIPU, KAUAI, HAWAII	Plate B - 14
---	-----------------



Sample: BULK-5
Depth: 0.0 - 1.0 feet
Description: Brown clayey gravel (GC) with some sand

TEST RESULTS
Maximum Dry Density: 86.5 pcf
Optimum Moisture Content: 30.0 %
Test Date: June 4, 2021

G. COMPACTION 8267-00.GPJ GEOLABS.GDT 7/12/21

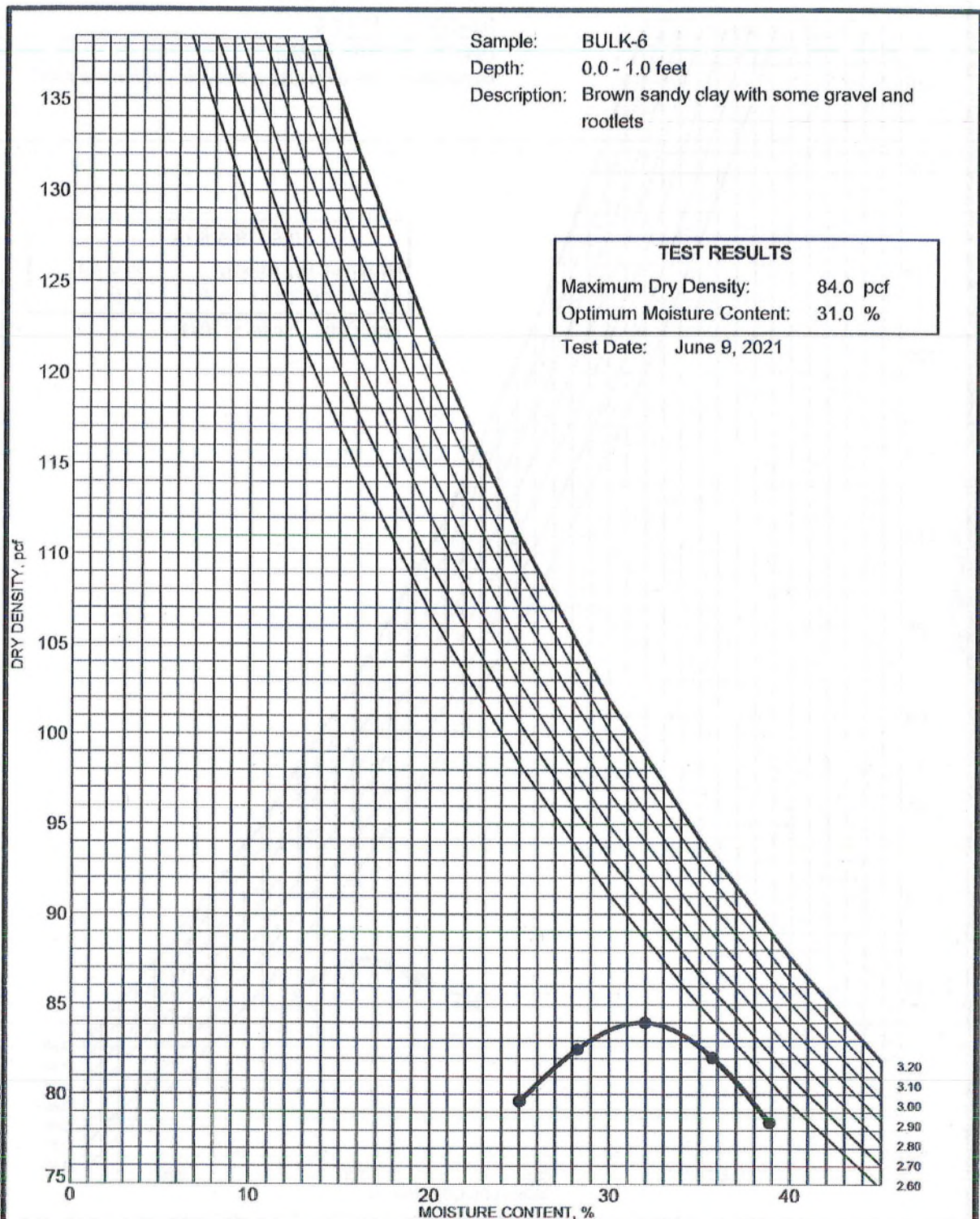


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MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 B

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 15



G COMPACTOR 8267-00.GPJ GEOLABS.GDT 7/1/21



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MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 C

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 16

Location	Depth (feet)	pH Value	Minimum Resistivity (ohm-cm)	Chloride Content (mg/kg)	Sulfate Content (mg/kg)
B-3	1.5 - 3.0	7.15'	13000'	ND	23
B-7	1.5 - 3.0	7.15'	14000'	34	49

TEST METHODS (by Eurofins TestAmerica Laboratories, Inc.)

pH Value Method 9045C
Minimum Resistivity SM 2510B
Chloride Content EPA 300.0
Sulfate Content EPA 300.0

ND: Not Detected Within Reporting Limits

TEST METHODS (by Geolabs, Inc.)*

pH Value ASTM G51
Minimum Resistivity ASTM G57
Chloride Content N/A
Sulfate Content N/A



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W.O. 8267-00

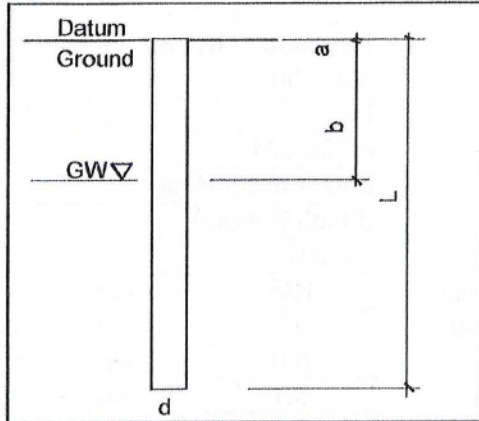
SUMMARY OF CORROSIVITY TESTS

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 17

APPENDIX C

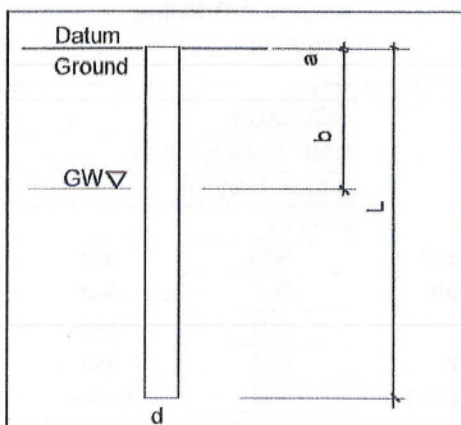
INFILTRATION TEST RECORD



Project: Kauanoe O Koloa
 W.O.: 8267-00
 Test No.: I-1
 Date of Testing: 4/26/2021
 Method of Testing: BMP Falling Head (Flush Bottom)
 Source of Water: Bucket
 GW level, b (from ground): N/A feet
 Datum, a (above ground): 0.2 feet
 Depth of Boring: 5.0 feet
 Length, L (from datum): 5.2 feet
 Diameter of Casing, d (I.D.): 4.0 inches

Testing Trial	Elapsed Time (minutes)	Time (hh:mm)	Depth to Water (measured from datum) (inches)	Percolation Rate (inches per hour)
Trial 1	0	10:42	36.50	
	15	10:57	36.70	
	30	11:12	36.80	
	45	11:27	36.85	
	60	11:42	36.85	0.4
Trial 2	0	11:42	36.85	
	15	11:57	36.85	
	30	12:12	36.90	
	45	12:27	36.90	
	60	12:42	36.95	0.1
Trial 3	0	12:42	36.95	
	15	12:57	36.95	
	30	13:12	37.00	
	45	13:27	37.00	
	60	13:42	37.05	0.1
Trial 4	0	13:42	37.05	
	15	13:57	37.05	
	30	14:12	37.10	
	45	14:27	37.10	
	60	14:42	37.15	0.1

INFILTRATION TEST RECORD



Project: Kauanoe O Koloa
 W.O.: 8267-00
 Test No.: I-2
 Date of Testing: 4/26/2021
 Method of Testing: BMP Falling Head
 (Flush Bottom)
 Source of Water: Bucket
 GW level, b (from ground): N/A feet
 Datum, a (above ground): 0.1 feet
 Depth of Boring: 5.0 feet
 Length, L (from datum): 5.1 feet
 Diameter of Casing, d (I.D.): 4.0 inches

Testing Trial	Elapsed Time (minutes)	Time (hh:mm)	Depth to Water (measured from datum) (inches)	Percolation Rate (inches per hour)
Trial 1	0	11:53	37.00	
	1	11:54	57.25	
	2	11:55	57.75	
	5	11:58	58.25	
	15	12:08	59.25	22.3
Trial 2	0	12:09	37.00	
	1	12:10	57.50	
	2	12:11	57.75	
	5	12:14	58.50	
	15	12:24	59.00	22.0
Trial 3	0	12:25	37.00	
	1	12:26	57.50	
	2	12:27	57.75	
	5	12:30	58.25	
	15	12:40	58.90	21.9
Trial 4	0	12:41	37.00	
	1	12:42	57.45	
	2	12:43	57.70	
	5	12:46	58.45	
	15	12:56	58.75	21.8

APPENDIX D



Environment Testing
America

1

2

3

4

5

6

7

8

9

ANALYTICAL REPORT

Eurofins TestAmerica, Sacramento
880 Riverside Parkway
West Sacramento, CA 95605
Tel: (916)373-5600

Laboratory Job ID: 320-75104-1
Client Project/Site: Kauanoe O Koloa

For:
GeoLabs Inc
94-429 Koaki Street Suite 200
Waipahu, Hawaii 96797

Attn: Chriztalee Calpito

Cesar C Cortes

Authorized for release by:
6/29/2021 12:37:17 AM

Cesar Cortes, Project Manager I
(916)374-4316
Cesar.Cortes@Eurofinset.com

LINKS

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The test results in this report meet all 2003 NELAP, 2009 TNI, and 2016 TNI requirements for accredited parameters, exceptions are noted in this report. This report may not be reproduced except in full, and with written approval from the laboratory. For questions please contact the Project Manager at the e-mail address or telephone number listed on this page.

This report has been electronically signed and authorized by the signatory. Electronic signature is intended to be the legally binding equivalent of a traditionally handwritten signature.

Results relate only to the items tested and the sample(s) as received by the laboratory.

Table of Contents

Cover Page	1
Table of Contents	2
Definitions/Glossary	3
Case Narrative	4
Detection Summary	5
Client Sample Results	6
QC Sample Results	7
QC Association Summary	8
Lab Chronicle	9
Certification Summary	10
Method Summary	11
Sample Summary	12
Chain of Custody	13
Receipt Checklists	14

Definitions/Glossary

Client: GeoLabs Inc
Project/Site: Kaua'noe O Koloa

Job ID: 320-75104-1

Qualifiers

HPLC/IC

Qualifier	Qualifier Description
4	MS, MSD: The analyte present in the original sample is greater than 4 times the matrix spike concentration; therefore, control limits are not applicable.
H	Sample was prepped or analyzed beyond the specified holding time

Glossary

Abbreviation	These commonly used abbreviations may or may not be present in this report.
"	Listed under the "D" column to designate that the result is reported on a dry weight basis
%R	Percent Recovery
CFL	Contains Free Liquid
CFU	Colony Forming Unit
CNF	Contains No Free Liquid
DER	Duplicate Error Ratio (normalized absolute difference)
Dil Fac	Dilution Factor
DL	Detection Limit (DoD/DOE)
DL, RA, RE, IN	Indicates a Dilution, Re-analysis, Re-extraction, or additional Initial metals/anion analysis of the sample
DLC	Decision Level Concentration (Radiochemistry)
EDL	Estimated Detection Limit (Dioxin)
LOD	Limit of Detection (DoD/DOE)
LOQ	Limit of Quantitation (DoD/DOE)
MCL	EPA recommended "Maximum Contaminant Level"
MDA	Minimum Detectable Activity (Radiochemistry)
MDC	Minimum Detectable Concentration (Radiochemistry)
MDL	Method Detection Limit
ML	Minimum Level (Dioxin)
MPN	Most Probable Number
MQL	Method Quantitation Limit
NC	Not Calculated
ND	Not Detected at the reporting limit (or MDL or EDL if shown)
NEG	Negative / Absent
POS	Positive / Present
PQL	Practical Quantitation Limit
PRES	Presumptive
QC	Quality Control
RER	Relative Error Ratio (Radiochemistry)
RL	Reporting Limit or Requested Limit (Radiochemistry)
RPD	Relative Percent Difference, a measure of the relative difference between two points
TEF	Toxicity Equivalent Factor (Dioxin)
TEQ	Toxicity Equivalent Quotient (Dioxin)
TNTC	Too Numerous To Count

Case Narrative

Client: GeoLabs Inc
Project/Site: Kauanoë O Koloa

Job ID: 320-75104-1

Job ID: 320-75104-1

Laboratory: Eurofins TestAmerica, Sacramento

Narrative

Receipt

The samples were received on 6/17/2021 10:15 AM. The temperature of the cooler at receipt was 16.8° C.

Receipt Exceptions

The samples were received at the laboratory outside hold time and the required temperature criteria (0 to 6° C.).

Method 300.0

No analytical or quality issues were noted, other than those described in the Definitions/Glossary page.

4

Detection Summary

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Client Sample ID: B7 RS1 1.5-3ft

Lab Sample ID: 320-75104-1

Analyte	Result	Qualifier	RL	Unit	Dil Fac	D	Method	Prep Type
Sulfate	23	H	5.0	mg/Kg	1		300.0	Soluble

Client Sample ID: B11 RS1 1.5-3ft

Lab Sample ID: 320-75104-2

Analyte	Result	Qualifier	RL	Unit	Dil Fac	D	Method	Prep Type
Chloride	34	H	4.9	mg/Kg	1		300.0	Soluble
Sulfate	49	H	4.9	mg/Kg	1		300.0	Soluble

This Detection Summary does not include radiochemical test results.

Eurofins TestAmerica, Sacramento

Client Sample Results

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Client Sample ID: B7 RS1 1.5-3ft

Lab Sample ID: 320-75104-1

Date Collected: 04/21/21 10:00

Matrix: Solid

Date Received: 06/17/21 10:15

Method: 300.0 - Anions, Ion Chromatography - Soluble

Analyte	Result	Qualifier	RL	Unit	D	Prepared	Analyzed	Dil Fac
Chloride	ND	H	5.0	mg/Kg			06/23/21 18:17	1
Sulfate	23	H	5.0	mg/Kg			06/23/21 18:17	1

Client Sample ID: B11 RS1 1.5-3ft

Lab Sample ID: 320-75104-2

Date Collected: 04/21/21 10:00

Matrix: Solid

Date Received: 06/17/21 10:15

Method: 300.0 - Anions, Ion Chromatography - Soluble

Analyte	Result	Qualifier	RL	Unit	D	Prepared	Analyzed	Dil Fac
Chloride	34	H	4.9	mg/Kg			06/23/21 18:35	1
Sulfate	49	H	4.9	mg/Kg			06/23/21 18:35	1

QC Sample Results

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Method: 300.0 - Anions, Ion Chromatography

Lab Sample ID: MB 320-500862/1-A
Matrix: Solid
Analysis Batch: 500913

Client Sample ID: Method Blank
Prep Type: Soluble

Analyte	MB Result	MB Qualifier	RL	Unit	D	Prepared	Analyzed	Dil Fac
Chloride	ND		5.0	mg/Kg			06/23/21 15:57	1
Sulfate	ND		5.0	mg/Kg			06/23/21 15:57	1

Lab Sample ID: LCS 320-500862/2-A
Matrix: Solid
Analysis Batch: 500913

Client Sample ID: Lab Control Sample
Prep Type: Soluble

Analyte	Spike Added	LCS Result	LCS Qualifier	Unit	D	%Rec	%Rec. Limits
Chloride	37.5	38.6		mg/Kg		103	85 - 115
Sulfate	37.5	37.4		mg/Kg		100	85 - 115

Lab Sample ID: 320-75101-A-1-B MS
Matrix: Solid
Analysis Batch: 500913

Client Sample ID: Matrix Spike
Prep Type: Soluble

Analyte	Sample Result	Sample Qualifier	Spike Added	MS Result	MS Qualifier	Unit	D	%Rec	%Rec. Limits
Chloride	400		25.0	416	4	mg/Kg		77	85 - 115
Sulfate	180		25.0	224	4	mg/Kg		163	85 - 115

Lab Sample ID: 320-75101-A-1-C MSD
Matrix: Solid
Analysis Batch: 500913

Client Sample ID: Matrix Spike Duplicate
Prep Type: Soluble

Analyte	Sample Result	Sample Qualifier	Spike Added	MSD Result	MSD Qualifier	Unit	D	%Rec	%Rec. Limits	RPD	RPD Limit
Chloride	400		25.1	429	4	mg/Kg		129	85 - 115	3	15
Sulfate	180		25.1	204	4	mg/Kg		82	85 - 115	9	15

QC Association Summary

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

HPLC/IC

Leach Batch: 500862

Lab Sample ID	Client Sample ID	Prep Type	Matrix	Method	Prep Batch
320-75104-1	B7 RS1 1.5-3ft	Soluble	Solid	DI Leach	
320-75104-2	B11 RS1 1.5-3ft	Soluble	Solid	DI Leach	
MB 320-500862/1-A	Method Blank	Soluble	Solid	DI Leach	
LCS 320-500862/2-A	Lab Control Sample	Soluble	Solid	DI Leach	
320-75101-A-1-B MS	Matrix Spike	Soluble	Solid	DI Leach	
320-75101-A-1-C MSD	Matrix Spike Duplicate	Soluble	Solid	DI Leach	

Analysis Batch: 500913

Lab Sample ID	Client Sample ID	Prep Type	Matrix	Method	Prep Batch
320-75104-1	B7 RS1 1.5-3ft	Soluble	Solid	300.0	500862
320-75104-2	B11 RS1 1.5-3ft	Soluble	Solid	300.0	500862
MB 320-500862/1-A	Method Blank	Soluble	Solid	300.0	500862
LCS 320-500862/2-A	Lab Control Sample	Soluble	Solid	300.0	500862
320-75101-A-1-B MS	Matrix Spike	Soluble	Solid	300.0	500862
320-75101-A-1-C MSD	Matrix Spike Duplicate	Soluble	Solid	300.0	500862

Lab Chronicle

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Client Sample ID: B7 RS1 1.5-3ft

Lab Sample ID: 320-75104-1

Date Collected: 04/21/21 10:00

Matrix: Solid

Date Received: 06/17/21 10:15

Prep Type	Batch Type	Batch Method	Run	Dil Factor	Initial Amount	Final Amount	Batch Number	Prepared or Analyzed	Analyst	Lab
Soluble	Leach	DI Leach			10.05 g	50 mL	500862	06/23/21 12:03	JCB	TAL SAC
Soluble	Analysis	300.0		1	10 mL	10 mL	500913	06/23/21 18:17	JCB	TAL SAC

Client Sample ID: B11 RS1 1.5-3ft

Lab Sample ID: 320-75104-2

Date Collected: 04/21/21 10:00

Matrix: Solid

Date Received: 06/17/21 10:15

Prep Type	Batch Type	Batch Method	Run	Dil Factor	Initial Amount	Final Amount	Batch Number	Prepared or Analyzed	Analyst	Lab
Soluble	Leach	DI Leach			10.23 g	50 mL	500862	06/23/21 12:03	JCB	TAL SAC
Soluble	Analysis	300.0		1	10 mL	10 mL	500913	06/23/21 18:35	JCB	TAL SAC

Laboratory References:

TAL SAC = Eurofins TestAmerica, Sacramento, 880 Riverside Parkway, West Sacramento, CA 95605, TEL (916)373-5600

Accreditation/Certification Summary

Client: GeoLabs Inc
Project/Site: Kaua'oe O Koloa

Job ID: 320-75104-1

Laboratory: Eurofins TestAmerica, Sacramento

Unless otherwise noted, all analytes for this laboratory were covered under each accreditation/certification below.

Authority	Program	Identification Number	Expiration Date
Hawaii	State	<cert No.>	01-29-22

The following analytes are included in this report, but the laboratory is not certified by the governing authority. This list may include analytes for which the agency does not offer certification.

Analysis Method	Prep Method	Matrix	Analyte
300.0		Solid	Chloride
300.0		Solid	Sulfate

10

Method Summary

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Method	Method Description	Protocol	Laboratory
300.0	Anions, Ion Chromatography	MCAWW	TAL SAC
DI Leach	Deionized Water Leaching Procedure	ASTM	TAL SAC

Protocol References:

ASTM = ASTM International

MCAWW = "Methods For Chemical Analysis Of Water And Wastes", EPA-600/4-79-020, March 1983 And Subsequent Revisions.

Laboratory References:

TAL SAC = Eurofins TestAmerica, Sacramento, 880 Riverside Parkway, West Sacramento, CA 95605, TEL (916)373-5600

Sample Summary

Client: GeoLabs Inc
Project/Site: Kauaooe O Koloa

Job ID: 320-75104-1

Lab Sample ID	Client Sample ID	Matrix	Collected	Received	Asset ID
320-75104-1	B7 RS1 1.5-3ft	Solid	04/21/21 10:00	06/17/21 10:15	
320-75104-2	B11 RS1 1.5-3ft	Solid	04/21/21 10:00	06/17/21 10:15	

Ver: 01/16/2019

Login Sample Receipt Checklist

Client: GeoLabs Inc

Job Number: 320-75104-1

Login Number: 75104

List Source: Eurofins TestAmerica, Sacramento

List Number: 1

Creator: Her, David A

Question	Answer	Comment
Radioactivity wasn't checked or is \leq background as measured by a survey meter.	True	
The cooler's custody seal, if present, is intact.	N/A	
Sample custody seals, if present, are intact.	N/A	
The cooler or samples do not appear to have been compromised or tampered with.	True	
Samples were received on ice.	False	
Cooler Temperature is acceptable.	False	
Cooler Temperature is recorded.	True	
COC is present.	True	
COC is filled out in ink and legible.	True	
COC is filled out with all pertinent information.	True	
Is the Field Sampler's name present on COC?	False	
There are no discrepancies between the containers received and the COC.	True	
Samples are received within Holding Time (excluding tests with immediate HTs)	False	
Sample containers have legible labels.	True	IDs documented on location and analysis section of containers.
Containers are not broken or leaking.	True	
Sample collection date/times are provided.	True	
Appropriate sample containers are used.	True	
Sample bottles are completely filled.	True	
Sample Preservation Verified.	N/A	
There is sufficient vol. for all requested analyses, incl. any requested MS/MSDs	True	
Containers requiring zero headspace have no headspace or bubble is $<6\text{mm}$ ($1/4"$).	True	
Multiphasic samples are not present.	True	
Samples do not require splitting or compositing.	True	
Residual Chlorine Checked.	N/A	

14

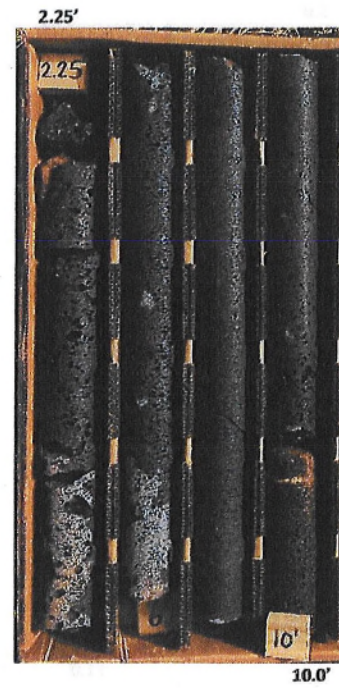
APPENDIX E

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

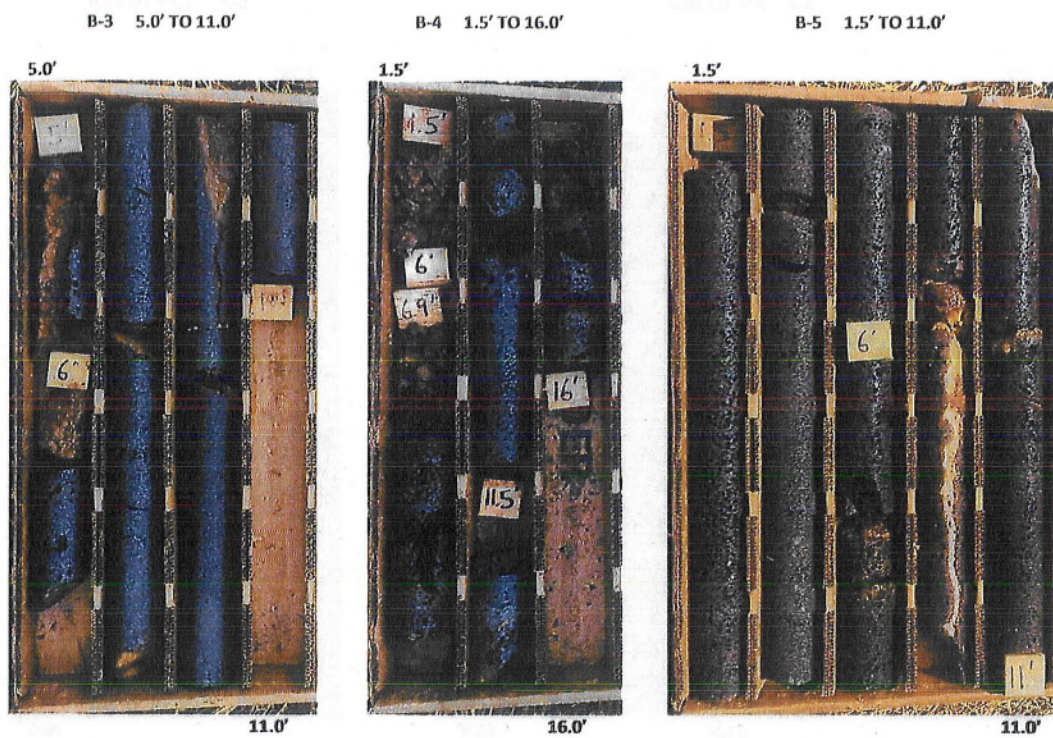
B-1 1.5' TO 16.0'



B-2 2.25' TO 10.0'



KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII



KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

B-6 1.5' TO 11.5'



B-7 3.4' TO 15.0'



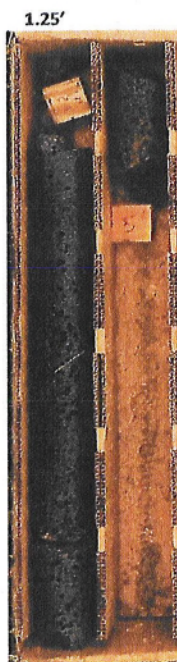
KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

B-8 3.9' TO 15.0'



KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

B-I-2 1.25' TO 5.0'



Survey of Kauanoe o Kōloa Parcel for Cave Habitats of Native Spiders and Sandhoppers near Po'ipū, Kaua'i

Prepared by:

Steven Lee Montgomery, Ph. D., Waipahu, Hawai'i

May 12, 2022

Submitted to: Meridian Pacific, Ltd.

Site Address: 5425 Pau a Laka St., Poipu, Hi, 96756 [TMK (4) 2-8-014-032]

Report of Field study on Possibility of Endangered Species Habitats in Lava Tubes and Mesocaverns of the Kauanoe Parcel near Po'ipū, Kaua'i

As a biologist I have worked in Hawaii since 1968 with field extensive on Kaua'i since 1969, including coastal Maha'ulepu, Po'ipū, Koloa caves and lavas, Kapa'a, and Mana, and mauka sites on Mt. Hā'upu, Mt. Kahili and Koke'e. As a citizen, I was privileged to have been asked by Governor Ben Cayetano in 2002 to serve as volunteer member on the Land Use Commission for 5 years alongside Peter Yukimura.

For this report, I have been retained by Meridian Pacific, Ltd. to address a 1978 LUC Condition #7 by conducting Kauanoe Parcel field work required on the question whether "the area for which work is to commence does not contain any habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sand-hoppers¹ deemed worthy of preservation." (see C V & qualifications below)

Results of field work and review of literature

1. Nearby critical habitat, Unit 5

The nearest lava tube, Kiahuna Mauka Cave, was entered and examined on May 7 and 8, 2022, for branches or any passages or connecting mesocaverns and we documented that none extend to or under the Kauanoe property. This was done with Dr. Charles Blay, a geologist with 25 years of Hawai'i experience, who prepared this section (see C V qualifications below):

2. Kiahuna Mauka Lava Tube Morphology

Rock formations of the Koloa Volcanic Series cover most of the eastern half of the Island, including the project site, which is generally composed of basaltic rock built by extrusion of lavas. The basalt rock formations observed near Koloa are representative of the pahoehoe lava flow type, which spread and ponded approaching the ocean from inland areas. Pahoehoe lavas

¹ For photos see Hawaiian Insect and their kin. 1992 F. G. Howarth, W. P. Mull page66, 68. Montgomery has 10 photos in book.

EXHIBIT "11"

Montgomery Survey Kauanoe O Koloa May 2022

are typically characterized by a smoother, billowy surface and internal structure of vesicular rock with limited clinker (a'a) materials.

A prominent lava tube within the Koloa Volcanics of the southern portion of the island is situated amid the Kiahuna Golf Course in the general vicinity of Po'ipū. This lava tube, including its opening to the surface, is most close to Hole Number 6 near the northern boundary of the golf course. From its five to ten foot wide opening, the lava tube initially extends southward 140 feet to a smaller, secondary surface opening and the location of a locked, iron security gate. Southward from the security gate, (as measured by unreeling a standard, flexible tape) the lava tube then displays an elongate, moderately sinuous, north to south orientation with an additional accessible length of 324 feet, providing a total accessible length of 464 feet.

The width of the tube ranges from 10 to 30 feet. Tube height ranges from as much as 10 feet near the northern opening, to less than 2 feet at its southern extent, which is naturally closed to human access by ceiling collapse and siltation. There is no evidence of any branching of the lava tube, nor lateral intersection with adjacent tubes. Lava rock exposed in the wall of the tube displays the characteristics of dense basaltic pahoehoe. Elongate, ridge-like levee features, congealed along much of the lower portions of the tube's wall, mark the varied levels of the molten lava that once flowed by gravity through this tube. All features within the tube suggest the presence of a shallow, elongate, single, isolated feature not associated vertically or laterally with other lava tubes of similar character. Unrolling the flexible tape on the surface, we can report that clearly, the narrow, north-south oriented Kiahuna Mauka Lava Tube does not extend laterally beyond the boundaries of the Kiahuna Golf Course. Its closest approach to the parcel in question is over 200 feet.

Importantly as to the habitat needs of native mini-wildlife, we must note the long standing position by U.S. Fish and Wildlife Service recorded in the Federal Register: "This [Kiahuna Mauka] cave was mapped and a 100 ft. buffer placed around to capture the mesocaverns surrounding the cave. The golf course has been fully developed, therefore an additional buffer to protect against additional development is not believed to be necessary." From the Designation of Critical Habitat by a 2003 Final Rule, states verbatim:

"The northern cave which occurs on the Kiahuna golf course has been gated, informational signs have been posted, and the area above the cave has been planted with native vegetation that is likely to provide food for the Kauai cave amphipod. This cave was mapped and a 30 m (100 ft.) buffer placed around to capture the mesocaverns surrounding the cave. The golf course has been fully developed, therefore an additional buffer to protect against additional development is not believed to be necessary. The cave located within the golf course and the buffer area comprise Unit 5." Titled:

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod; Final Rule. Federal Register / Vol. 68, April 9, 2003 / Rules and Regulations P.17430 www.govinfo.gov/content/pkg/FR-2003-04-09/html/03-8180.htm

Montgomery Survey Kauanoe O Koloa May 2022

3. Kauanoe Parcel Soils and Basaltic Anatomy

The subject parcel had been part of a working ranch cleared by heavy equipment of most loose boulders, which were placed in piles. From the report, "Geotechnical Engineering Exploration, Kauanoe O Koloa Development, Po'ipū, Kauai, Hawaii," prepared for Meridian Pacific by John Y. L. Chen, P.E., with Geolabs, Inc., we read descriptions of the soil and rock sample cores recovered during 2021 field explorations to the maximum depth of 16 feet below the existing ground surface. His field exploration generally encountered relatively thin surface soils over the weathered basalt formation. The rock cylinders drilled out and retrieved revealed mostly solid basalt with small, discrete vesicles and a lack of larger voids. (Such large voids could hold dangling roots or accumulate any other organic matter to sustain a food web for amphipod crustaceans or arachnids.) Also, he writes that groundwater was not encountered.

Geolabs, Inc. sampled eight borings, designated as Boring Nos. 1 through 8, extending to the maximum depth drilled of 16 feet below the existing ground surface. In addition, two boreholes, designated as I-1 and I-2, were drilled to a depth of about 5 feet below the existing ground surface. The basalt formation encountered in the borings consisted of hard, unweathered to slightly weathered basalt rock with various fractured conditions and interbedded with dense clinker layers... In general, the surface fill materials consist of clayey/silty soils with some boulders/cobbles extending to a depth of less than about 3 feet below the existing ground surface. Stiff residual soils consisting of clayey/silty soils with varying amounts of cobbles encountered under the surface fills, extending to a depth up to about 3.5 feet below.

Tiffany Bovino Agostini, Senior Biologist with Tetra Tech contractor, reported on alien and native biota and did also explore in detail the Study Area for any caves or lava tube openings, finding none.

In the general area around the Kauanoe location, consultants had been trying out ground penetrating radar, but veteran cave biologist Wendy Kishida (in detailed comments to Lara Reynolds of Tetra Tech) said their results were not as useful or clear as hoped, even after tests over the Kiahuna Mauka golf club cave. They were able to see that void, but that was only because they knew there was a cave/void present. Interpreting data over other areas where they did not know there was a cave was difficult, so they were not able to interpret the data very well, and they were not able to pick out caves that were, indeed, present. So it was thought worthwhile to try that technology, but it was not informative or possible to interpret the data, in the end.

The fact that the Kauanoe Parcel was not included along with official critical habitats is of prime importance now. The present official critical habitat units are centered around explored lava tubes and limestone caves within a 10 square mile makai section of the Koloa Series of volcanic lavas. This region includes over 6,200 acres of lava lands, all of which may contain mesocaverns (underground spaces and inaccessible passages) and most of these will remain practically unsampled as unexplorable by scientists. This is a vast field of potential habitats that, over the 500,000 years of shield building by lava flows, may have been traversed and then become inhabited by cave spiders and cave amphipods via dispersal, especially during rainy periods before predatory ants and rats arrived on Kaua'i with human aid. The official 2003 critical habitats mapped by U.S. Fish and Wildlife Service are in 14 units totaling 272 acres, centered around explored lava tubes and limestone caves within a 10 square

Montgomery Survey Kauanoe O Koloa May 2022

mile makai section of the Koloa Series of volcanic lavas. This region spans 6,200 acres of lava lands, all of which may contain mesocaverns (underground spaces and in-accessible passages) and the underground mostly remains unexplored by scientists. This is a vast field of potential micro-habitats that over a half million years may have been dispersed into by the subject species during rainy periods before predatory ants and rats came to Kaua'i with human aid.

4. Conclusions

Therefore, having summarized our actual recent work on the project location, and after reviewing all relevant reports, I do conclude that, with extremely high probability, caverns and mesocavern habitats sustaining a food web with resident native Crustacea or arachnids do not occur on this Kauanoe parcel. (mesocaverns = underground spaces and in-accessible passages) Furthermore, it is reassuring to note that during stages of construction a scientist will be monitoring for any moist, food containing voids that are inhabited by either of the 2 species, based on USFWS' (2019) avoidance and minimization measures for the Kaua'i cave wolf spider and Kaua'i cave amphipod, and if a cave is found during construction, work around the cave stops immediately and USFWS and DLNR/DOFAW are contacted for guidance to minimize and mitigate adverse effects.

A US FWS memo states:

"Our data indicate the following federally listed species may be present on or in the vicinity of the proposed project locations: the pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*) and 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*).....The project area does not contain any official critical habitat for these...." but no actual data are presented to support that possibility the species "may be present on or in the vicinity of" Kauanoe parcel. So as we conclude the very low probability of these troglobites' habitat and presence in the 25 acres of Kauanoe Parcel, we note in the FWS memos:

"Few of the known caves in the Kōloa district provide appropriate habitat for these arthropods. The limited number of occupied caves greatly limits our knowledge of the life history requirements...

"The critical habitat unit to the west of the proposed project is surveyed periodically for the presence of both species. Although both species could be absent during cave surveys conducted in the critical habitat unit to the west, this does not indicate that these species does not exist within the mesocaverns of the surrounding areas."

5. On the Uncertainty of Knowledge

Ross Conrad, the author of Natural Beekeeping: Organic approaches to modern apiculture, writes: "Ultimately, science is the best guess we are able to make about the reality of the world based upon what we know, and since what we know is always changing, the determination of what is scientifically "true" is always changing. Science requires the collection of hard data (measurements of some kind) in order to extrapolate patterns and use scientific outcomes to help describe or predict real world experience." www.beeeculture.com/the-reliability-of-science-part-1

On the question of presence or absence of cave species in this 25 acres, we applied the scientific method as a process of observation to establish facts, which we could assume as the absolute truth, but in reality, we can't prove anything in science. What scientists do is gather observational evidence that support some propositions and refute others.

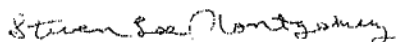
Montgomery Survey Kauanoe O Koloa May 2022

In my final comprehensive oral exam as a University of Hawaii at Manoa Ph.D. student, I was asked: "Can we humans know anything with certainty?" by a learned professor of insect science, Dr. Toshiyuki Nishida, who lived to 96, after a career as Professor of Entomology (and son of Hanapepe, Kauai, in the same class as Spark Matsunaga). I did pass his test after replying "No" and discussing the many limits upon human observational capacities.

Science requires the collection of hard data (measurements of some kind) in order to extrapolate patterns and use scientific outcomes to help describe or predict real world experience. However, when it comes to something that cannot be measured very objectively, such as the presence or absence in dense pahoe-hoe of mesocaverns with adequate organic matter and water to support endemic invertebrates, we have sparse data as discussed in this report.

Due to the above findings, I certify that the area for which work is to commence (Kauanoe Parcel) does not contain any habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sand-hoppers deemed worthy of preservation.

Steven Lee Montgomery, Ph.D.



ABBREVIATIONS

DLNR Department of Land and Natural Resources, State of Hawai'i
DOFAW Division of Forestry and Wildlife
ESA Endangered Species Act of 1973, as amended.
USFWS United States Fish and Wildlife Service

Montgomery Survey Kauanoe O Koloa May 2022

Steven Lee Montgomery, Ph. D.

94-610 Palai Street, Waipahu, Hawai'i 96797-4535 USA

BIOLOGICAL CONSULTING

Experienced field collector of invertebrates and plants in Hawai'i and the Pacific

- experienced with land and fresh water ecosystems
- especially successful at locating extremely rare species
- discovered 30+ new species; many new state records, localities, re-discoveries

EDUCATION

- 1984 Ph. D. (Entomology), College of Tropical Agriculture, University of Hawai'i, Manoa
Lepidoptera
- 1973 Master of Science (Entomology), College of Tropical Agriculture, Univ. of Hawai'i
Drosophila
- 1969 B. A. (Biology), Grinnell College, Iowa

WORK EXPERIENCE

- present - Biological Consultant, self-employed: provides scientific expertise on
1978 Hawai'i and the Pacific to private landowners, government agencies (surveys,
collecting, identifications, checklists, and reports)
- 1988-82 Researcher, Hawai'i State Legislature
Rep. James Shon - Committees - Ocean and Marine Resources, Health
Sen. Anthony K.U. Chang - Committees - Environment, Judiciary
- 1980 Biological Consultant, Cooperative National Park Resources Studies Unit.
Examined stomach contents from native Hawaiian birds to identify food items
using partial remains (e.g., caterpillar jaw or fly wing)
- 1979 Assistant Botanist, Island Forest Bird Census Team, U. S. Fish and Wildlife
Service
- 1978 Field consultant, co-author, *Unique Wildlife Ecosystems Concept Plan*,
U. S. Fish and Wildlife Service
- 1977-72 Natural Areas Specialist, Dept. of Land and Natural Resources,
Natural Area Reserves System Commission, State of Hawai'i
- 1972-64 Employed in biological projects and programs in Hawai'i, Oklahoma,
Louisiana, Iowa and Michigan for U.S. Public Health Service, U.S. Department
of Agriculture, Notre Dame University, and University of Hawai'i

FIELD EXPERIENCE

- since 1967 islets Extensive experience in the Hawaiian Islands on Ni'ihau, Kaua'i, O'ahu, Maui, Moloka'i, Lāna'i, Kaho'olawe, Hawai'i, Northwest Hawaiian Islands, off-shore islets
- 1988 and 1977 Scientific expeditions to several Pacific Islands, including the Marquesas, Tuamotu and Society Archipelagoes
- 1988 Scientific coordinator, Fatu Hiva Expedition in the Marquesas
- since 1964 Field work in divergent environments: New Zealand; Easter Island; New Guinea; Japan (Kyoto, Osaka, Tokyo), Ogasawara Islands (Chichi Jima, Ha ha Jima); Indonesia; French Polynesia; Palau; Cook Islands; British Columbia, Grenada - West Indies, Puerto Rico; Alaska, Arizona, Indiana, Iowa, Louisiana, Michigan

DISCOVERIES – a partial record

new species

Hawaiian Islands

flies

Drosophila montgomeryi, Wai'anae, O'ahu

D. kaneshiroi n. species, South Kona, Hawai'i

D. touchardiae, on Olonā shrub above Kahana, O'ahu

D. toxochaetae on Olonā at Mapulehu, Moloka'i

D. paucicilia, Wai'anae, O'ahu

D. obatae

D. reynoldsiae

D. pulipes, Hawai'i

Asteia montgomeryi, N. Kona Wiliwili Branch Fly

Limonia hardyi [flightless crane fly]

Campsicnemus n. sp. [Mt. Ka'ala, O'ahu flightless long-legged fly]

Hawaiian Islands

moths

Agrotis n. sp. [summit ice cutworm noctuid]

Eupithecia n. sp. [East Maui orange]

E. new species #8 [Moloka'i, Maui bristly Killer caterpillar]

Aumakua omaomao, Maui & Moloka'i populations

other

Nysius wekiuicola [Wekiu vampire bug] with F. G. Howarth

insects

Plagithmysus montgomeryi [akoko longhorn wood borer]

plants

Remya montgomeryi, Kaua'i [aster family]

Stenogyne campanulata, Kaua'i [woolly mint]

Perottetia n. sp., Mōhihi wet forest, Kaua'i [Olomea]

Hedyotis n. sp., Manono shrub Nāpali cliffs

Chamaesyce elenoriae, Kalalau [cliff yakoko or spurge]

Hibiscadelphus woodii, Kaua'i, with K. Wood

Montgomery Survey Kauaʻnoe O Koloa May 2022

Pacific Islands

- moths *Gymnoscelis montgomeryi* on *Clematis* flower,
 Ogasawara Islands [dimorphic looper]
 Cleora sp, Ogasawara Islands [looper]
 Asymphorodes montgomeryi, Marquesas Is. [micromoth]
 flies *Chloropid* n. sp., Orohena, Tahiti [flightless fly]

REDISCOVERIES

- Hawaiian Islands *Cookeconcha*, Kōloa, Kauaʻi
 snails *Newcombia*, on pua, Olokuʻi, Molokaʻi
 insects *Micromus cookeorum*, flightless brown lacewing, Maui
 Eupithecia niphoreas [ambush predatory behavior]
 Theridion grallator, Happyface spider [notice of markings on back]
 Caconemobius schauinslandii, Puʻukoaʻe, Kahoʻolawe
 plants *Chamaesyce olowaluan*, a tree ʻyakoko, with S. Perlman
 Marquesas *Trichometra*, flightless water measurer bug

NEW LOCALITIES

- Hawaiian Islands *Euphorbia haeleeeleanum*, ʻyakoko, haʻeleʻele Valley on Kauaʻi
 plants *Caesalpinia kavaensis*, uhiuhi, Koaiʻe, Kauaʻi

NEW STATE and ISLAND RECORDS partial record

- arthropod *Schizomida*, Mānoa Quarry cave, Oʻahu, with F. G. Howarth
 insects *Hydrellia tritici*, rice leaf miner, Maui and Hawaiʻi
 Ephydriidae, shore fly
 plants *Tibouchina herbacea*, Punaluʻu, Oʻahu

COMMUNITY NETWORKING and SERVICE

- since 1979 Associate in Science, Bishop Museum, Honolulu, HI
 2014 Plants Advisory Subcommittee, Plant Quarantine Branch, HI Dept. Agriculture
 2002-2006 Land Use Commission, Governor's appointee, State of Hawaii
 1994-1976
 2000-1993 Natural Area Reserve System Commission, Governor's appointee,
 1971-1970 State of Hawaii

Montgomery Survey Kauanoe O Koloa May 2022

SELECTED PUBLICATIONS and REPORTS

"Survey of Native Invertebrate Resources in proposed expansion of Hawaiian Memorial Park, Kāne'ohē, O'ahu," July 2017, updated 2018, report to HHF Planners for Hawaiian Memorial Life Plan Ltd.

"Survey of Native Invertebrate Resources in proposed Dillingham Ranch Agricultural Subdivision, Mokulē'ia, O'ahu," August 2018, report to HHF Planners for Dillingham Ranch Aina, LLC.

"Survey of Native Invertebrate Resources in proposed HoKua Place project area," Jan. 2018, report to Agor Jehn Architects, LLC, for HG Kaua'i Joint Venture LLC

"Cattle manure related species and control strategies for Hawai'i Dairy Farms, Māhā'ulepū, Kaua'i, Hawai'i," Oct. 2014 [updates 2015-16], report to G70 for Hawai'i Dairy Farms. 43pp.

"Survey of Terrestrial Invertebrate Resources at Kamakoa, South Kohala, Hawai'i Island." May 2014, report to PBR Hawaii & Associates, Inc. for True Life Companies, LLC. 33pp.

"A survey for sphinx moth (*Manduca blackburni*) and associated vegetation on planned roadway corridors for the Natural Energy Laboratory of Hawai'i Authority, Hawai'i Ocean Science and Technology Park, North Kona, Island of Hawai'i." April 2014, report to AECOS for Natural Energy Laboratory of Hawaii Authority. 18pp.

"Survey of Invertebrate Resources at site of drainage improvements, Pāpa'aloa, Hāmākua, Hawai'i Island." May 2013, report to Park Engineering for State of Hawaii, Department of Transportation. 22pp.

"Survey of Terrestrial Invertebrate Resources at Pāhala, Ka'ū, Hawai'i Island." June 2012, report to AECOS for Trustees of the Estate of Bernice Pauahi Bishop.

"Survey of Terrestrial Invertebrate Resources at Weliweli, Kōloa, Kaua'i Island." July 2011, report to AECOS for CIRI Land Development Company.

"Survey of Terrestrial Invertebrate Resources at Kīholo State Reserve Park, North Kona, Hawai'i Island." July 2011, report to Rana Biological Consulting, Inc. / Planning Solutions, Inc., 48 pp.

"Terrestrial Invertebrate resources at the site of the Mt. Ka'ala Radio Facility Project, Mt. Ka'ala, O'ahu, Hawai'i." May 2011. Report to Helber Hastert & Fee Planners, Inc. for Richard Matsunaga and Associates Architects, Inc. 25pp.

"Survey of Terrestrial Wildlife Resources at Kahuku, Ka'ū, Hawai'i Island." February 2011; June 2011, report to PBR Hawai'i & Associates for Nani Kahuku 'Āina, LLC. 73pp.

Multiple surveys and reports on endangered species presence/absence at Ulupalakua Ranch wind energy farm sites. 2010-2011. Tetra Tech and other firms for Sempra Generation. Multiple surveys of individual tobacco plants to determine absence / presence/ feeding by *Manduca*.

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

"Survey of Terrestrial Invertebrate Resources on agricultural lands at Honokōhau, North Kona, Hawai'i Island." Nov 2010, report to PBR Hawai'i & Associates for Lanihau Properties.

"Survey of Terrestrial Invertebrate Resources at Honokōhau Makai, Honokōhau, North Kona, Hawai'i Island." Nov 2010, report to PBR Hawai'i & Associates for Lanihau Properties.

"Regional Study Area Report for O'ahu, terrestrial invertebrate resources, for Hawaiian Electric Big Wind O'ahu Interconnection Project," May 2010, report to CH2M Hill, Honolulu, for Hawaiian Electric Company, Inc.

"Weed and Pest Prevention and Response Plan for Rogers Ranch, Pu'u Wa'awa'a, Hawai'i," April 2010. With Anita Manning.

"Results of survey for *Manduca* on *Nicotiana glauca* along Mamalahoa Highway (Route 190), Island of Hawaii." February 2010, report to Parsons Brinckerhoff for Hawai'i State Department of Transportation.

"A Reptilian Smoking Gun: First Record of Invasive Jackson's Chameleon (*Chamaeleo jacksonii xantholophus*) Predation on Native Hawaiian Species," *Biodiversity & Conservation*, 2010. 19(5): 1437-1441. Brenden S. Holland, Steven L. Montgomery, Vincent Costello.

"First recorded Hawaiian occurrence of the alien ground beetle, *Agonum muelleri* (Coleoptera: Carabidae), from the summit of Mauna Kea, Hawaii Island," Dec 2009. J.K. Liebherr, S.L. Montgomery, R.A. Englund, and G.A. Samuelson. *Proc. Hawaiian Entomological Society*, 41: 97-103.

"New Immigrant Drosophilidae in Hawaii, and a Checklist of the Established Immigrant Species." Dec 2009. L. Leblanc, P.M. O'Grady, D. Rubinoff, and S.L. Montgomery. *Proc. Hawaiian Entomological Society*, 41:121-127.

"Survey of Invertebrate Resources West Makaiwa, Hāmākua loa, East Maui Reservoir Areas." Sept 2009, report to Department of Water Supply - County of Maui.

"*Drosophila* Survey Notes," for Environmental Division, Directorate of Public Works, U.S. Army Garrison, Hawai'i. June 2009 Identification of rare *Drosophila* on Army lands.
"Survey of Invertebrate Resources at Anini, near Princeville, Hanalei District, Kaua'i," May 2009, report to Princeville Prince Golf Course, LLC.

Invertebrate sections in "Biological surveys for the University of Hawaii Center at West Hawaii, North Kona District, Island of Hawaii," April 2009, report to AECOS Consultants.

"The Little Things That Run Hawaii: Na 'Enuhe", presentation to Nahele Dry Forest Symposium, Hawai'i Island, Feb 27, 2009.

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

"Survey of Invertebrate Resources at Kaūmana, Hawai'i Island," Feb 2009, report to AECOS Consultants for Wil Chee Planning for Connections New Generation Public Charter School, Hilo, Hawai'i.

"Survey of Invertebrate Resources at Koa Ridge Makai, 'Ewa District, O'ahu, Hawai'i," Feb 2009, report to Helber Hastert & Fee for Castle & Cooke Homes Hawaii.

"Survey of Terrestrial Invertebrate Resources at Kaloko Makai, Kaloko and Kohanaiki, North Kona, Hawai'i Island," Nov 2008, report to Wilson Okamoto Corporation for Stanford Carr Development, LLC.

"Survey of Terrestrial Invertebrate Resources at 'O'oma, North Kona, Hawai'i Island," Nov 2008, report to PBR Hawaii & Associates, Inc for 'O'oma Beachside Village, LLC.

"Survey of Invertebrate Resources at Waimanalo Gulch Sanitary Landfill Expansion Area, O'ahu, Hawai'i," Sept. 2008, report to AECOS Consultants for R. M. Towill Corporation and City & County of Honolulu, Department of Environmental Services.

"Survey of Native Invertebrate Resources at site of future expansion of Hawaiian Memorial Park, Kāne'ohe, O'ahu," August 2008, report to Helber Hastert & Fee for Hawaiian Memorial Life Plan Ltd.

"A Survey of Invertebrate Resources for the Shell WindEnergy Inc. Auwahi Parcel, Ulupalakua Ranch, Hana District, Island of Maui." April and June 2008, report to CH2M Hill, Honolulu, for Shell WindEnergy Inc. Identified presence of *Manduca*. Later assisted in planning for response.

"Survey of Native Invertebrate Resources at Lā'īpala Heights, North Kona, Hawai'i Island," May 2008, report to Group 70 International, Inc. for Kona Heights LLC.

Drosophila briefing for Naval Facilities Engineering Command, Pacific, entomologists.
Apr 24, 2008

"Survey of Invertebrate Resources at Waiawa, 'Ewa District, O'ahu, Hawai'i," March 2008, report to Wilson Okamoto Corporation for Castle & Cooke Properties. Excluded presence of *Manduca* as cause of feeding damage to *Manduca* host plant by finding true feeding insect.

Drosophila Survey Guidelines. 2007 (revised 2008). With Anita Manning. A how-to methods handbook for Environmental Division, Directorate of Public Works, US Army Garrison-HI, and US Navy Naval Facilities Engineering Command, Pacific (EV22).

"Survey of Terrestrial Invertebrate Resources, 'Akulikuli Water Tunnel, Kawaihau District, Kaua'i," 2008, report for AECOS and SSFM International, Inc.

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

Presentation to UXO personnel clearing Waikoloa Maneuver Area regarding native and introduced plants and animals of concern; included how-to identification of *Manduca* and host plants. 2004-2007.

"Survey for *Drosophila* and Other Invertebrates, Saddle Road-East Side Corridor, Hawaii Island," April 2007, report for Rana Productions and Okahara & Associates.

"Survey of Terrestrial Invertebrate Resources on Makaiwa Hills Project Site, 'Ewa District, O'ahu, Hawai'i," November 2006, report for Rana Productions and Group 70.

"Survey of Terrestrial Invertebrate Resources as part of a biological assessment within the Pan-STARRS Project area, Mauna Kea Summit, Island of Hawai'i", September 2006, DRAFT, report for Rana Productions and Group 70. Project on hold due to court action.

"Status Report on Terrestrial Invertebrate Resources as part of a biological assessment of Kanaha Pond Wildlife Sanctuary, Kahului, Maui, Hawai'i," Nov 2005, revised May 2006, report for Wil Chee Planning and AECOS Associates.

Invertebrate sections in, "Biological surveys for the University of Hawaii Center at West Hawaii Main Street Collector Road, North Kona District, Island of Hawaii," Aug 2005, report to AECOS Consultants, for Mitsunaga & Associates, Inc.

"Survey of Terrestrial Invertebrate Resources as part of a biological assessment in support for the remedial investigation/feasibility study, Waikane Valley Training Area, Island of O'ahu," Aug 2005, report to AECOS Consultants, for Wil Chee Planning, Inc.

"Survey of native terrestrial and stream fauna near Koloa Landing, Po'ipu, Koloa District, Island of Kaua'i", 2005, report for Po'ipu Beach Villas, LLC.

"Results of 2004 Wekiu Bug (*Nysius wekiuicola*) Surveys On Mauna Kea, Hawai'i Island Final Report" (with R.A. Englund, A. Ramsdale, M. McShane, D.J. Preston, S. Miller) Feb 2005. For Office of Mauna Kea Management, No. 2005-003 Hawaii Biological Survey.

"Survey of subterranean invertebrate resources on Po'ipu Beach Villas property Po'ipu, Koloa district, Island of Kaua'i," Jun 2004, report for Michael Thompson.

"Survey of Terrestrial Invertebrate Resources in Keauhou Mauka, North Kona, Island of Hawai'i," 2004, report for Kamehameha Development, Geometrician Associates and Rana Productions.

"Multiple Mortality Factors for Stowaway Pests in Sealed Solid Waste Bales, an analysis." Memo report to Ross Environmental / Pacific Rim Environmental Services, Goldendale, WA. Jan 2004.

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

"Survey of terrestrial faunal resources on Po'ipu Beach Villas property, Koloa district, Island of Kaua'i," 2003, report for Michael Thompson.

"Survey of terrestrial invertebrate resources proposed Kuhio Highway-Kapa'a Relief Route, Lihu'e and Kawaihau districts, Island of Kaua'i", 2003, report Kimura International, Rana Prodtns.

"Survey of Terrestrial Invertebrate Resources in Marine Corps Jungle Training Area, Waikane Valley, Island of Oahu," June 2003, report for US Army Corps of Engineers through AECOS.

"Survey of Invertebrate Resources (Snails, Insects And Other Arthropods) of Opana Point and Makawao Gunnery Range, Island of Maui", 2003, report for U. S. Army Corps of Engineers through AECOS Associates.

"Survey of Terrestrial Invertebrate Resources, mid-slope Mauna Kea, S. Hilo District, Island of Hawai'i", 2002, report for Koa Timber, Inc., Honolulu, Hawai'i.

Survey of Hawaiian coastal and dry shrubland / forest arthropods for US Fish & Wildlife Service. 1997-2003. Determine absence / presence of *Manduca* was one goal.

"Blackline Damselfly" Remains of a Rainbow. 2001, National Geographic Society/ Environmental Defense Fund. Author for species essays to accompany David Liittschwager / Susan Middleton photographs of endangered and rare Hawaiian animals. p232

"Survey of Invertebrate Resources at 'Ouli and Puako, South Kohala District, Island of Hawai'i", 2000, report for Donaldson Enterprises Inc., Honolulu, Hawai'i.

"Surveys of Lava Tube Arthropod Resources at Keopuka, South Kona, Island of Hawai'i," 2000, report for PBR Hawai'i. With Reginald E. David.

"Ecology and Evolution of *Drosophila ambochila*, A Rare Picture-Winged Species Endemic to the Wai'anae Range of O'ahu, Hawaiian Islands," (with Kambyzellis, Craddock, Kaneshiro, Edwards and Carson) Pacific Science, 2000, 54:2, 169-181.

"Preliminary assessment of potential, opportunistic terrestrial arthropod use of dredged sediment, Waipi'o Peninsula CDF, Pearl Harbor, Hawai'i, O'ahu", 1999, report for Helber Hastert & Fee.

"Fauna Survey (Arthropod, Diptera Resources) of Waiakea Prison site, Island of Hawai'i," 1999, report for Bishop Museum, Honolulu, Hawai'i. In Cowie, R. H., F. G. Howarth, D. J. Preston, R.J. Rundell, F. D. Stone & S. L. Montgomery. 1999. Proposed new Hawai'i Island Correctional Facility, Waiakea, South Hilo, Hawai'i Island: assessment of potential impacts on invertebrates. Final report submitted to Wilson Okamoto & Associates, Honolulu.

"Fauna Survey (Arthropod Resources) Mauna Kea Summit Zone, Island of Hawai'i," 1998, report for Bishop Museum, Honolulu, Hawai'i. [An Arthropod Assessment within Selected Areas of Mauna Kea Science Reserve, F. G. Howarth, G. J. Brenner, D. J. Preston, 1999]

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

"Natural Resources Survey & Report for 17th Area Support Group installation, Japan: Fauna Investigations", (contributor to Eric B. Guinther, et al.) 1998, report for AECOS / Wil Chee Planning, Inc., Honolulu, Hawai'i.

"Invertebrates: Palau Compact Road Dredge Sites Assessment," 1997, report for AECOS / Wil Chee Planning, Inc., Honolulu, Hawai'i.

"Community Monitoring of Butterflies at Arfak Mountains, Irian Jaya and Palu, Sulawesi with Recommendations for Project Enterprises," 1997, report for World Wide Fund for Nature Indonesia Program, and Biodiversity Conservation Network.

"Flora and Fauna Survey, Waikoloa Maneuver Area, Waimea, Island of Hawai'i, Hawai'i: Arthropod Resources", (with Eric B. Guinther) December 1996, report for AECOS / Wil Chee Planning, Inc., Honolulu, Hawai'i.

"Native Arthropod Resources of Queen's Beach and its Coastal Flats on East O'ahu," February 1996, report for Helber Hastert, Honolulu, Hawai'i.

"Invertebrates of Ka'ala Natural Area Reserve Summit Cloud Forest," July 1994, report for Department of Land and Natural Resources, State of Hawai'i.

"Review of Effects on Native Arthropods: Master Plan for Kealahou Ranch Lands", May 1994, report for Kealahou Development Corp.

"Animals on the Earth: Moths" (translated), *Asahi Shimbun*, 1992, 78:181.

"Population Ecology of the Kamehameha Butterfly (Lepidoptera: Nymphalidae)", *Annals of the Entomological Society of America*, (with B. E. Tabashnik, W. D. Perreira, and J. S. Strazanac), 1992, 85(3):282-285.

"Subzero Temperature Adaptations in Arthropods from the Summit of Mauna Kea, Hawaii," (with John G. Duman), *The Journal of Experimental Zoology*, 1991, 259:409-12.

"Carnivorous caterpillars: the systematics, behavior, biogeography and conservation of *Eupithecia curtis* (Lepidoptera: Geometridae) in the Hawaiian Islands", Thesis (Ph. D.), University of Hawaii at Mānoa, 1984, 141 pp.

"Carnivorous Caterpillars: The Behavior, Bio-geography and Conservation of *Eupithecia* Geometrids in the Hawaiian Islands," *GeoJournal*, 1983.

"Predatory Inchworms and Aggressive Mimicry in the Hawaiian Islands," *Anima*, 1982, 106:50-56 (translated to Japanese).

"Biogeography of the moth genus *Eupithecia* in Oceania and the evolution of ambush predation in Hawaiian caterpillars (Lepidoptera: Geometridae)", Journal series (Hawaii Agricultural Experiment Station), 1982, 2329: [27]-34.

PUBLICATIONS and REPORTS (cont.)

"Biogeography of Moths in Oceania and Evolution of Ambush Predation by Geometrid Caterpillars," *Entomologia Generalis*, 1982, 77:1-9.

"Hawaii's Natural Area Reserves System: A Conceptual Plan and Status Report," *British Columbia Museum Heritage Record*, 1981, 10:20-33.

"Records of Mummified Leiothrix from the Summits of Mauna Loa and Mauna Kea," (with F. G. Howarth), *Elepaio*, 1980, 41(4):30-33.

"Notes on the Ecology of the High Altitude Aeolian Zone on Mauna Kea," (with F. G. Howarth), *Elepaio*, 1980, 41:21-22.

"Notes on Birdlife and Nature Conservation in the Marquesas and Society Islands," (with W. C. and B. H. Gagné), *Elepaio*, 1980, 40:152-155.

"Citizen Conservationists in Tahiti, French Polynesia," *Elepaio*, 1978, 38:83.

"An Analysis of Crop Sugars in the Oriental Fruit Fly and Correlation with Possible Food Sources," (with F. Chang, et al.), *Proceedings Hawaiian Entomological Society*, 1977, 22:461-9.

"Caterpillars (*Eupithecia* spp.) as Obligatory Ambush Predators: A Unique Adaptive Shift in the Hawaiian Islands," *Proceedings, First Conference in Natural Sciences, Hawaii Volcanoes National Park*, 1977.

"Ecology of the dry land forest at Kānepu'u, island of Lāna'i," (with G. Spence), *Newsletter of the Hawaiian Botanical Society*, 1976, 15(4-5):62ff.

"Comparative Breeding Site Ecology and the Adaptive Radiation of Picture-Winged *Drosophila* in Hawaii," *Proceedings, Hawaiian Entomological Society*, 1975, 22 (1):65-103.

"Botanical Resources Along North Kona's Ancient Coastal Trail," *Na Ala Hele: Trails for Walking*, 1973, Department of Planning and Economic Development, State of Hawai'i.

"Ecology of the Hawaiian drylands: Forests - Hawaii," (with R. Ahuna And C. S. K. Ching), Abstract Reports, presented at the meeting of the American Association for the Advancement of Science, Philadelphia, PA, December 28-29, 1971, pp. 292-299.

"The Need to Regulate Alien Animal Importation to the Hawaiian Islands," 1970, Report for the Hawaii State Legislature, Committees on Agriculture, Ecology and Environmental Protection.

Dr. Charles T. Blay; Ph.D. Geology (Emphasis Sedimentology); Indiana, 1971.

Dr. Charles "Chuck" Blay is a geologist specializing in the analysis and interpretation of both modern and ancient sedimentary deposits. Prior to establishing residence, and a business, in Hawaii in 1995, he accumulated over 25 years of research and explorations on the genesis of both clastic and carbonate depositional systems. Along with authoring over 100 scientific publications and industry research reports, he has worked extensively on surface and subsurface depositional systems.

Dr. Blay received his Ph.D. from Indiana University (Bloomington Campus) in June 1971 and has been a Professor of Geology at the Indiana University, the University of New Mexico and the University of Wyoming as well as Senior Research Geologist with Cities Service Oil Company. Since 1980, he has worked as an independent consultant, initiating and managing several successful business. From 1982 to 1990, he was a senior scientist of the consulting firm Sedimentology, Inc., Boulder, Colorado. From 1989 to 1993, he was the head of Sedimentology Division of P.T. Geoservices in Jakarta, Indonesia and from 1993 to 1995, was employed as an independent consultant in Quito, Ecuador. Since 1996, within his Hawaii company, TEOK (The Edge of Kauai) Investigations, his emphasis has been on the investigation of the natural environments and sedimentary deposits of the Hawaiian Island. He has served periodically as an affiliate professor within the Department of Geology of the University of Hawaii-Manoa and as a board member of the recently established Hawaii Shore and Beach Preservation Association (HSBPA).

At present Dr. Blay is active in the presentation of lectures, field seminars and educational tours dealing with various aspects of the geology, ecology and natural history of the Island of Kauai, the Big Island of Hawaii, and other islands of the Hawaiian Archipelago. Specific research endeavors involve marine reef and nearshore sediments, the origin of beach sediments, as well as water safety and drowning prevention. Current research involves the fluctuation in the character of sandy beaches around the island of Kauai in response to both long-term, "chronic," sea level rise and short-term variation in marine wave systems that impact the island on a seasonal basis.

Selected Publications and Professional Reports:

2020, Monitoring the Kikiaola Small Boat Harbor Sand Bypass Project, April 2014 to September 2020, Waimea-Kikiaola Beach Complex, Kauai, Hawaii: TEOK Investigations, Final Report, October 20, 2020: 12 text pages, 10 illustrations, Appendices. Monitoring of the sand bypass Waimea/Kikiaola beach program over a period of 6.5 years (72 months).

2020, Monitoring the Waimea Rivermouth Sandbar Excavation, March 2019-April 2020, Waimea, Kauai, Hawaii: TEOK Investigations, Final Report, May 15, 2020: 15 text pages, 21 illustrations. Full year (March 2019-April 2020) of weekly to monthly monitoring of the character and volume of Waimea Rivermouth Sandbar deposits.

Montgomery Survey Kauanoe O Koloa May 2022

2016, West Kauai PMRF/Kekaha Mana Coastal Plain Beach System Monitoring and Modeling, November 2012 – April 2016: TEOK Investigations, Interim Report, June 2016, 26 text pages, 26 illustrations, 3 tables, Appendices. Precise monitoring of the Mana Coastal Plain, Pacific Missile Range Facility, beach deposits over a 4-5 year period of time in response to seasonal ocean wave variability.

2015, Natural History of the Sandy Beaches of the Young, Shield Volcanic Mountain-Island Complex of the Big Island of Hawaii: in Blay, C.T. and Caputo, M. V., eds, *Sediments of a Mid-Plate Volcanic Island Complex; A field-Investigative Trip on the Islands of Hawaii and Kauai: Volumes 1: Big Island of Hawaii: Pacific Section SEPM, Book 118, vol. 1.*, 12 text pages, 2 tables, 6 figures, 7 plates. Comprehensive description and interpretation of the complex beaches of the Big Island of Hawaii.

2015, Sandy Beaches of a Mature, Mid-Ocean Tectonic Plate, Shield Volcanic Mountain-Island Complex within a Trade-Wind-Dominated, Subtropical Setting; The Island of Kauai: in Blay, .T., and M.V., *Sediments of a Mid-Plate Volcanic Island Complex; A Field Investigative Trip on the Islands of Hawaii and Kauai: Vol. 2: Island of Kauai: Pacific Section SEPM, Book 118, vol. 2,* 28 text pages, 1 table, 16 figures, 5 plates. Comprehensive description and interpretation of the beaches of the Island of Kauai.

2014, Kauai Island's Fluctuating Sandy Beaches: Response to Varying Wave Energy and Approach Azimuth over Seasonal and Decadal Time Scales: Geological Society of America Meeting, Vancouver, B.C., abstr w/program, p. 485. Impact of waves on the fluctuating character of the sandy beaches of the Island of Kauai, seasonal and decadal periodicity.

2014, Geological Investigation Makahuena Point Property, Kauai, Hawaii: Report Prepared for CIRI Land Development Company (CLDC): TEOK Investigations, 5 p, 6 figs. Investigation of collapsed lava tube at southernmost point of Kauai.

2013, Kauai's Geologic History; A Simplified Overview of the Garden Island: TEOK Investigations, Kauai, Hawaii, 161 pages. (w/ R. J. Siemers)

2011, Drowning Deaths in the Nearshore Marine Waters of Kauai, Hawaii 1970-2009: International Journal of Aquatic Research and Education: vol. 5, no. 3, p. 284-324.

2004, Carbonate Sediment Deposits on the Reef Front around Oahu, Hawaii: Marine Georesources and Geotechnology, v. 22, p. 65-102. (w/ M. A. Hampton & C. J. Murray)

2001, Stratigraphy and Sedimentology of Pleistocene and Holocene Carbonate Eolianites, Kauai, Hawaii, USA: in Abegg, F.E., Loope, D.B., and Harris, P.M., eds., *Carbonate Eolianites; Sedimentology, Sequence Stratigraphy and Diagenesis: SEPM Special Pub No. 71, Society of Sedimentary Geology, Tulsa, OK, p. 93-115*(w/M.W. Longman)

Montgomery Survey Kauanoe O Koloa May 2022

1999, Comprehensive Analysis of Hawaiian Beach Sediments: An Indicator of Source, Process and Coastal Change: in Fletcher, C.H. and Matthews, J.V., eds., The Non-Steady State of the Inner Shelf and Shoreline: Coastal Change on the Time Scale of Decades to Millennia in the Late Quaternary: Inaugural Meeting of IGCP Project #437 "Coastal Environmental Change During Sea Level Highstands:" Univ. Hawaii, USA, Nov 9-12, abs. w/ program, p. 55-58.

1997, Character and Origin of Beach Sediments, Island of Kauai, Hawaii: Geological Society of America, Cordilleran Section, abst. w/program, p. 5, (w/R.J. Siemers and T.J. Siemers).

DECLARATION OF ADAM ASQUITH

I, Adam Asquith, do hereby declare under penalty of law that the following statements are true and correct:

1. I hold a PhD in Entomology from Oregon State University.
2. In 1994, I was employed at the US Fish and Wildlife Service ("FWS") as a Conservation Biologist. While employed at the FWS, I conducted research on the Kauai cave wolf spider (*Adelocosa anops*), and the Kauai cave amphipod (*Spelaeorchestia koloana*) (collectively "the species". The most conspicuously diagnostic character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and its distinction justifies the recognition of a separate genus for this taxon. A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent.
3. The Kauai Cave Wolf Spider is known from three populations, and the Kauai cave amphipod is known from five populations. These animals and their habitats have been variously affected or are currently threatened by the following—habitat degradation and loss through the removal of perennial vegetation, soil fill, grading, paving, quarrying, and other activities associated with development and agriculture; predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining populations and their limited distribution.
4. These animals are known only from a single exposed lava flow in the "very rocky" to "extremely rocky" Waikomo soil series (U.S. Department of Agriculture, Soil

EXHIBIT "12"

Conservation Service 1972). The lava flow covers approximately 10.5 square kilometers (sq km) (4 sq miles (mi)), and exhibits no covering by erosional sediments.

5. The two cave animals are restricted to dark, moist areas of larger caverns and smaller subterranean spaces or mesocaverns, which may be the primary habitat for these species. For example, the Kauai cave amphipod was not seen during initial surveys of Kiahuna cave #210. On a subsequent survey however, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns. On younger islands, these mesocaverns also allow animals to move among larger, adjacent lava tubes. However, because these smaller voids become filled with erosional sediment in older flows like Koloa and as a result of surface disturbance, it is unlikely that the Kauai cave animals can move among separate lava tube systems.

6. Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns it is prudent to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. For example, the Kiahuna Cave #210 harbors a separate population each of the spider and amphipod. and agriculture. In fact, the Koloa cave systems are considered to be 1 of the 10 most endangered cave ecosystems worldwide. These animals are also increasingly at risk from predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities associated with residential and golf course development; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals and populations and their limited distribution.

7. On interior lands, small areas of exposed pahoehoe lava, rock outcrops, and the entrances to lava tubes were generally unsuited for cultivation of crops and were left less disturbed. The remaining pockets of uncultivated land around collapsed lava tubes and exposed lava probably served as refuge for the cave animals. Significantly, all the known populations of both the spider and amphipod are in areas never used for plantation sugar cane cultivation.

8. The restricted area where these animals occur is rapidly undergoing development. Increased human use of caves can result in the direct trampling, intentional or otherwise, of cave animals as well as indirect impacts due to destruction of root systems. The shallow cave habitat is degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, and other activities associated with development.

9. Insecticide use, coincident with the change to urban land development, poses a serious threat to the cave animals because of their tendency to seek water sources. Even if pesticides are not used directly above a lava tube, pesticides that leach into adjacent subterranean caverns with water from runoff or irrigation are serious threats because the animals may be attracted to the water and come into contact with the chemicals.

10. I have reviewed LUC Condition No. 7, County Zoning Ordinances, zoning permits, tentative subdivision approval and mass grading permit.

11. The County conditions are inadequate to identify habitat and protect the species as required by Condition No. 7. For example, one population of the cave spider is provided some protection by a County ordinance requiring the landowner to conserve two Kiahuna lava tubes known to harbor the spider (County of Kauai Development Plan 1979). However, existing conservation measures under this ordinance protect only the cave entrances and not the surface footprint, adjacent mesocaverns, or surrounding above ground habitat that help to maintain the

microhabitat conditions within the caves that the animals need to survive. Evaluation of one of the caves conserved under this ordinance showed significant degradation from surface disturbance over the dark zone of the cave. In addition, this ordinance protects only a single population of each of the cave animals, which is not sufficient to ensure the continued existence of these species, given the range of threats that affect all remaining populations.

12. Subsequent County approvals also failed to require the study and certification required in Condition No. 7, or the protection of the species from the development related activities.

13. In 2002, the FWS, based on biology, habitat and conservation needs for the Blind Spider and Amphipod, initially recommended that the critical habitat 4000 acres. The County argued against protection of species, and the critical habitat was limited to 200 acres. This difference, between recommended and adopted protection, leads to situations like the present, where an area immediately adjacent to designated Critical Habitat, which likely harbors the species, is grubbed and graded, removing vegetation and surface features required for habitat identification and management.

14. I have reviewed zoning and tax maps, and maps attached to the various County permitting applications, along with maps and aerial photos of the property of the proposed development located at 5425A Pau A Laka Street, Koloa, Kauai, Hawaii. The Critical Habitat designated by the FWS for the Blind Spider and Amphipod is adjacent to the property.

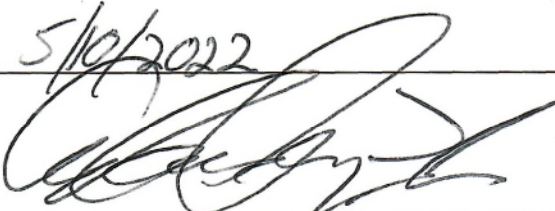
15. I have reviewed photos of the property and saw exposed pahoe-hoe lava and rock outcrops on the close to the identified Critical Habitat that likely harbor the Blind Spider and Amphipod.

16. At a minimum, in order to identify their habitat and protect the species, the study and certification required in Condition No. 7 must include the following:

- a. No grading, grubbing or any ground disturbing activities should be allowed until an appropriate survey, specific for these species and their habitat, can be conducted and reviewed by FWS.
- b. The habitat must be identified by carefully hand cutting all the vegetation so that surface geology can be seen and mapped. If parts of the area have already been disturbed, then additional techniques such as coring or ground penetrating radar should be employed to identify the habitat and avoid disturbance.

17. As the species are protected by the Endangered Species Act, the FWS recommendations regarding the incidental take permit and development of a critical habitat plan are also essential to the protection of both species.

DATED: Waimea, Kauai, Hawaii, _____

5/10/2022


ADAM ASQUITH

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

MYLES S. HIRONAKA
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

September 15, 2006

Kiahuna Poipu Golf Resort LLC
c/o Greg Kamm
P.O. Box 1200
Kōloa, Kauai, Hawaii 96756

SCANNED

SUBJECT: Project Development Use Permit P.D. U-2006-25
Use Permit U-2006-26
Class IV Zoning Permit Z-IV-2006-27

At its meeting held on August 22, 2006, the Planning Commission approved the subject permits. Approval is subject to the following conditions, as recommended by the Planning Department and as amended by the Planning Commission:

1. The Applicant is advised that the property is subject to the conditions of LUC Decision and Order A76-418 (D&O) and County of Kauai Ordinances No. PM-31-79, PM-148-87 and PM-334-97 ("the Ordinances"), which shall run with the land. All conditions of the Ordinances are enforceable against any party seeking to use the entitlement. The following conditions are deemed complete, ongoing or to be resolved with LUC, or not applicable to the subject property: LUC Docket A76-418 #1-6, 17, 19-22; PM-31-79, PM -148-87 and PM-334-97 #1, 3, 4, 9, 15, 17, 19(c), 25.
2. Prior to building permit approval:
 - (a) The Applicant shall provide clearance from SHPD that data recovery is complete for any non-significant sites on the parcel prior to any grading or grubbing on the site.
 - (b) Prior to building permit approval, the Applicant shall provide to the Planning Department evidence that the subject parcel is clear of habitats for the Kauai cave amphipod or cave spiders worthy of preservation.

EXHIBIT "13"

AN EQUAL OPPORTUNITY EMPLOYER

EXHIBIT

25

DEPONENT NAME:

CUA, D.

DATE:

08/30/22

3. Prior to building permit approval, the applicant shall provide documentation substantiating compliance with LUC Condition #8 and County Ordinance Condition #7, relating to employment of Kauai residents in construction and permanent hotel related jobs. "Hotel related jobs" shall mean any sales, operations, management or maintenance job associated with the operation or transient vacation rentals conducted on the property.
4. Prior to building permit approval:
 - (a) as recommended by the Count Housing Agency, "Prior to building permit application, the Applicant shall resolve with the County Housing Agency and the Planning Department the satisfaction of the employee housing requirement in Condition No. 2 of Ordinance No. PM-31-79 for employee housing in the Kōloa-Po'ipū area," and
 - (b) the Applicant shall provide a preferential rate schedule or purchase price for employees.
5. The Applicant is advised that lands rezoned by the Ordinance Nos. PM-31-79, PM-148-87 and PM-334-97 are responsible for continued provision of a public pedestrian access between Po'ipū Road and the Ho'onani cul-de-sac as a condition of their zoning. Signage shall be maintained and replaced as needed. The sidewalk and crosswalk from Po'ipū Road to the shopping center sidewalk shall be provided prior to building permit approval for the project.
6. The Applicant is advised that should the maintenance agreement for the comfort station at the Ho'onani Road cul-de-sac be terminated, the Applicant and other rezoned parcels within the Moana project shall be required to fund the comfort station maintenance and liabilities, pursuant to Condition #8 of the Ordinances.
7. Prior to certificate of occupancy, KMP project sidewalks along Kiahuna Plantation Drive shall be developed to connect to and integrate with the Hapa Road path, at SHPD and Planning Department approved locations.
8. The Applicant shall resolve any improvements required for the extension of Kiahuna Plantation Drive for access to the subject project and to the KMP5 project subdivision with the Department of Public Works. Internal driveways shall be a minimum of 20' wide for two-way traffic, and landscaping maintained to provide adequate clearance for fire vehicle access. Parking areas shall meet County standards. No parking for the project shall be allowed along Kiahuna Plantation Drive, except for public parking stalls as represented for Hapa Trail users. An emergency vehicular connection shall be made from the Kiahuna Plantation Drive extension to Hapa Road or a future roadway which connects to Hapa Road as resolved with the Planning Department and the Department of Public Works.

9. The Applicant shall resolve fire protection, drainage, grading, water, and wastewater treatment requirements directly with the applicable agencies. Wastewater handling shall be provided through connection to and expansion of the private wastewater treatment plant on TMK 2-8-14: 27, as required by the Health Department. Easements shall be created in the subdivision for any sewer, irrigation or utility lines associated with this or other KMP projects, and granted to appropriate parties. Additional easements shall be dedicated if required by the Fire Department, Departments of Public Works or Water.
10. In order to address traffic circulation issues relating to the Kōloa-Po'ipū area:
 - (a) Prior to building permit application, the Kōloa-Po'ipū Area Circulation Plan shall be completed, and the Applicant shall enter into a non-occupancy agreement with the Planning Department which shall expire when the improvements are accepted or approved as complete by the County Department of Public Works. Prior to the County's issuance of certificate of occupancy, construction of the required improvements, and dedication to the County if applicable, shall be completed.

For KMP related improvements, circulation improvements as recommended by the final Kōloa-Po'ipū Area Circulation Plan shall be resolved with the Department of Public Works (DPW) Engineering Division, the Planning Department, and the County Transportation Agency, and constructed, or construction plans and a performance bond be posted for such construction, prior to any building permit application (except for temporary sales offices) on any adjoining Kiahuna Mauka Partners project phase parcel. If a bond is posted, improvements shall be completed prior to certificate of occupancy of such buildings. Such circulation improvements to be resolved shall include but not be limited to:

- (1) A sidewalk within the Po'ipū Road mauka right-of-way from Kiahuna Plantation Drive west to the Po'ipū Road-Kapili Road intersection;
- (2) A sidewalk within the Kiahuna Plantation Drive right-of-way from Po'ipū Road mauka to the western edge of the KMP4 project;
- (3) Improvements to the intersection of Po'ipū Road and Kiahuna Plantation Drive; and
- (4) Crosswalks on Po'ipū Road, and Kiahuna Plantation Drive at locations appropriate to the intersection improvements approved to be constructed; and
- (5) location and detail of any other sidewalks, bus turnout, road and access improvements, landscaping, and bikeways adjacent to KMP properties.

- (b) Prior to building permit application, the Applicant shall execute with the County of Kauai (Planning Department, Department of Public Works, and OCA Transportation Agency, the Mayor, County Attorneys and the County Council) and record with the Bureau of Conveyances on the deed for the subject property, an agreement as herein described:
- (1) As represented, the Applicant or its successors in interest to the property shall contribute its reasonable and fair share of funding, in conjunction with other developers and government agencies, of any Kōloa-Po'ipū-Kukui'ula transportation or circulation measures and/or improvements which may include but shall not be limited to construction plans and environmental studies for and construction of Capital Improvements such as roads, intersection improvements, traffic signals, sidewalks, bike paths, off-street parking areas or structures, and traffic calming devices, and may include Traffic Demand Management measures such as increased bus service, shuttles, car-pooling, ride-sharing, flex-time work hours, bus/shuttle use incentives, car-pooling incentives and other measures, as approved, adopted or designated by the County of Kaua'i within seven years of approval of the subject zoning permit. As represented, prior to building permit approval the Applicant shall participate in and seek approval of a Community Facilities District (CFD) for implementation and cost-sharing of the foregoing improvements.
 - (2) The share attributable to each development shall be determined at the time of adoption of any implementing funding ordinance adopted, including but not limited to a Community Facilities District (CFD), Impact Fee, and Improvement District. Such commitment and responsibility to contribute shall run with the land.
11. In conjunction with the KMP projects and in compliance with an Ordinance condition, a landscaped buffer is proposed within the Po'ipū Road right-of-way from Waikomo Stream to Kiahuna Plantation Drive. Prior to building permit approval, landscaping construction plans for the proposed Po'ipū Road landscape buffer shall be submitted to the Planning Department and the Department of Public Works for review and approval. Landscaped buffers within the rights of way shall be installed prior to completion and acceptance of any road improvements. Offsite landscaping improvements shall be installed either prior to building permit approval of buildings within adjacent Kiahuna Mauka Partners projects (excepting temporary sales office) or a performance bond posted for the construction. If a bond is posted, offsite landscaping improvements shall be completed prior to issuance of certificate of occupancy for those buildings.
12. Prior to certificate of occupancy for project buildings, civil defense measures shall be installed within the KMP4 project area as represented in the KMP Implementation Plan addendum, and as resolved with State Civil Defense. Such improvements shall be adjacent to but not within the Hapa Road right-of-way.

13. The project shall be served by private solid waste collection. A construction waste diversion plan shall be developed for the project for diversion of at least 80% of the waste generated by the project from the Kekaha landfill. Approval of the plan shall be obtained from the Department of Public Works prior to building permit approval, and the remainder of the waste may be accepted at the Kekaha Landfill.

14. The following uses are deemed permitted in the project:

- (a) in the Residential (R-10) district, a maximum of 280 multi-family residential dwelling units; a front desk, rental and administrative management offices; a maintenance building and restrooms; and a Hapa Road shelter as represented in the Open District;
- (b) designed for guest use, the following: a pool bar/snack bar of a maximum of 1,600 s.f.; business center; fitness center, game room, retreat center, outdoor recreational facilities as represented including a tennis court, sand volleyball courts, nine-hole executive putting course and putting shack, two swimming pools, keiki playground and activity center; and
- (c) two single-family dwellings may be constructed in the Open District, subject to design review by the Planning Department.

Any other uses not specifically listed above shall require Planning Department review and approval.

15. The project shall comply with County and State codes, laws, ordinances, rules and regulations, except for the uses allowed in Condition #14 above and the following:

- (a) minimum distance between residential buildings may vary from the applicable standard only for the third floor covered lanais as represented; and
- (b) provided that the total lot coverage allowed for the combined zoning districts, including impervious surfaces within the road easement, is not exceeded and uses are generally allowed in the Open District, lot coverage may be transferred from the Residential District into the Open District through the Project Development Use Permit.
- (c) The clubhouse shall meet the building height and setback requirements of CZO Section 8-3.11(a) for single-family dwellings.

16. The project shall provide parking for residential uses in accordance with CZO Section 8-3.7(a). The Applicant shall also provide a minimum of one parking stall adequate for maintenance vehicles at each building. Parking shall be provided for the pool bar/snack bar and offices in accordance with commercial standards designated in CZO Section 8-5.5.

17. The temporary sales offices shall be limited to "on-site" properties and shall not be used as general real estate brokerage offices. The driveway approach shall be paved to reduce transport of gravel onto the roadway. Any temporary sales facilities shall be included and indicated on the building permit application for the overall project.
18. Prior to building permit approval, the Applicant or other entity shall prepare and obtain construction plan approvals for undergrounding of electrical, street light wiring, communication and cable utilities abutting KMP projects in the Po'ipū Road right-of-way and construct the same or post a performance bond for completion.
19. The Applicant shall submit a landscaping plan at the time of building permit application, subject to Planning Department review and approval, and is encouraged to use endemic, indigenous or Polynesian introduced plant species common to the area in project landscaping and landscaped buffers.
20. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: shielded lights, cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlighting of structures shall be prohibited.
21. The applicant shall resolve and comply with all applicable conditions as recommended by the Water, Fire, and Public Works Departments, and with the State Departments of Health, Transportation and DLNR Historic Preservation Division.
22. The Applicant shall submit annual status reports documenting compliance with conditions of the permits until final completion of buildings and all conditions are completed.
23. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or to revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval or if unforeseen problems are generated by the proposed use at the project site.
24. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).
25. The Applicant shall incorporate and integrate this project with any master plan to be developed for the Poipu area, where feasible.

Kiahuna Poipu Golf Resort LLC
September 15, 2006
Page 7

26. Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneioulouma Heiau.
27. The Applicant shall demonstrate marketable title of the project premises to the Planning Department prior to building permit application.



IAN K. COSTA
Planning Director

cc: DPW Engineering Div.; DPW Solid Waste Div.; Water Dept.; State Dept. of Health; DLNR
Historic Preservation Div.; Fire Dept.; State DOT Highways Div.; Finance Dept. Real
Property Div.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
MOANA CORPORATION)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District For Approximately)
457.54 Acres of Land Situated at)
Poipu, Island of Kauai, State of)
Hawai'i, TMK: 2-8-14: 05, 07, 08,)
por. 19, 20, 21, 26-36; 2-8-15: 77;)
2-8-29: 1-94)
_____)

DOCKET NO. A76-418

ORDER GRANTING FIRST
HAWAIIAN BANK, TRUSTEE
OF THE ERIC A. KNUDSEN
TRUST'S AMENDMENT TO
MOTION TO MODIFY
CONDITION IMPOSED BY THE
LAND USE COMMISSION

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

AUG 05 1997

Date

by


Executive Officer

ORDER GRANTING FIRST HAWAIIAN BANK, TRUSTEE OF THE
ERIC A. KNUDSEN TRUST'S AMENDMENT TO MOTION
TO MODIFY CONDITION IMPOSED BY THE LAND USE COMMISSION

LAND USE COMMISSION
STATE OF HAWAII
1997 AUG -5 A 11:37

EXHIBIT "14"

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A76-418
)	
MOANA CORPORATION	)	ORDER GRANTING FIRST
	)	HAWAIIAN BANK, TRUSTEE
To Amend the Agricultural Land Use	)	OF THE ERIC A. KNUDSEN
District Boundary into the Urban	)	TRUST'S AMENDMENT TO
Land Use District For Approximately	)	MOTION TO MODIFY
457.54 Acres of Land Situated at	)	CONDITION IMPOSED BY THE
Poipu, Island of Kauai, State of)	LAND USE COMMISSION
Hawai'i, TMK: 2-8-14: 05, 07, 08,)	
por. 19, 20, 21, 26-36; 2-8-15: 77;)	
2-8-29: 1-94)	
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ORDER GRANTING FIRST HAWAIIAN BANK, TRUSTEE OF THE
ERIC A. KNUDSEN TRUST'S AMENDMENT TO MOTION
TO MODIFY CONDITION IMPOSED BY THE LAND USE COMMISSION

On October 31, 1995, First Hawaiian Bank, as Trustee of the Eric A. Knudsen Trust, and Hawaiian Trust Company, Limited, as Trustee of the Augustus F. Knudsen Trust (hereinafter collectively "Knudsen Trusts"), filed a Motion To Modify Condition Imposed By The Land Use Commission pursuant to Hawai'i Revised Statutes ("HRS") Section 205-4, and Hawai'i Administrative Rules ("HAR") Chapter 15-15.

On November 2, 1995, Sports Shinko (Kauai), Co., Ltd. (hereinafter "Sports Shinko") filed its Motion To Amend Or Modify Condition No. 9 Of Decision and Order, and its Joinder In Knudsen Trusts' Motion To Modify Condition Imposed By The Land Use Commission.

On December 14, 1995, the respective motions filed by the Knudsen Trusts and Sports Shinko came before the Land Use Commission (hereinafter "Commission") at its meeting in Honolulu,

Oahu. The Commission deferred action on the respective motions pending the completion of hearings on the Order to Show Cause proceedings for the subject docket.

On March 14, 1996, the Commission held a meeting in Lihue, Kauai, to hear the Order to Show Cause. The Order to Show Cause proceedings were continued until such time that the appropriate parties were known, due to the termination of the Augustus F. Knudsen Trust, and distribution of trust assets to beneficiaries or designees. The Order to Show Cause proceedings were subsequently continued due to interventions by some of the beneficiaries of the Augustus F. Knudsen Trust and to allow the parties to meet and discuss possible resolution of the issues surrounding the subject docket.

On or about June 18, 1997, the Commission scheduled the respective motions for action at the Commission's June 26, 1997 meeting in Honolulu, Oahu.

On June 25, 1997, First Hawaiian Bank, as Trustee of the Eric A. Knudsen Trust, filed its Amendment To Motion To Modify Condition Imposed By The Land Use Commission ("Motion to Modify Condition"). The Motion to Modify requested that the Commission consider an amendment to Condition No. 9, as well as the imposition of a number of additional conditions, which were a result of the negotiations that took place between and among the parties.

On June 26, 1997, Sports Shinko filed its Joinder In Movant First Hawaiian Bank's Motion To Modify Condition Imposed

By The Land Use Commission Filed Herein On October 31, 1995, As Amended By Filing Dated June 25, 1997.

Also on June 26, 1997, Sports Shinko filed a Withdrawal Of Its Motion To Amend Or Modify Condition No. 9 of Decision and Order Originally Filed Herein On November 2, 1995.

The Motion to Modify Condition, having come before the Commission at its meeting on July 26, 1996 in Honolulu, Oahu, and the Commission, having considered the arguments presented by the Movants and other parties to the proceeding, both written and oral, and having reviewed the entire record for the subject docket to date, and with good cause shown;

NOW HEREBY GRANTS the Motion to Modify Condition, and Condition No. 9 shall be amended to read as follows:

9. As of the effective date of this amendment, Petitioner has completed 90 single-family residential homesites, 48 multi-family residential units, and appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, as well as all off-site and on-site improvements and landscaping servicing the same as provided by the original Condition No. 9.
- a. The Eric A. Knudsen Trust and the other Knudsen Entities or any subsequent owner of the properties (the "Knudsen Property") identified by TMK Nos. (4) 2-8-14: 19 (por.) as shown on the map attached hereto as Exhibit "A" and made a part hereof, and consisting in the aggregate of approximately 63 acres, will substantially commence the development and construction within seven (7) years from the effective date of this amendment of not less than fifty (5) single-family homesites and/or multi-family residential units on the currently undeveloped portions of the Knudsen Property or on other property owned by the Eric A. Knudsen Trust and the other Knudsen Entities in the urban district immediately adjacent to the Knudsen Property as evidenced by the issuance of the initial building permit for such construction by

the County of Kauai, and the Eric A. Knudsen Trust and the other Knudsen Entities shall report to the Commission annually on the progress of the development and their compliance with these conditions as they relate to such Knudsen Property. The annual report of the Eric A. Knudsen Trust and the other Knudsen Entities to the Commission on the progress of their development and compliance with conditions will cover the undeveloped portions of the Knudsen Property only.

- b. Sports Shinko or any subsequent owner of the properties (the "Sports Shinko Property") identified by TMK Nos. (4) 2-8-14:8, 28, 32, 33, 34, and 35; and (4) 2-8-15: 77, as shown on the map attached hereto as Exhibit "A" and made a part hereof, and consisting of approximately 179 acres, will substantially commence the development and construction within seven(7) years from the effective date of this amendment of not less than three hundred (300) single-family residential homesites and/or multi-family residential units on the currently undeveloped portions of the Sports Shinko Property, as evidenced by the issuance of the initial building permit for such construction by the County of Kauai, and Sports Shinko shall report annually on the progress of its development and its compliance with these conditions as they relate to the Sports Shinko Property. The annual report of Sports Shinko to the Commission on the progress of its development and compliance with conditions will cover the undeveloped and compliance with conditions will cover the undeveloped portions of the Sports Shinko Property only.

IT IS FURTHER ORDERED that the following additional conditions shall be imposed on the subject Property in its entirety:

- 10. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated water master plan covering the then remaining undeveloped portions of the Knudsen Property and the Sports Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of

the Knudsen Property or the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Property, if rezoning is not required.

11. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated master drainage plan covering the then remaining undeveloped portions of the Knudsen Property and the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of the Knudsen Property or the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Property, if rezoning is not required.
12. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated traffic impact analysis and report covering the remaining undeveloped portions of the Knudsen Property and the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of the Knudsen Property or the Sports Shinko Property or prior to approval of any county subdivision or building permit for any future development on the remaining undeveloped portions of the Property, if rezoning is not required. A copy of any such updated traffic impact analysis and report shall be submitted to the State Department of Transportation for comment prior to approval by the County of Kauai, and following approval by the County of Kauai, a copy of the approved traffic impact analysis and report shall be filed with the State Department of Transportation.
13. Wastewater treatment for the future developments upon the currently undeveloped portions of the Knudsen Property and Sports Shinko Property will be handled and processed by one or more of the following: (a) the expansion of the existing Kiahuna Wastewater Treatment Plan, (b) the development and construction upon the Property of private sewage treatment facilities, or (c) a satisfactory agreement to connect into the private

sewage treatment facility to be developed and constructed by Alexander & Baldwin upon adjoining property. The Eric A. Knudsen Trust and other Knudsen Entities, Sports Shinko and any subsequent owner of the subject properties will not look to the County of Kauai for the provisions of wastewater treatment facilities.

14. All of the internal roadways within the future developments on the remaining undeveloped portions of the Knudsen Property and the Sports Shinko Property will be private and therefore private, not County, trash collection will be used for any future development on the currently undeveloped portions of the Knudsen Property and the Sports Shinko Property.
15. Effective soil erosion and dust control measures will be implemented during construction upon any currently undeveloped portion of their respective properties to the satisfaction of the County of Kauai and the Department of Health, State of Hawaii.
16. The Eric A. Knudsen Trust and the other Knudsen Entities with respect to the Knudsen Property, or any subsequent owner of the Knudsen Properties, and Sports Shinko with respect to the Sports Shinko Property, or any subsequent or any subsequent owner of the Sports Shinko Properties, shall fund and construct adequate civil defense measures as determined by the County of Kauai and the State Civil Defense agency as part of the future development upon the currently undeveloped portions of their respective properties.
17. The Eric A. Knudsen Trust and the other Knudsen Entities with respect to the Knudsen Property, or any subsequent owner of the Knudsen Properties, and Sports Shinko with respect to the Sports Shinko Property, or any subsequent owner of the Sports Shinko Properties, shall notify all prospective buyers of their respective properties of the potential odor, noise and dust pollution which may result from surrounding agricultural district lands and that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.
18. Absent approval from the appropriate federal, State and County agencies, Sports Shinko or any subsequent owner of the Sports Shinko Property

shall not channelize Waikomo Stream for flood control purposes. A reasonable buffer zone from the edge of Waikomo Stream shall also be provided as to any development fronting Waikomo Stream as may be required by the County of Kauai. Within the approved stream buffer zone landscaping shall be permitted. A copy of the proposed stream buffer area along Waikomo stream shall be submitted to the State of Hawaii Department of Land and Natural Resources and U.S. Fish and Wildlife Service for comment prior to approval by the County of Kauai.

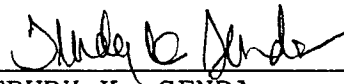
19. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Knudsen Property or the Sports Shinko Property upon timely motion and upon provision of adequate assurance of satisfaction of these conditions by Petitioners.
20. The noncompliance with or nonperformance of any remaining conditions of the Decision and Order by the Eric A. Knudsen Trust and the Other Knudsen Entities with respect to the Knudsen Property or by Sports Shinko with respect to the Sports Shinko Property will not constitute nonperformance of or noncompliance with the remaining conditions of the Decision and Order as it may concern or relate to the other party's property.
21. The obligations and liability of the Eric A. Knudsen Trust under the Decision and Order are not personally binding upon nor shall resort be had to the private property of First Hawaiian Bank, or any other trustee of the Eric A. Knudsen Trust, but only the Trust estate shall be bound.
22. A copy of this amendment and modification to the Decision and Order shall be recorded against the subject properties with the Bureau of Conveyances of the State of Hawaii in accordance with Section 15-15-92 of the Hawaii Administrative Rules.


IT IS HEREBY FURTHER ORDERED that Conditions No. 5, 7, and 8 imposed previously by the Commission in the subject docket, are reaffirmed and shall remain in effect.

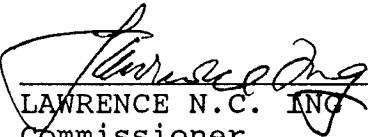
DOCKET NO. A76-418 - MOANA CORPORATION

Done at Honolulu, Hawai'i, this 5th day of August 1997,
per motions on June 26, 1997 and July 31, 1997.

LAND USE COMMISSION
STATE OF HAWAI'I

By 
TRUDY K. SENDA
Chairperson and Commissioner

By 
RUPERT K. CHUN
Vice Chairperson and Commissioner

By 
LAWRENCE N.C. ING
Commissioner

By 
M. CASEY JARMAN
Commissioner

By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

By 
LLOYD F. KAWAKAMI
Commissioner

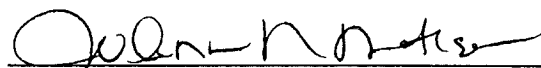
By (absent)
MERLE A. K. KELAI
Commissioner

Filed and effective on
August 5, 1997

Certified by:


Executive Officer

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By 
JOANN N. MATTSON
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A76-418
)	
MOANA CORPORATION	)	CERTIFICATE OF SERVICE
)	
To Amend the Agricultural Land Use)	
District Boundary into the Urban)	
Land Use District For Approximately)	
457.54 Acres of Land Situated at)	
Poipu, Island of Kauai, State of)	
Hawai'i, TMK: 2-8-14: 05, 07, 08,)	
por. 19, 20, 21, 26-36; 2-8-15: 77;)	
2-8-29: 1-94)	
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting First Hawaiian Bank, Trustee of the Eric A. Knudsen Trust's Amendment to Motion to Modify Condition Imposed by the Land Use Commission was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL.	RICK EGGED, Director Office of Planning P.O. Box 2359 Honolulu, Hawaii 96804-2359
CERT.	DEE CROWELL, Planning Director Planning Department, County of Kauai Suite 473, Building A 4444 Rice Street Lihue, Hawaii 96766
CERT.	HARTWELL H.K. BLAKE, ESQ. County Attorney Office of the County Attorney County of Kauai 4396 Rice Street, #202 Lihue, Hawaii 96766
CERT.	D. SCOTT MACKINNON, ESQ., Attorney for Sports Shinko McCorriston Miho Miller Mukai Five Waterfront Plaza, Suite 400 500 Ala Moana Boulevard Honolulu, Hawaii 96813

CERT. GRACE NIHEI KIDO, ESQ., Attorney for Knudsen Trusts
Cades Schutte Fleming & Wright
P. O. Box 939
Honolulu, Hawaii 96808-0939

CERT. GARY M. SLOVIN, ESQ.
CAROL A. EBLEN, ESQ.,
Attorneys for KVH Partners and CGB Partners
1800 Ali'i Place
1099 Alakea Street
Honolulu, Hawaii 96813

CERT. ELIZABETH KNUDSEN TOULON
Milohae Limited Partnership
P. O. Box 666
Koloa, Hawaii 96756

CERT. WILFRED J. BALDWIN
Baldwin-Knudsen Family Partnership
5451 Wailaau Road
Koloa, Hawaii 96756

DATED: Honolulu, Hawaii, this 5th day of August 1997.



ESTHER UEDA
Executive Officer

Comparison of the Developed and Undeveloped Properties Within the Petition Area

- Knudsen Lands Undeveloped
- Knudsen Lands Developed
- Sports Shinko Lands Undeveloped
- Sports Shinko Lands Developed
- County of Kauai Lands (Park Site)
- 90-Single Family Lots, Roads and Open Area
- Lands Developed
- Undeveloped Lands Surrounding the Petition Area
- State Land Use Petition Boundary
- Parcel Boundary (The parcel numbers refer to Tax Map 2-8-14 or as noted)
- Time Share Boundary
- Zone Boundary

Residential District:
 R-1 (1 unit/acre)
 R-2 (2 units/acre)
 R-3 (4 units/acre)
 R-4 (6 units/acre)
 R-10 (10 units/acre)
 R-20 (20 units/acre)

Resort District:
 RR-10 (10 hotel rooms/acre)
 RR-20 (20 hotel rooms/acre)

Commercial District:
 C-N neighborhood

Open District:
 O open

Special Treatment District:
 ST-P public
 ST-C cultural; historic

Parcels - Digitized by R.M. Towill Co., current to 1990.
 State Land Use Petition Boundary - Belt Collins Hawaii. Testimony of Knudsen Trust Before The Land Use Commission, April 4, 1995.
 Stream - USGS DIG files, 1/24/00, 1983.
 Tax map key numbers and acreages - State of Hawaii, Realty Atlas, 1994.
 Time Share Boundary - Kauai County Zoning Maps.
 Undeveloped Lands Surrounding the Petition Area - State of Hawaii, Office of Environmental Planning, October 1987.
 Zoning - Planning Department, County of Kauai, photocopied paper maps digitized by OSP, December 1999.
 Zoning acreages - GIS-derived from digitized zoning maps.

OSP—
 A76-418 MOANA CORPORATION Feb. 1996



Scale 1:9,800

Poipu, Kauai



This map was produced by the Office of Planning (OP) for planning purposes. It should not be used for boundary information. The OP is not responsible for the limitations of the data information regarding compilation dates and accuracy of the data presented can be obtained from OP.

EXHIBIT A

Water Quality Standards
 CLASS AA
 (rounded by 100-foot increments)



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96850



In Reply Refer To:
1EPIF00-2022-TA-0024

October 27, 2021

Mr. Kenneth Estes
County of Kaua'i
Department of Planning
4444 Rice Street, Suite A473
Lihu'e, Hawai'i 96813

Subject: Technical Assistance Regarding Proposed Yellow Hale Subdivision, Po'ipū,
Kaua'i

Dear Mr. Estes:

The U.S. Fish and Wildlife Service (Service) thanks you for your email dated September 30, 2022 requesting technical assistance on the potential effect to threatened or endangered species or their designated critical habitat resulting from the proposed subdivision and construction of a 280-unit multi family residential project at the Tax Map Key (TMK): (4) 2-8-014:032, Po'ipū, Kaua'i.

This letter has been prepared under the authority of and in accordance with provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (ESA). We have reviewed the information you provided and pertinent information in our files, as it pertains to listed species and designated critical habitat in accordance with section 7 of the ESA.

Our data indicate the following federally listed species may be present on or in the vicinity of the proposed project locations: the pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*) and 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*), the endangered 'ōpe'ape'a or Hawaiian hoary bat (*Lasiurus cinereus semotus*), the endangered ua'u or Hawaiian petrel (*Pterodroma sandwichensis*), endangered 'akē'akē or Hawaii distinct population segment (DPS) of band-rumped storm-petrel (*Oceanodroma castro*), and threatened 'a'o or Newell's shearwater (*Puffinus auricularis newelli*) (hereafter collectively referred to as Hawaiian seabirds). The project area does not contain critical habitat for the pe'e pe'e maka'ole, 'uku noho ana.

INTERIOR REGION 9
COLUMBIA-PACIFIC NORTHWEST

IDAHO, MONTANA*, OREGON*, WASHINGTON

*PARTIAL

INTERIOR REGION 12
PACIFIC ISLANDS

AMERICAN SĀMOA, GUAM, HAWAII, NORTHERN MARIANA ISLANDS

EXHIBIT "15"

Pe'e pe'e maka'ole and 'uku noho ana

The pe'e pe'e maka'ole and 'uku noho ana are obligate cave-dwelling arthropods restricted to the Koloa Basin of the island of Kaua'i where lava tubes and other cave bearing rock substrate are present. These species live in inaccessible mesocaverns (underground spaces and in accessible passages) as well as large cave passages making population estimates difficult. Few of the known caves in the Koloa district provide appropriate habitat for these arthropods. The limited number of occupied caves greatly limits our knowledge of the life history requirements of these arthropods.

Urban, agricultural development and quarrying operations within the area threatens the mesocavern (underground spaces, caves, cracks, crevices) habitat these species being exposed to drying conditions, most typically from increased airflow created by breaking through the mesocaverns. Another threat comes from non-native insect species that may prey upon and compete for limited food resources. Human visitation and use of caves are threats, including urban and commercial pesticide use. Pesticides, herbicides, and other chemicals as liquid substances and smoke or fumes can percolate through the cracks and crevices of mesocaverns effecting these arthropods. Environmental threats such as extended droughts also threaten these species by altering the high-humidity environment to which these arthropods are adapted and facilitate invasion by non-native species.

Pe'e pe'e maka'ole and 'uku noho ana may be in the vicinity of the proposed project area in Po'ipū, an area within the Koloa basin and adjacent to two critical habitat units (one to the north and one the west) (see Map of TMK and Critical Habitat). Both critical habitat units are designated for both species. The critical habitat unit to the west of the proposed project is surveyed periodically for the presence of both species. Although both species could be absent during cave surveys conducted in the critical habitat unit to the west, this does not indicate that these species does not exist within the mesocaverns of the surrounding areas.

To avoid and minimize impacts to pe'e pe'e maka'ole and 'uku noho ana, we recommend you consider incorporating the following into the project description:

- Survey the project area for depth of soil deposits and exposed rock for the presence of caves. Any areas with soil deposits greater than 12 inches (in) are not likely to provide appropriate habitat or have the species present. Contact the Service and do not disturb the vegetation or soil in areas with soil deposits less than 12 in or if a cave is found.
- If a cave is found during construction, work will stop around the newly found cave immediately and contact the Service immediately for guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of the guidelines or actions developed during consultation with the Service.

Enhance cave invertebrate habitat if possible:

- Outplant native plants like maiapilo (*Capparis sandwichiana*) so roots eventually provide a food source and irrigate the surface. Control established ecosystem-altering non-native invasive plant species throughout the development especially around in areas with soils less than 12 in or exposed rocks.
- Minimize the use of herbicide, pesticide, and other liquid chemicals in the Project Area.

- Enhance habitat by sealing currently non-occupied caves with temporary air blocks – to increase relative humidity by restricting air flow through cave entrances.
- Design permanent air blocks (e.g., walls) and develop plans to replace temporary air blocks.
- Install gates to cave entrances to restrict access to caves.

‘Ōpe‘ape‘a

The ‘ōpe‘ape‘a or Hawaiian hoary bat roosts in woody vegetation across all islands and will leave their young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet (ft) or taller are cleared during the pupping season, June 1 through September 15, there is a risk that young bats could inadvertently be harmed or killed, since they are too young to fly or move away from disturbance. Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend you consider incorporating the following applicable measure into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 ft tall during the bat birthing and pup rearing season (June 1 through September 15).

Hawaiian seabirds

Hawaiian seabirds may traverse the project area at night during the breeding, nesting and fledging seasons (March 1 to December 15). Outdoor lighting could result in seabird disorientation, fallout, and injury or mortality. Seabirds are attracted to lights and after circling the lights they may become exhausted and collide with nearby wires, buildings, or other structures or they may land on the ground. Downed seabirds are subject to increased mortality due to collision with automobiles, starvation, and predation by dogs, cats, and other predators. Young birds (fledglings) traversing the project area between September 15 and December 15, in their first flights from their mountain nests to the sea, are particularly vulnerable to light attraction.

To avoid and minimize potential project impacts to Hawaiian seabirds we recommend you consider incorporating the following applicable measures into your project description:

- Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary.
- Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
- Avoid nighttime construction during the seabird fledging period, September 15 through December 15.
- Disseminate information (e.g., about the species, what to do if a seabird is found) to all construction workers and residents prior to and during seabird fallout season. If a downed seabird needs to be rescued, transport them to the nearest Save Our Shearwater (SOS) collection station.
- Maintenance staff of the development should attend annual training to recognize downed sea birds and know how to respond.

We appreciate your efforts to conserve protected species. If you have any questions regarding this letter, please contact Joy Browning, Fish and Wildlife Biologist (phone: (email: joy_browning@fws.gov, phone: telephone at 808-792-9400). When referring to this project, please include this reference number: 01EPIF00-2022-TA-0024.

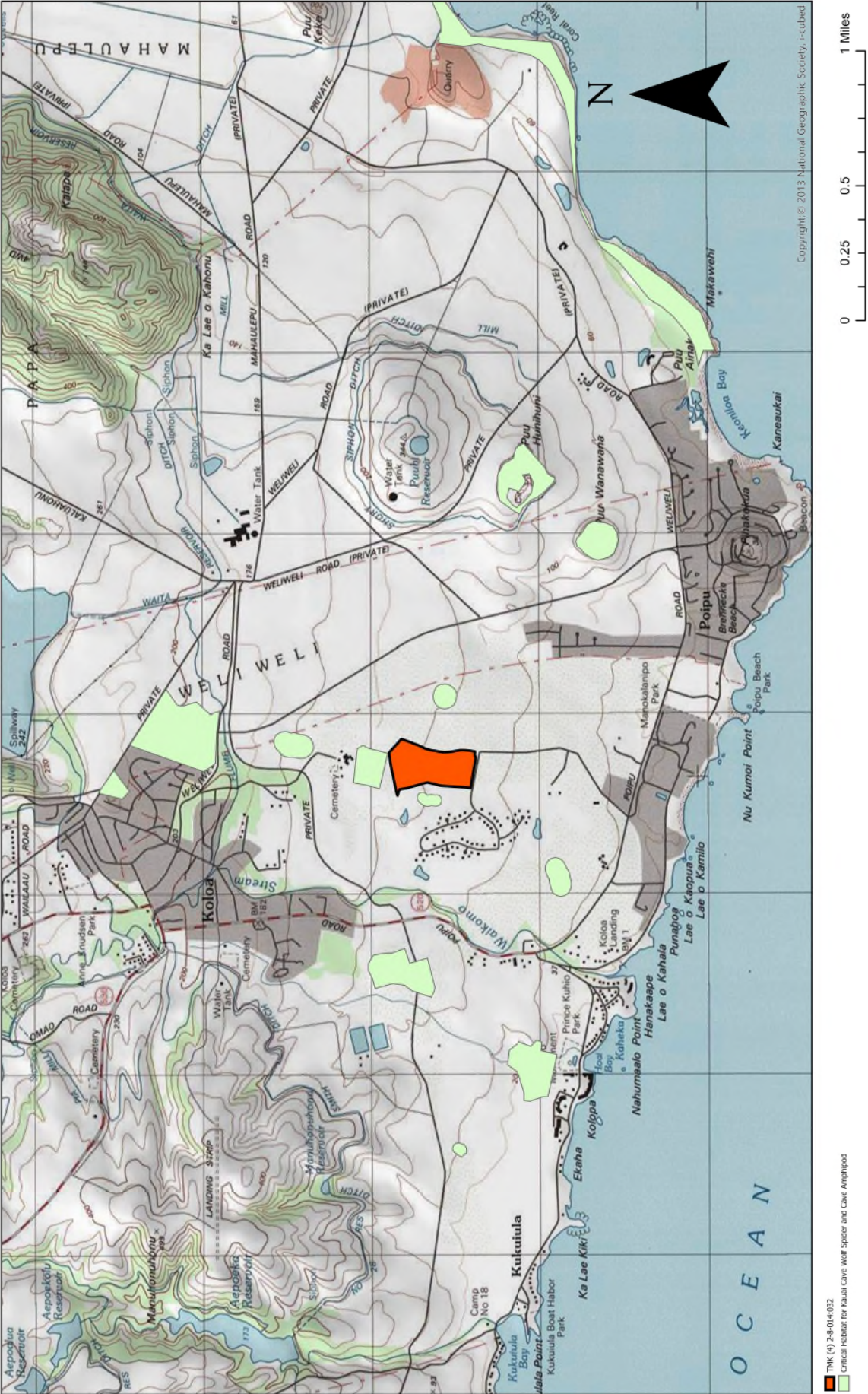
Sincerely,

Island Team Manager
O‘ahu, Kaua‘i, Northwestern Hawaiian
Islands and American Sāmoa

cc: DOFAW Kaua‘i District Office

Enclosure (1): Map of TMK and Critical Habitat

TMK and Critical Habitat for the Kauai Cave Spider and Amphipod



Subject: Blasting Impacts Habitat for Endangered Species

Date: Wed, 1 Jun 2022 13:34:17 -1000

From: Bridget Hammerquist <BridgetHammerquist@hawaiiintel.net>

To: Governor Ige <Governor.Ige@Hawaii.gov>, Brandon T. Asuka <Brandon.T.Asuka@hawaii.gov>

CC: County Council <councilmembers@kauai.gov>, Derek Kawakami <dkawakami@kauai.gov>, Nadig,

Aaron <aaron_nadig@fws.gov>, Michael Dahilig <mdahilig@kauai.gov>, Sarah Blane <sblane@kauai.gov>, Lebo,

Susan A <Susan.A.Lebo@hawaii.gov>, alan.s.Downer@hawaii.gov <alan.s.Downer@hawaii.gov>, Leimana

DaMate <Leimana.K.DaMate@hawaii.gov>, jennifer_roth@fws.gov <jennifer_roth@fws.gov>, Manisa_kung@fws.gov

Aloha Governor Ige and Responsible Officials,

We need your help in Koloa. Regrettably all of our efforts to stop the destruction of a historic archaeologic cave system have thus far failed. Numerous emails have been sent by community members, Friends of Maha'ulepu and Save Koloa. Most of the emails have not even been answered. We do know that US Fish and Wildlife Service, who has answered our emails, is investigating our complaint while developer Gary Pinkston and Pacific Meridian continue to blast. Attached is a copy of the blast letter nearby home owners received May 22, 2022, when the blasting began. USFWS per their attached letter anticipated cave formations below Pinkston's 25 plus acre parcel, TMK 2-8-14:32, and told both the developer and the County that if caves were found, all work had to stop because of the endangered species known to inhabit the area detailed in the attached USFWS letter of 10/27/2021. In addition to the blind cave spider and the amphipod there are at least 3 endangered sea birds and the hoary bat that were believed to inhabit the Pinkston's undeveloped parcel.

Having been born in Hilo, I always understood the State cared about lava tubes and its archaeologically significant cave structures. Not only are the species at risk with the on going blasting that the County and State are allowing, but a rare and valuable cave system is being destroyed. This parcel contains a system of underground passages that is recognized as one of the 10 most endangered cave networks in the world (Tongvig and Mylroie, in litt. 1998; Belson 1999).

A biologist first brought to the property May 9, 2022, 3 weeks after extensive heavy equipment grading and he issued a report May 12 expressing the opinion that there were no caves under the property and if there were they did not have moisture sufficient to support the endangered blind cave spider and amphipod. The caves have now been revealed by the blasting and I suspect there would not be 8 months of planned blasting but for the existence of an extensive cave network that would compromise the stability of the proposed 282 unit development if it were not destroyed. The following

Blasting 5/31 creates new opening to cave/lava tube

<https://www.youtube.com/watch?v=x6s6yckmvus>

May 22, 2022

EXHIBIT "16"



May 24, 2022



May 29, 2022



Construction workers gather near exposed cave/lave tube, seen kicking rock into the exposed opening likely trying to determine depth.

<https://www.youtube.com/watch?v=YqlYjkaIoQo>

Video Closeup of Cave Opening

<https://www.youtube.com/watch?v=e2A0H4PZmoc>

[Save Koloa YouTube channel](#)

Please see below email of Peter Morimoto also trying to stop the destruction of the cave network and the likely dissemination of endangered species endemic to Kauai. Please intervene. Blasting the caves out of existence is not the way to develop, clearly not in the 21st century when so many other means of construction are available.

Mahalo nui loa,

Bridget Hammerquist, President
Friends of Maha`ulepu, a 501(c)(3)
Kia`i Wai o Wai`ale`ale, Co-founder
PO Box 1654
Koloa, HI 96756

[Donate](#)

friendsofmahaulepu.org

friendsofmahaulepu@hawaiiintel.net

(808)742-1037

----- Forwarded message -----

From: **Peter Morimoto** <pmmorimoto@gmail.com>

Date: Wed, Jun 1, 2022 at 9:01 AM

Subject: Blasting next to critical habitat for endangered species

To: Charles Foster <cfoster@kauai.gov>, Matthew Bracken <mbracken@kauai.gov>

Gentlemen,

I recently sent you video links to explosions on the property located at 5425 Pau A Laka Street, Koloa, Hawai'i. The property is adjacent to the US Fish and Wildlife Service's identified critical habitat for the the indigenous pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*), 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*), both of which are endangered species under Federal and State law.

As you know, the biological study regarding both submitted to Planning Director Ka'aina Hull on May 12, 2022, has the following language in its conclusion:

Furthermore, it is reassuring to note that during stages of construction a scientist will be monitoring for any moist, food containing voids that are inhabited by either of the 2 species, based on USFWS' (2019) avoidance and minimization measures for the Kaua'i cave wolf spider and Kaua' i cave amp hi pod, and if a cave is found during construction, work around the cave stops immediately and USFWS and DLNR/DOFAW are contacted for guidance to minimize and mitigate adverse effects.

Kenneth Estes of the Planning Department received the attached letter from Aaron Nadig of the US Fish and Wildlife Service. It contains the following language regarding the pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*), 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*):

- If a cave is found during construction, work will stop around the newly found cave immediatley and contact the Service immediately for guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of the guidelines or actions developed during consultation with the Service.

I have submitted links to videos showing what appears to be a cave exposed by the blasting on the property.

The County of Kaua' i has previously violated the Endangered Species Act and Chapter 195D of the Hawaii Revised Statutes. Both prohibit the harassing or killing of the endangered pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*), 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*). The County has been advised by the US Fish and Wildlife Service and the developer's own biologist to stop work when a cave is exposed and to contact the FWS and the State's Division of Forestry and Wildlife.

The County of Kaua' i , by issuing the mass grading permit for the property without incorporating the safeguards recommended by the US Fish and Wildlife Service and the developer's own biologists, is allowing explosives to be used next to a critical habitat for endangered species. Now that a cave has been exposed, what does the County intend to do?

Please inform the Mayor Derek Kawakami and Planning Director Ka'aina Hull of the situation as soon as possible.

Peter Morimoto
(808) 482-1451



McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

Laurel Loo, Partner
ll@m4law.com

January 03, 2023

Ka`aina Hull, Director
Kaua`i Planning Department
Attn: Laura Barzilai via email at LBarzilai@kauai.gov

RE: Meridian Pacific, TMK 2-8-014:032

Dear Mr. Hull:

Please consider this a Motion to Modify a condition of the existing Class IV zoning permit for Meridian Pacific, successor in interest in TMK 2-8-014:032 to Kiahuna Poipu Golf Resort LLC c/o Greg Kamm.

Pursuant to Rules 1-12-9 and 1-6-16 of the Rules of the Practice and Procedure of the Kaua`i County Planning Commission, I submit this request to modify Condition 10 of Class IV Permit No. Z-IV-2006-27.

The exhibits attached hereto serve as our legal memoranda as to why we are asking for the modification of Class IV Permit No. Z-IV-2006-27.

Sincerely yours,
McCorriston Miller Mukai MacKinnon LLP

Laurel Loo

LL; vct

Attachments

Honolulu Office: P. O. Box 2800 • Honolulu, Hawai`i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai`i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293

Kaua`i Office: 4463 Pahe`e St., Suite 208 • Lihu`e, Hawai`i 96766
Telephone: (808) 632-2267 • Fax: (808) 524-8293

EXHIBIT "17"



McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

Laurel Loo, Partner
ll@m4law.com

December 14, 2022

Helen Cox, Chair
Kauai County Planning Commission
Via e-mail to: LBarzilai@kauai.gov

Re: Class IV Zoning Permit Z-IV-2006-27
Meridian Pacific dba MP Elko II LLC
Tax Map Key 2-8-014:032

Dear Chair Cox and Planning Commissioners:

My firm represents Meridian Pacific, the parent company of MP Elko II, LLC, which owns and is developing the above-referenced parcel. We seek an amendment to the permits¹ which were approved for the region in 2006. The original permit is attached as Exhibit 1 with our proposed revision to condition 10.

Specifically, condition 10 of the Class IV permit requires the developer to pay for its fair share of traffic circulation improvements in the area by either 1) constructing those improvements or 2) posting a construction bond for those improvements. The permit then goes on to say the developer is also required to participate in a Community Facilities District (CFD) to implement those improvements.

The developer has negotiated with the County what Meridian Pacific's fair share of traffic circulation improvements will be. Rather than construct them, or post a bond for that amount, or create a CFD to fund those improvements, Meridian Pacific is willing to outright pay the County for its fair share of those improvements. It is our understanding the County Department of Public Works is in agreement with that method as it is simple and direct.

Very truly yours,

McCORRISTON MILLER MUKAI MACKINNON LLP

¹ Kiahuna Poipu Golf Resort LLC developed a larger area than we are seeking the amendment for and received a Project Development Use Permit P.D. U-2006-25, Use Permit U-2006-26, and Class IV Zoning Permit Z-IV-2006-27, a copy which is attached as Exhibit 1.

Honolulu Office: P. O. Box 2800 • Honolulu, Hawai'i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293

Kaua'i Office: 4357 Rice Street, Suite 102 • Lihue, Hawai'i 96766
Telephone: (808) 632-2267 • Fax: (808) 524-8293

1 IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
2 STATE OF HAWAII
3
4 _____
5 E OLA KAKOU HAWAII, ET AL.,)
6 Plaintiffs,)
7 Vs.) 5CCV-22-000036
8 COUNTY OF KAUAI, ET AL.,) TRANSCRIPT OF
9 Defendants.) ELECTRONICALLY
10 _____
) RECORDED PROCEEDINGS

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25 Transcribed by:

EXHIBIT "18"
Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

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INDEX

WITNESSES:

Joseph Niezgodzki
Direct Examination, page 12

Jody Higuchi Sayegusa
Direct Examination, page 40
Cross-Examination by Mr. Foster, page 111
Cross-Examination by Mr. Minkin, page 112
Redirect Examination, page 121

Elizabeth Okinaka
Direct Examination, page 129
Cross-Examination by Mr. Minkin, page 169
Redirect Examination, page 176

EXHIBITS

Plaintiffs' Exhibit 2 in evidence, page 146

1 **THURSDAY, MAY 25, 2023**

2 *******

3 THE BAILIFF: All rise. This court is
4 now in session, the Honorable Judge Kathleen N.A.
5 Watanabe presiding. Thank you. You may be seated in
6 the gallery.

7 Calling 5CCV 22-0036, E Ola Kakou
8 Hawaii, et al Vs. County of Kauai, et al, motion for
9 preliminary injunction, Day Two.

10 THE COURT: Good morning. Appearances,
11 please.

12 MR. MORIMOTO: Peter Morimoto on behalf
13 of the Plaintiffs.

14 MR. FOSTER: Good morning, your Honor.
15 Charlie Foster on behalf of the County.

16 MR. MINKIN: Good morning, your Honor.
17 David Minkin on behalf of the other Defendants except
18 for Earthworks.

19 MS. LOO: Good morning, your Honor.
20 Laurel Loo on behalf of Earthworks Pacific.

21 THE COURT: All right. Good morning to
22 all of you. Before we start, any resolution to the
23 case? Okay. Ready to proceed then?

24 MR. MINKIN: Still Mr. Morimoto's case,
25 your Honor.

1 A. I think for the purposes of the
2 meeting, I think we all had -- were allowed
3 sufficient time to review it.

4 Q. At that meeting, was there a discussion
5 about this report?

6 A. We did discuss the report.

7 Q. And was any conclusion reached about
8 the report and whether or not it satisfied Condition
9 7?

10 A. We -- I think we all had the similar
11 sentiments that I stated. I mean, for what I recall
12 generally, we discussed that this Steven Montgomery
13 was well qualified and that he had a conclusion that
14 would seem to be relevant to LUC Condition 7.

15 Q. Did any of you -- did anyone in the
16 meeting discuss the Geolabs report that's referenced
17 in Dr. Montgomery's report?

18 A. We didn't specifically discuss the
19 Geolabs report.

20 Q. So when you were assigned to review the
21 Montgomery report, were you also assigned to make
22 findings about whether or not it satisfied Condition
23 7?

24 A. The context of which I was provided the
25 report and also requested to review it was so we can

1 discuss together compliance with LUC Condition 7.

2 Q. And did you make any findings with
3 regard to that compliance?

4 A. It was more of a discussion, no like
5 technical findings or conclusions or anything like
6 that.

7 Q. So there was no written findings or no
8 memorialization of any conclusions that you made in
9 that meeting?

10 A. For the purpose of the meeting --

11 Q. Yes.

12 A. -- or resulting from the meeting, there
13 was no findings resulting from the meeting.

14 Q. Did you review the document for
15 sufficiency to determine whether it was sufficient to
16 satisfy Condition No. 7?

17 MR. MINKIN: Objection; vague and
18 ambiguous, sufficiency.

19 THE COURT: Sustained.

20 BY MR. MORIMOTO:

21 Q. With regard to the biological component
22 of Condition 7 which requires the certification and
23 study, did you make any determination as to whether
24 or not the report and letter was sufficient to
25 satisfy Condition No. 7?

1 MR. MINKIN: Objection; asked and
2 answered.

3 THE COURT: Sustained.

4 MR. MINKIN: Actually, asked, objected
5 to, and sustained.

6 THE COURT: Sustained.

7 BY MR. MORIMOTO:

8 Q. Did the department make any findings as
9 a whole regarding the acceptance or the acceptability
10 of the Montgomery report and certification as
11 satisfying Condition 7?

12 MR. MINKIN: Objection; speculation and
13 asked and answered.

14 THE COURT: Sustained.

15 BY MR. MORIMOTO:

16 Q. Do you know if the department has made
17 any findings with regard to the Montgomery report?

18 A. We haven't officially recommended final
19 approval yet for the tentative -- for the
20 subdivision.

21 Q. So the answer is no?

22 A. There's no official findings as of yet.

23 Q. Was any report generated with regard to
24 satisfaction of Condition No. 7 by the department?

25 A. Again, we haven't issued a formal

1 recommendation yet.

2 THE COURT: Mr. Morimoto, further
3 questions?

4 MR. MORIMOTO: Yes, your Honor.

5 THE COURT: How much longer do you
6 expect to be with this witness?

7 MR. MORIMOTO: We're almost done with
8 her.

9 THE COURT: Okay. Five minutes?

10 MR. MORIMOTO: I would say ten. What
11 time is it now?

12 THE COURT: It is 11:13. We've been
13 going for an hour so I'm just trying to factor in a
14 recess.

15 BY MR. MORIMOTO:

16 Q. Now, the Planning Department reviews
17 clearinghouse forms for public works, correct, the
18 Department of Public Works?

19 MR. MINKIN: Asked and answered.

20 THE COURT: Sustained.

21 MR. MORIMOTO: Just to get --

22 THE COURT: Let's just get to the
23 question.

24 BY MR. MORIMOTO:

25 Q. And can the department choose not to

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application for) Permit Nos. Z-IV-2006-27, U-2006-26, and
) PDU-2006-25/ Subdivision S-2021-7
(1) Preliminary subdivision extension request for)
application no. S-2021-7, 5425 PAU A LAKA,) CERTIFICATE OF SERVICE
LLC for proposed 2-lot consolidation and resub-)
division 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 de-)
velopment 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)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing was filed, hand-delivered or sent via U.S. mail, postage prepaid pursuant to Kauai Planning Commission Rule §1-3-3 to the following:

5425 PAU A LAKA LLC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

MP ELKO II, LLC
1136 Union Mall Ste 301
Honolulu, Hawaii 96813

KAUANOE O KŌLOA Phases 1 through 4
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

KAUAI HALE, INC.
1136 Union Mall Ste 301
Honolulu, Hawaii 96813

MERIDIAN PACIFIC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

MP FINANCIAL GROUP, LTD.
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

DATED: Honolulu, Hawaii

July 3, 2023

/s/ Ryan D. Hurley
LAW OFFICE OF RYAN D. HURLEY
RYAN D. HURLEY

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for Petitioners FRIENDS OF
MĀHĀ‘ULEPU & SAVE KŌLOA

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-2022-6		Kukui'ula Development Company, LLC. MP Kaua'i HH Development Fund, LLC.	
Location:	Kōloa	Tax Map Key:	(4) 2-6-019: 026, 029, 031
Extension Request No. (1 st , 2 nd , etc.)		Tentative Approval Granted On:	Previous Ext. Expired On:
1st		02.08.2022	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...


Kenneth A. Ests
Staff Planner

06.05.2023
Date

[☒] Approved and Recommended
to Planning Commission

[☐] Denied

Comments:


Planning Director

6/8/2023
Date

F.I.B.I. G.I.C.I.

JUL 11 2023

JUN 27 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.

FINDINGS/BACKGROUND:

The proposed development establishes forty-seven (47) lots within the County Residential (R-10) zoning district, one (1) roadway lot (Lot 48), one remnant Lot (Lot 50), proposed Lot 49 that encompasses The Club at Kukui'ula facility, and proposed Lot 51 that encompasses the Kukui'ula golf course. This application was granted *revised* tentative approval by the Planning Commission on February 08, 2022 and the Applicant's request is the **1st** extension of the tentative approval.

The subject property is located on the *makai* side of Ala Kukui'ula with its southern boundary being immediately adjacent to Lāwa'i Road. It is noted that the proposed residential lots are outside of the Special Management Area (SMA); however, proposed Lots 50 and 51 have portions of the lots that are within the SMA. Any new "development", as defined in Section 1.4 of the SMA Rules and Regulations of the County of Kauai, may require an SMA Permit and if so, the applicant is subject to all applicable requirements/conditions of the permit.

In considering the project, it is noted that the Public Path and Trails Exhibit dated October 2020 identifies the proposed subdivision as part of the trail system within the Kukui'ula planned community. Prior to final subdivision approval, the Application will be required to resolve with the Planning

Department the provision of public access that would be consistent with the previously approved public path and trails plan for Kukui'ula.

PROGRESS OF THE SUBDIVISION:

As represented, the Applicant has been working to resolve the various conditions of tentative approval. Currently, the Applicant is corresponding with both the Planning Department and the Department of Public Works in resolving the provision of public access as well as establishing an access point connection onto Lāwa'i Road. The construction plans for subdivision improvements have been prepared, however, the plans are awaiting agency review and approvals which has consumed much of the time. Since it is uncertain as to when all of 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 of the requirements of 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 have been made and conditions satisfied.

RECOMMENDATION:

It is recommended that an extension until **FEBRUARY 08, 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.

ESAKI SURVEYING & MAPPING, INC

1610 HALEUKANA STREET - LIHUE, KAUA'I, HAWAII 96766
(808) 246-0625 ESM@ESAKIMAP.COM

April 24th, 2023

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

**RE: S-2022-6, KUKUIULA DEVELOPMENT COMPANY, LLC./MP KAUA'I HH DEVELOPMENT FUND, LLC.
1st SUBDIVISION EXTENSION REQUEST
TMK (4) 2-6-19: 26, 29, and 31
KŌLOA, KAUA'I, HAWAII**

The subject subdivision was granted **TENTATIVE APPROVAL** by the Planning Commission at their meeting held on January 11th, 2022 and **REVISED TENTATIVE APPROVAL** at their meeting held on February 8th, 2022. Since then, the applicant has been diligently working on the conditions set forth in the revised Tentative Approval letter.

Attached is the status on the conditions set forth by the Planning Commission.

The construction plans for the improvements have been prepared but still need final approval. The applicant requires more time to complete all the conditions. We respectfully request an extension in time of two years to file the Final Subdivision Map. Two years are being requested to allow for approval of all construction plans and to post a surety bond for completion and/or construct the improvements.

Thank you for your consideration,

Very truly yours,



Dennis M. Esaki, Authorized Agent

S-2022-6 Status on Conditions
Kukui'ula Parcel HH Subdivision
Kukui'ula Development Company, LLC. and MP Kaua'i HH Development Fund, LLC.

#	Requirement	Status
1. a.	Requirements of the Planning Department:	
	An updated preliminary title report for each existing lot shall be submitted to the Planning Department for review.	Acknowledged and will be complied with.
1. b.	All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.	Acknowledged and will be complied with.
1. c.	<p>Pursuant to Ordinance No. PM-2004-370, the Applicant is allowed to credit Environmental Impact Assessment and Park Dedication fees for developments within their Project Area. Since the Applicant has not resolved with the Planning Department whether they will pay fees or provide improvements for credit, the following fees are being assessed:</p> <ol style="list-style-type: none"> 1) An Environmental Impact Assessment Fee of Twenty Three Thousand Five Hundred Dollars (\$23,500.00) shall be paid to the County of Kaua'i; and 2) The Applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kaua'i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Properties Division to help calculate the fee amount. <p>The Applicant shall resolve with the Planning Department the method that will be utilized to satisfy these fee requirements prior to final subdivision approval.</p>	Pursuant to Ordinance No. PM-2004-370, the Applicant intends to utilize its credit to satisfy these fees.
1.d.	<p>Relative to Condition No. 1.c. and prior to final subdivision map approval, the Applicant shall meet with the Planning Department to resolve the applicable requirements of Ordinance No. PM-2004-370. Specifically, the following conditions shall apply to this subdivision:</p> <p><u>Conditions of Ordinance No. PM-2004-370:</u></p> <ul style="list-style-type: none"> o 3. (prohibition of Additional Dwelling Units) o 7. (improvements to roadway system) o 14. (EIA credit) o 15. (recreation) o 16. (park dedication credit) o 23. (wastewater system master plan) o 27. (solid waste management plan) o 30. (blasting plan) 	Acknowledged. The Applicant has met with the Planning Department to resolve applicable requirements and is in progress of receiving County approvals that will coordinate the work to meet their requirements.

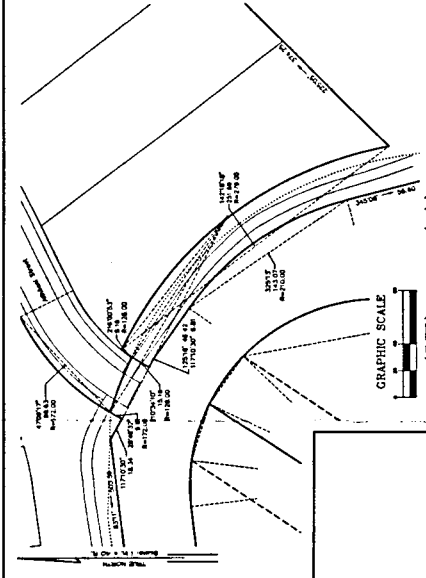
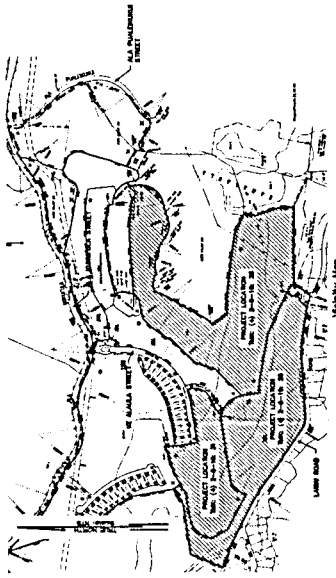
#	Requirement	Status
1. e.	Prior to final subdivision approval, Lot 26 (existing) shall be amended to be labeled as Lot 10 as shown on the final subdivision map of Subdivision Application No. S-2019-9 (Kukui'ula Parcel FF Subdivision) that was approved on March 24, 2020. Lot 26 was initially a part of the 10-lot subdivision that was approved through S-2019-9 where it subsequently became Lot 10 on the final subdivision map.	Acknowledged and will be complied with.
1. f.	Relative to the requirements/standards set forth in Ordinance No. 777, the Applicant shall resolve with the Planning Department the provision of public access. The subdivider shall incorporate the features of the Conceptual Trail Master Plan (dated April 2004) within the project area, if applicable. The access plan shall be reviewed and approved by both the Planning and Parks & Recreation Departments. Furthermore, proper documents shall be prepared and ready for execution prior to final subdivision approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.	Acknowledged. The Applicant has incorporated the feature of the conceptual Trail Master Plane within the project
1. g.	There shall be no vehicular access permitted onto Lawai Road from proposed lot 50. Semi-circles denoting no vehicular access permitted shall be shown on the final subdivision map. These provisions shall be incorporated as a restrictive covenant for the subject lot, draft copies of which shall be submitted to the Planning Department for review and approval.	Acknowledged and will be complied with.
1. h.	The Applicant is made aware that the streets designated within the subdivision must be officially named before the Department approves the construction plans. Street names should be in Hawaiian and be submitted to our Department for review and approval, along with a request letter and 12 maps (on 8 1/2" 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.	Acknowledged and will be complied with.
1. i.	The Subdivider shall comply with the requirements in Section 9-2.3(e) of the Kauai County Code (1987) relating to the provision of curbs, gutters and sidewalks along Roadway Lot 48. The extent of improvements shall be resolved with the Planning Department and Department of Public Works prior to final subdivision map approval.	Acknowledged and will be complied with.
1. j.	The Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.	Acknowledged and will be complied with. The Applicant submitted construction plans and is pending agencies approval.
1. k.	The Applicant shall establish bus stops/shelters pursuant to Ordinance No. 406. The details shall be resolved with the Planning Department and Department of Public Works prior to construction plan approval.	Acknowledged and will be complied with.
1. l.	The Applicant shall identify on the final subdivision map whether the proposed lots will be utilized for Transient Vacation Rental (TVR) purposes. If so, the total amount of the lots	Acknowledged and will be complied with.

#	Requirement	Status
	within the Kuku'i'ula Parcel HH Subdivision, shall be counted towards the total amount approved through Ordinance No. PM-2004-370.	
1. m.	The subdivider is informed that a portion of the subject property is located within the Special Management Area (SMA). Additional lots within the SMA or any new "Development," as defined in Section 1.4 of the SMA Rules and Regulations of the County of Kaua'i, may require an SMA Permit and if so, the applicant is subject to all applicable requirements/conditions of the SMA Permit.	Acknowledged and will be complied with.
1. n.	The applicant shall depict with a dotted line on the final subdivision map zoning lines delineating the boundaries between each County Zoning District as shown on the "Kuku'i'ula South Shore, Kaua'i, Zoning Refinement Area Map" dated June 8, 2020.	Acknowledged and will be complied with.
1. o.	Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.	Acknowledged and will be complied with.
1. p.	<p>In Ka Pa'akai O Ka'aina v. Land Use Commission, the Hawai'i Supreme Court established a three-part analytical framework to fulfill the constitutional duty to preserve and protect traditional and customary native Hawaiian rights and resources while reasonably accommodating competing private interests. Prior to final subdivision approval the Applicant shall describe the actions taken and examination conducted to analyze the following:</p> <ol style="list-style-type: none"> 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: <ul style="list-style-type: none"> o Describe the project area in relation to traditional and customary practices that occurred in the region or district. o Describe the extent that traditional and customary practices were practiced in the ahupua'a and project area. o Describe the community members you consulted with including their genealogical ties, long-standing residency, and relationship to region, ahupua'a and project area. o Describe the Land Commission Awards provided on the property. o Describe the prior archaeological studies that were conducted for the property. o Are you aware of any resources that found any evidence of subsurface habitation or excavation on the property? o Does the property contain any evidence that trails were in existence on the property? o 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. 	<p>A Cultural Impact Assessment, Ethnographic Survey, and Ka Pa'akai O Ka'aina Analysis was prepared in June 2022 by Honua consulting for the proposed development and submitted to the Planning Department for review and consideration.</p>

#	Requirement	Status
	3) Specify any mitigative actions to be taken to reasonably protect native Hawaiian rights if they are found to exist.	
2. a.	<p>Requirements of the Department of Public Works (DPW):</p> <p>We have no site-specific comments for the preliminary map for the proposed consolidation of lots 26, 29, and 31 and Resubdivision of said consolidation into lots 1 through 51 (Parcel HH).</p> <p>In general, the applicant shall comply with all the provisions of the "Sediment and Erosion Control Ordinance" to safeguard the public health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. This shall include, but not limited to, a grading and/or grubbing permit, which is required if any of the following conditions apply:</p> <ol style="list-style-type: none"> 1) The work area exceeds one (1) acre. 2) Grading involving excavation or embankment, or combination thereof exceeds 100 cubic yards. 3) Grading exceeds five (5) feet in vertical height or depth at its deepest point. 4) The work area unreasonably alters the general drainage pattern to the detriment of abutting properties. 	Acknowledged and will be complied with.
2. b.	Best management practices (BMPs) shall be incorporated to the maximum extent practicable to prevent damage by sedimentation, erosion, or dust to watercourses, natural areas, and other properties. The permittee and the property owner shall be responsible to ensure that BMPs are satisfactorily implemented at all times.	Acknowledged and will be complied with.
2. c.	<p>The existing grass strip and sidewalk on Lawai Road previously built by Kukui'ula Development Corporation is difficult for the County of Kaua'i Public Works Department to maintain due to limited equipment available. Therefore, we recommend that the Planning Commission include the following condition with this subdivision:</p> <p>"The applicant shall maintain the portion of the County right-of-way of Lawai Road between the curb (or edge of pavement where there is no curb) and the property line separating the County right-of-way and the properties being subdivided as part of this subdivision. The maintenance shall include mowing or otherwise maintaining the grass or other vegetation within this area, maintaining the concrete sidewalk to be free of obstructions and debris, and replacing the concrete sidewalk in the event it is broken or uneven in the future."</p>	Acknowledged and will be complied with.
3. a.	<p>Requirements of the Department of Water (DOW):</p> <p>Pay the Department of Water the following charges in effect at the time of receipt. At the present time, these charges include:</p> <ol style="list-style-type: none"> 1) A Facilities Reserve Charge (FRC) of \$705,750 (SO lots at \$14,115 per lot). 	Acknowledged and will be complied with.

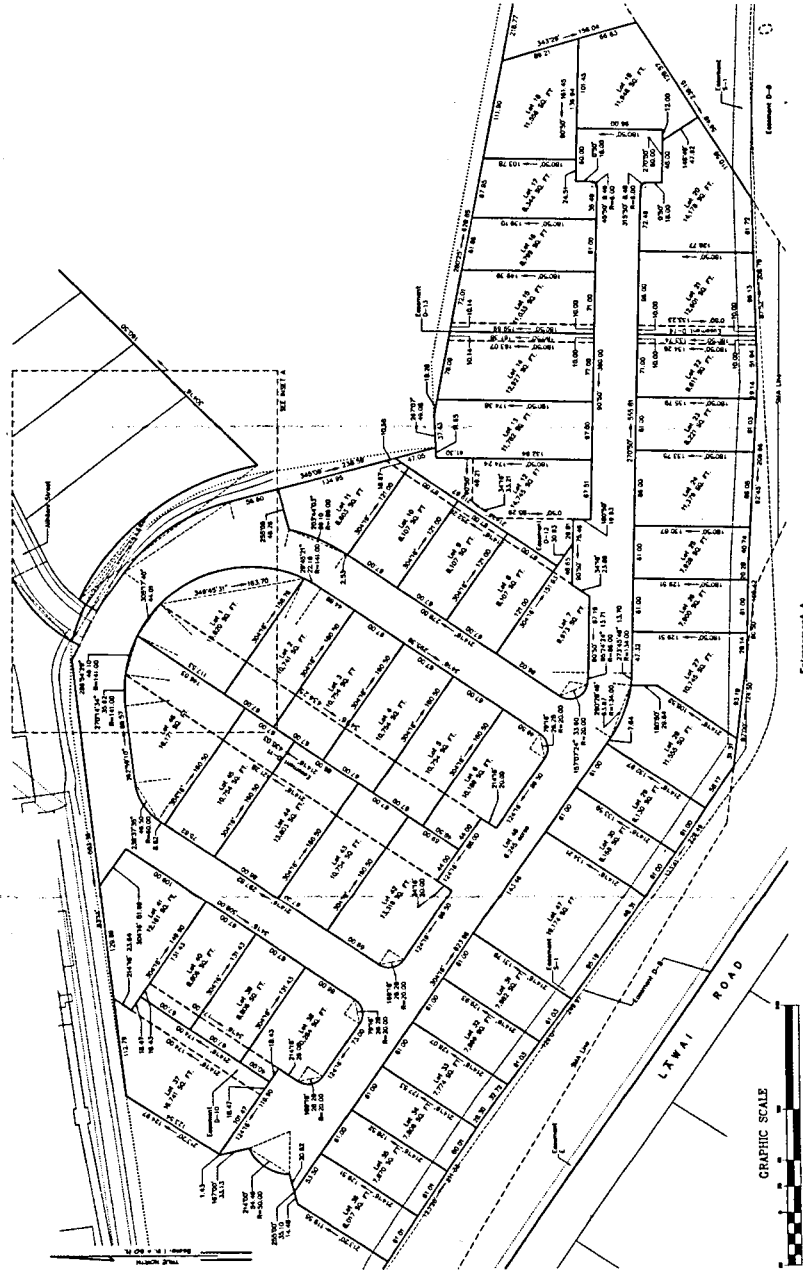
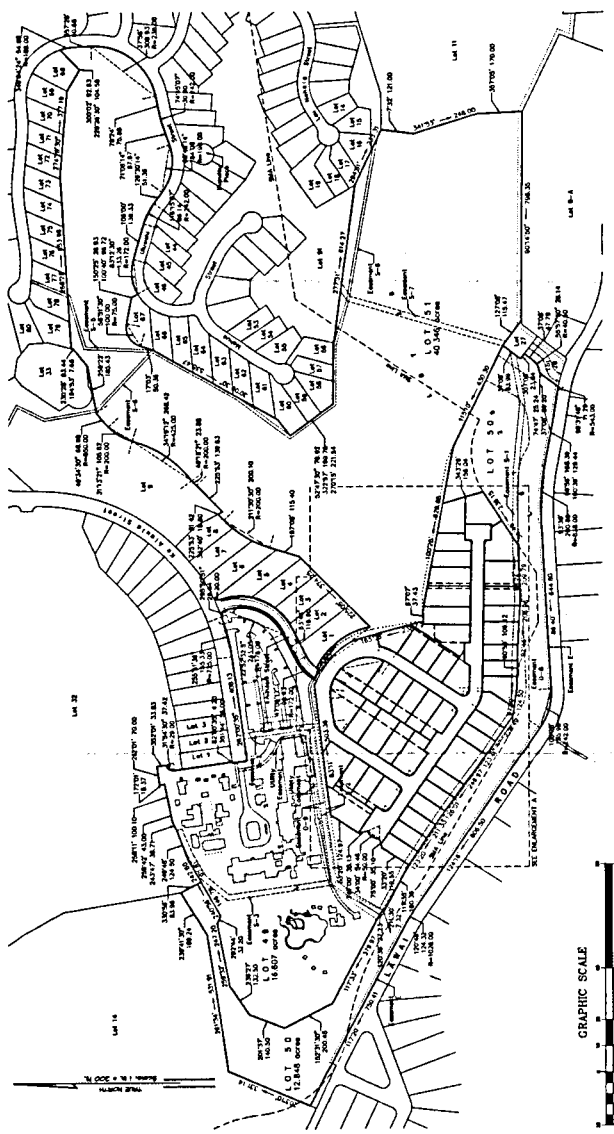
#	Requirement	Status
3. b.	<p>Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and either construct the said facilities or post a performance bond for construction. These facilities shall also include:</p> <p>1) All facilities required in the approved Kukui'ula Water Master Plan for the proposed project.</p>	The Applicant has submit construction drawing for the necessary water facilities and awaits DOW's approval.
3. c.	<p>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.</p>	Acknowledged and will be complied with.
3. d.	<p>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:</p> <p>"Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kauai."</p> <p>This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.</p> <p>Kukui'ula Development Company (KDC) will be required to:</p>	Acknowledged and will be complied with.
3. e.	<p>1) Submit an updated Kukui'ula Water Demand and System Capacity Tracking Matrix.</p> <p>2) Be made aware that the Facilities Reserve Charge and the adequacy of source, storage and transmission facilities for the proposed development will be dependent on the approved updated Kukui'ula Water Demand and System Capacity Tracking Matrix.</p> <p>3) Show water service assignments on the subdivision map for DOW's review and approval. The DOW comments may change depending on the approved subdivision map.</p> <p>Requirements of the Department of Health (DOH):</p>	A Water Demand and System Capacity Tracking Matrix has been submitted to DOW and is being reveiwd concurrently with the consnsruction drawings.
4. a.	<p>The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control", Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.</p>	Acknowledged and will be complied with.
4. b.	<p>Noise will be generated during the construction and grading phase of the project. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded, unless a noise permit is obtained from the State Department of Health (DOH).</p>	Acknowledged and will be complied with.
4. c.	<p>Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1, entitled "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by</p>	Acknowledged and will be complied with.

#	Requirement	Status
	construction work from affecting the surrounding areas. This includes the offsite roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.	
4. d.	The construction waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1, "Solid Waste Management Control", the open burning of any of these wastes on or off site is prohibited.	Acknowledged and will be complied with.
5. a.	Requirement of the State Historic Preservation Department (SHPD): The subdivider shall comply with the requirements of the State Historic Presentation Department, if any, prior to final subdivision approval.	Acknowledged and will be complied with. The project has received SHPD's determination of "No Historic Properties Affected" and has permitted the project initiation process to continue (January 30, 2023).
6.	The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.	Acknowledged and will be complied with.
7.	The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).	Acknowledged.



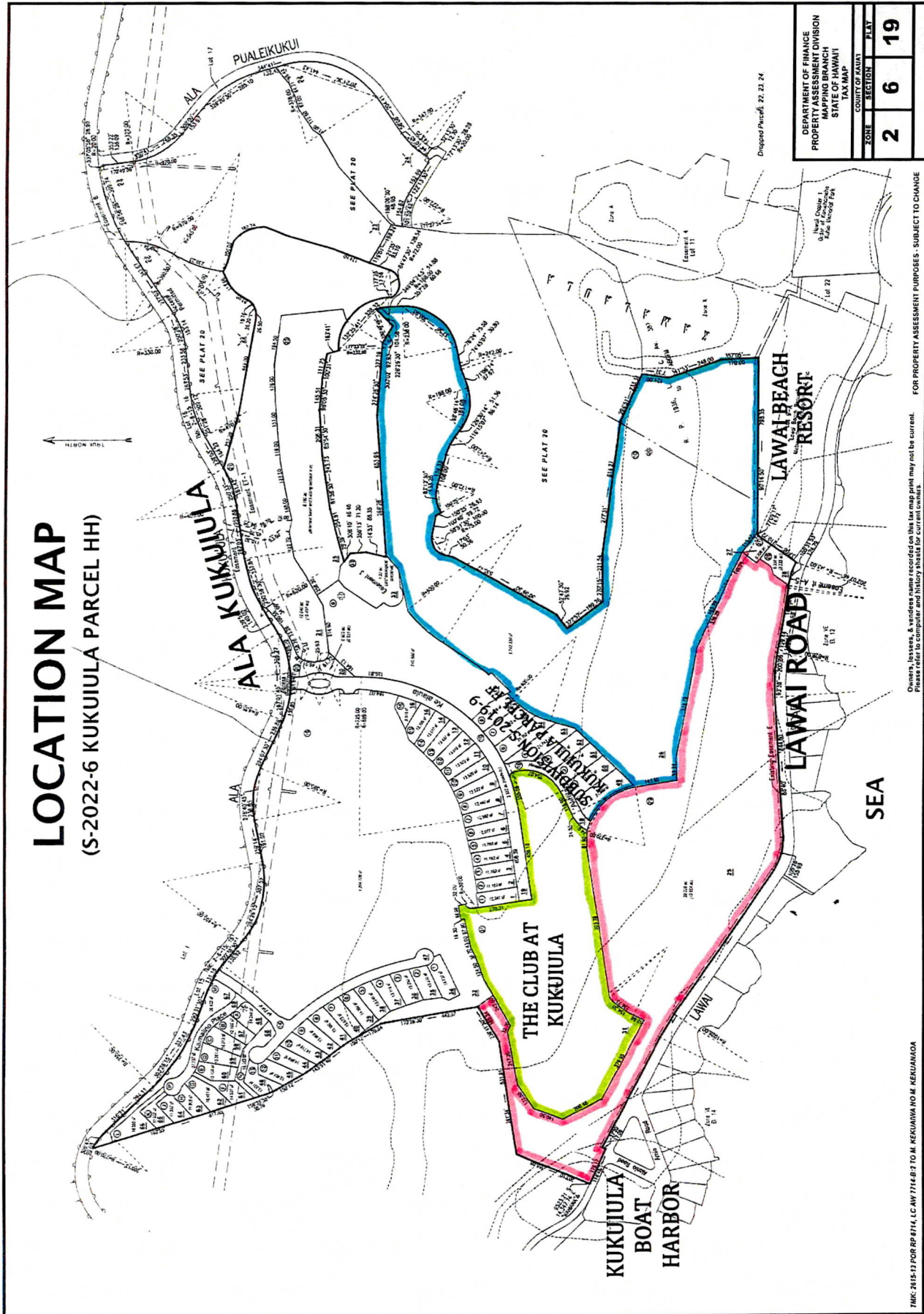
Professional Engineer
State of Hawaii
No. 1045
Date: 10/10/2019

PRELIMINARY MAP
(Parcel HH)
CONSOLIDATION OF LOTS 26, 29, AND 31
Kukulua Residential Subdivision, Phase III-A
Being Portion of R.P. 6714,
L.C. Aw. 7714-B, Ap. 2 to
M. Kekuaia no M. Kekuaia
RESUBDIVISION OF SAID CONSOLIDATION INTO
LOTS 1 THROUGH 51, INCLUSIVE
AND DESIGNATION OF EASEMENTS
D-10 THROUGH D-14, INCLUSIVE
Koloa, Kauai, Hawaii
Owner: Kukulua Development Co. LLC
TAK: (4) 2-6-19: 26
(4) 2-6-19: 29
(4) 2-6-19: 31
Date: October 9, 2019



LOCATION MAP

(S-2022-6 KUKUIULA PARCEL HH)



Dropped Parcel: 22, 23, 24

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

OWNERS, LESSEES, & VENDORS NAME RECORDED ON THIS TAX MAP PRINT MAY NOT BE CURRENT. PLEASE REFER TO COMPUTER AND HISTORY SHEETS FOR CURRENT OWNERS. FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

TMK: 216-1-1 FOR RP 8714, LC AW 714-8-2 TO H. KUKUIULA NO. 4 KUKUIULA

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

SUPPLEMENT #1 TO SUBDIVISION REPORT

RE: Subdivision Application No. S-2022-6

APPLICANT: Kukui'ula Development Company, LLC./
MP Kaua'i HH Development Fund, LLC.

Preliminary Subdivision Extension Request

At the Subdivision Committee Meeting held on June 27, 2023, there were concerns raised regarding the timeliness of the subdivision extension request as it relates to Section 9-3.8(c)(1) of the Subdivision Ordinance, Kaua'i County Code (K.C.C.), 1987, as amended. The Planning Department has referred the subject matter to the Office of the County Attorney and the department is requesting to defer Planning Commission action for a preliminary subdivision extension request of the subject subdivision application until the Office of the County Attorney has opined on the matter.

By Kenneth A. Estes
Kenneth A. Estes, Planner

Date: 07.03.2023

F.I.b.2.
JUL 11 2023

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

SUBDIVISION REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of Subdivision Application No. S-2023-4 that involves an eighteen (18) lot subdivision.

Subdivision Permit No. Application No. S-2023-4

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

II. PROJECT INFORMATION

Map Title	Kukui'ula Parcel J1-A Subdivision. Subdivision of Lot 40 of Kukui'ula Parcel I Subdivision into Lots 1 to 18, Inclusive, and Designation of Easements AU-1 and AU-2 Being a Portion of Royal Patent 6714, Land Commission Award 7714-B, Apana 2 to M. Kekuaiwa No M. Kekuanaoa situated at Kōloa (Makai), Kōloa, Kona, Kaua'i, Hawai'i.				
Tax Map Key(s):	2-6-023:040	Area:	114.469 Acres		
Zoning:	Residential (R-4)/Open – Special Treatment Open (O/ST-O)				
State Land Use District(s):	Urban	General Plan Designation:	Residential Community/ Golf Course		
AGENCY COMMENTS					
<input checked="" type="checkbox"/> COK Public Works	Pending	<input type="checkbox"/> State DOT-Highways:			
<input checked="" type="checkbox"/> COK Water:	06.13.2023	<input checked="" type="checkbox"/> State Health:	05.02.2023		
<input type="checkbox"/> Other(s)		<input checked="" type="checkbox"/> DLNR – SHPD:	pending		
EXISTING ROAD RIGHT-OF-WAY(S)					
Road Name	Existing Width	Required Width	Pavement YES	NO	Reserve
Ala Kukui'ula	60 feet	60 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ala Haku Lei Loop	44 feet	44 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
APPLICABLE FEES					
Environmental Impact Assessment (EIA)	\$7,000				
Park Dedication	TBD. Appraisal required				
Appraisal Report Required	Yes				

G.I.A.I.
JUL 11 2023

III. EVALUATION

The proposal subdivides Lot 40 of Kukui'ula Parcel I Subdivision into a total of fourteen (14) residential lots, one (1) lot that will be utilized as a common area with landscaping (Lot 15), one (1) remnant lot and two (2) roadway lots. The proposed development is located within the County Residential (R-4) zoning district and is within the State Land Use Urban District. The development shall be subject to the applicable requirements/conditions of Ordinance No. PM-2004-370 and the EIA and Park Dedication Fees shall be credited, as specified by the foregoing ordinance.

Native Hawaiian Traditional and Cultural Rights



A Ka Pa'akai O Ka'aina Analysis was prepared by Cultural Surveys Hawai'i, Inc., for the proposed development. The analysis describes the historic and traditional accounts associated with the Kōloa Ahupua'a as well as provides a summary of archaeological studies that have been conducted in the vicinity of the project area. The analysis also provides a detailed summary of the community outreach that was conducted including oral and written testimony of individuals that were contacted.

The consultation outreach involved attempting to contact Hawaiian organizations, agencies, and community members as well as cultural and lineal descendants in order to identify individuals with cultural expertise and/or knowledge of the project area and vicinity. Community outreach letters were sent to 52 individuals or groups by email and/or U.S. Postal Service with additional follow-up by text or phone. As represented, as of June 6, 2022, nine individuals had responded.

Based on the information contained in the analysis and evaluating the historical information that was available to the department, the department finds that the proposed development at its designated location should have no impact on any known Hawaiian traditional or customary practices for the following reasons:

- a. There are no known traditional or customary practices of Native Hawaiians that are presently occurring at the project site.
- b. There are no known special gathering practices taking place at the project site or within the vicinity of the project site.
- c. The Project should not detrimentally inhibit access to any streams; access to the shoreline or other adjacent shoreline areas; gathering along any streams, the shoreline or in the ocean.
- d. There are no known religious practices taking place within the project site.

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	 Date
	Director of Planning Date

V. AGENCY REQUIREMENTS

1. Requirements of the Planning Department:

- a. An updated preliminary title report for the existing lot shall be submitted to the Planning Department for review.
- b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- c. Pursuant to 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.
- d. Pursuant to Ordinance No. PM-2004-370, the Applicant is allowed to credit Environmental Impact Assessment and Park Dedication fees for developments within their Project Area. Since the Applicant has not resolved with the Planning Department whether they will pay fees or provide improvements for credit, the following fees are being assessed:
 - 1) An Environmental Impact Assessment Fee of Seven Thousand Dollars (\$7,000) shall be paid to the County of Kaua'i; and
 - 2) The Applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kaua'i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Properties Division to help calculate the fee amount.

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

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

Conditions of Ordinance No. PM-2004-370:

- 3. (prohibition of Additional Dwelling Units)
 - 7. (improvements to roadway system)
 - 14. (EIA credit)
 - 15. (recreation)
 - 16. (park dedication credit)
 - 23. (wastewater system master plan)
 - 27. (solid waste management plan)
 - 30. (blasting plan)
- f. There shall be no vehicular access permitted onto Ala Kukui'ula from proposed Lot 18. Semi-circles denoting no vehicular access permitted shall be shown on the final subdivision map. These provisions shall be incorporated as a restrictive covenant for the subject lot, draft copies of which shall be submitted to the Planning Department for review and approval.
- g. 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.
- h. Pursuant to Section 9-2.3(e) of the Subdivision Ordinance, Kaua'i County Code (1987), as amended, curbs, gutters and sidewalks shall be provided on both sides of all proposed or existing streets within or abutting the subdivision in Residential Districts where the density permitted is four (4) units or more per acre. For existing streets abutting subdivisions, sidewalks shall be required on the side of the street fronting the subdivision for the length of the subdivision frontage.

Prior to final subdivision approval, the Applicant shall work with the Planning Department and Department of Public Works to determine if the provision of curbs, gutters and sidewalks is necessary. If it is determined necessary, the Applicant shall comply with the requirements of Section 9-2.3(e)(3) prior to final subdivision approval. Further, if the requirement of sidewalks is waived, the Applicant shall comply with Sections 9-2.3(e)(3)(C) and 9-2.3(e)(3)(D) prior to final subdivision approval.

Section 9-2.3(e)(3) states:

“(3) Curbs, gutters and sidewalks shall be provided on both sides of all proposed or existing streets within or abutting the subdivision in Commercial, Industrial and Resort Districts; in Residential Districts where the density permitted is four (4) units or more per acre; and in any other Zoning Districts within the State Land Use-Urban District that are located within one-half (1/2) mile from any elementary, intermediate, high school, or college. For existing streets abutting subdivisions, sidewalks shall be required on the side of the street fronting the subdivision for the length of the subdivision frontage.

(A) In Residential Districts, swales may be constructed in lieu of curbs and/or gutters in accordance with the drainage standards and design guidelines established by the Department of Public Works.

(B) In Residential Districts, the requirement of sidewalks may be waived if the Planning Commission determines that sidewalks are infeasible or unnecessary, taking into account local context and sensitivity to community character, and an alternate method of pedestrian circulation exists or will be provided by the applicant.

(C) If the requirement of sidewalks is waived, the subdivider shall be required to pay a fee in lieu of required sidewalk construction. The fee in lieu of sidewalk construction shall not be required for subdivision approvals for less than six (6) lots. The fee in lieu of required sidewalk construction shall be equal to or greater than one hundred percent (100%) of the cost of constructing the sidewalk as determined by the County Engineer. There is hereby established and created a “sidewalk/shared use path fund” for the deposit of fees collected in lieu of required sidewalk construction. The fees collected pursuant to this Subsection (C) are hereby deemed appropriated upon receipt and shall be expended by the County Engineer for sidewalk or shared use path planning, design, land acquisition, construction and/or repair and maintenance. The County Engineer shall submit an annual written report to the Council of each fiscal year’s expenditures and balance of the sidewalk/shared use path fund on or before the 15th day of March of each year. If the 15th day of March falls on a Saturday, Sunday, or legal holiday, the report shall be submitted on the prior working day. The fees collected shall not lapse at the close of the fiscal year.

(D) Payment of said fees shall be made in a lump sum at the time of final subdivision map approval or payment shall be made according to the following schedule: fifty percent (50%) at the time of preliminary subdivision map approval and the balance paid at the time of final subdivision map approval. When funds are needed for sidewalk or shared use path planning, design, land acquisition, construction and/or repair, the County Engineer shall submit a written request to the Planning Director and Mayor for approval. Upon approval, the Finance Director shall be authorized to release monies from the fund.”

- i. The Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
 - j. The Applicant shall establish bus stops/shelters pursuant to Ordinance No. 406. The details shall be resolved with the Planning Department and Department of Public Works prior to construction plan approval.
 - k. The Applicant shall identify on the final subdivision map whether the proposed lots will be utilized for Transient Vacation Rental (TVR) purposes. If so, the total amount of the lots within the Kukui'ula Parcel J1-A Subdivision, shall be counted towards the total amount approved through Ordinance No. PM-2004-370.
 - l. The applicant shall depict with a dotted line on the final subdivision map zoning lines delineating the boundaries between each County Zoning District as shown on the "Kukui'ula South Shore, Kaua'i, Zoning Refinement Area Map" dated June 8, 2020.
 - m. Lot 15 shall have no residential density as it will be used as a common area and for landscaping, as represented. This provision shall be incorporated into the deed description of Lot 15, draft copies of which shall be submitted to the Planning Department for review and approval.
 - n. Lots 2 and 3 do not comply with the Lot Length requirement outlined in Section 8-4.4(a) (3) (A) of the Comprehensive Zoning Ordinance (CZO), Kaua'i County Code (K.C.C), 1987, as amended. The Applicant shall work with the Planning Department to resolve this matter prior to final subdivision approval.
2. Requirements of the Department of Public Works (DPW):
- a. The subdivider shall comply with the requirements of the Department of Public Works, if any, prior to final subdivision approval.
3. Requirements of the Department of Water (DOW):
- a. Pay the Department of Water the following charges in effect at the time of receipt. At the present time, these charges include:
 - 1) A Facilities Reserve Charge (FRC) of 18 Lots at \$14,115 per lot.
 - b. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and either construct said facilities or post a performance bond for construction. These facilities shall also include:
 - 1) All facilities required in the approved Kukui'ula Water Master Plan for the proposed project.

- c. Prepare and convey to the Department of Water a Right-of-Entry and Temporary Grant of Easement for the purpose of construction, repair, maintenance, and operation of the subdivision water system improvements installed in other than County-owned property.

- d. If a bond is filed, to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map, and deeds:

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

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

- e. Kukuiʻula Development Company (KDC) will be required to:
 - 1) Submit an updated Kukuiʻula Water Demand and System Capacity Tracking Matrix.
 - 2) Be made aware that the Facilities Reserve Charge and the adequacy of source, storage and transmission facilities for the proposed development will be dependent on the approved updated Kukuiʻula Water Demand and System Capacity Tracking Matrix.
 - 3) Identify the proposed subdivision lots that will not be assigned water service. DOW comments may change depending on the approved subdivision map.

4. Requirements of the 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.

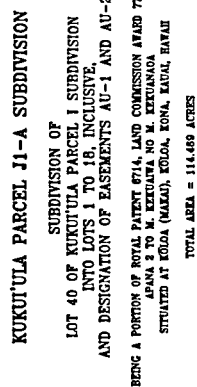
Other

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.
5. Requirements of the State Historic Preservation Department (SHPD):
 - a. The subdivider shall comply with the requirements of the State Historic Preservation Department, if any, prior to final subdivision approval.
6. Project construction workers and all other personnel involved in the construction and related activities of the project should be informed of the possibility of inadvertent cultural finds, including human remains. Should any potential historic properties be identified during construction activities, all activities will cease and the SHPD will be notified pursuant to HAR §13-280-3. In the event that *iwi kūpuna* (Native Hawaiian skeletal remains) are identified, all earth moving activities in the area will stop, the area will be cordoned off, and the SHPD, coroner, and Police Department will be notified pursuant to HAR §13-300-40. In addition, in the event of an inadvertent discovery of human remains, the completion of a burial treatment plan, in compliance with HAR §13-300 and HRS §6E-43, is recommended.
7. In the event that *iwi kūpuna* and/or cultural finds are encountered during construction, project proponents should consult with cultural and lineal descendants of the area to develop a reinterment plan and cultural preservation plan for proper cultural protocol, curation, and long-term maintenance.
8. 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 JULY 11, 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



LOT 40 TRK: (4) 2-8-023: 040
OWNER: EBCP KUKU'ULA DEVELOPMENT, LLC
ADDRESS: 2700 KE ALAULA ST STE B
KULOA, HI 96756



THE WORK WAS PROVIDED BY ME
ON UNDER MY SUPERVISION.

[Signature]

JOHN PROCTOR, LAB SUPERVISOR
OCTOBER 10, 1967

AUTUMN THERMAL & ASSOCIATES INC.
801 SUMNER STREET, SUITE 101
MONTREAL, QUEBEC

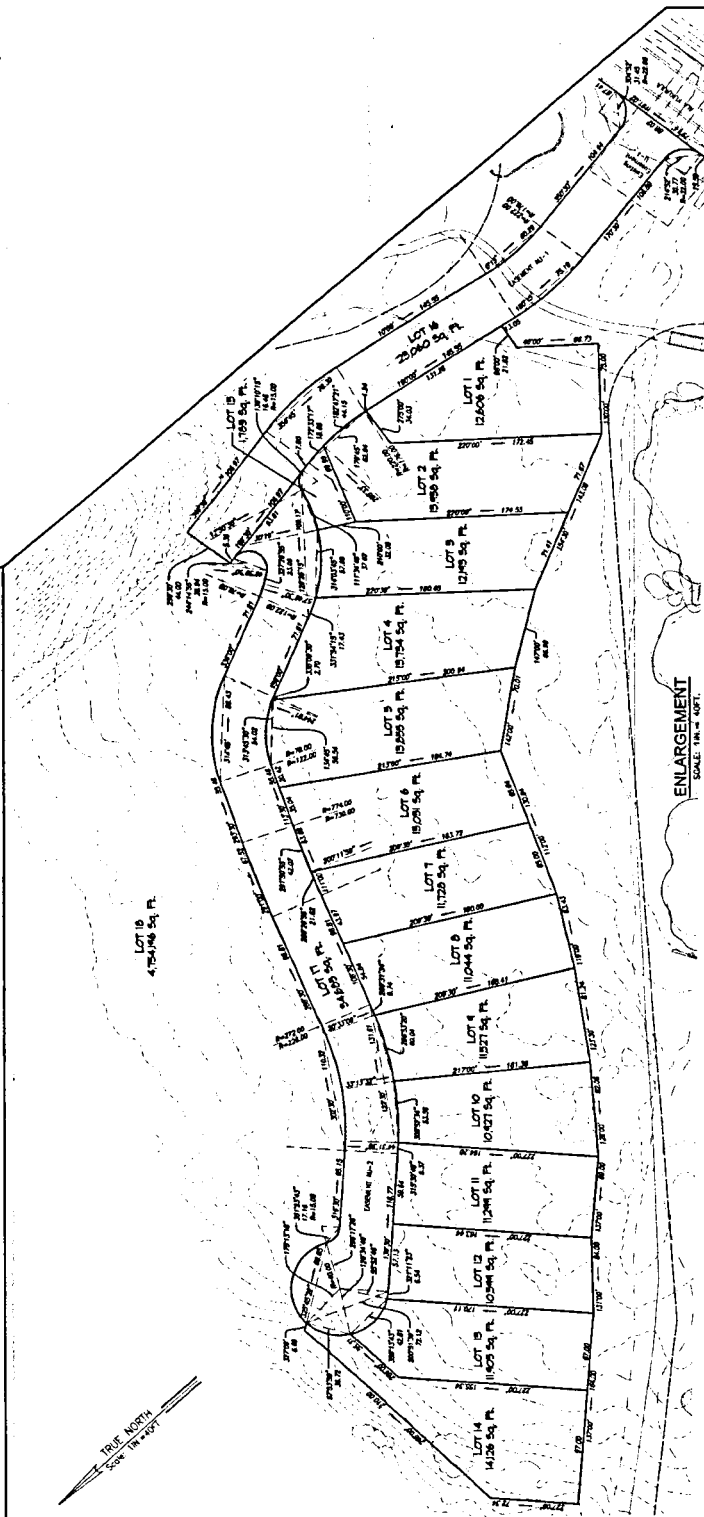
RESEARCH OF NEW POLYMER

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

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Subdivision No. S-2023-4 Kukuila Parcel J1-A Subdivision





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

Water has no substituteConserve it!

SUBDIVISION REPORT

TO: PLANNING DEPARTMENT
FROM: DEPARTMENT OF WATER

June 13, 2023

TMK: 2-6-023:040 NAME: BBCP Kukui'ula Development LLC SURVEYOR: Marcus K. Hoapili REPORT NO: S-2023-4

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

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

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

Kukui'ula Development Company (KDC) will be required to:

 - A. Submit an updated Kukui'ula Water Demand and System Capacity Tracking Matrix.
 - B. Be made aware that the Facilities Reserve Charge and the adequacy of source, storage and transmission facilities for the proposed Development will be dependent on the approved updated Kukui'ula Water Demand and System Capacity Tracking Matrix.
 - C. Identify the proposed subdivision lots that will not be assigned water service. DOW comments may change depending on the approved subdivision map.

Regina Flores

Jun 13, 2023

SUBDIVISION REPORT No. S-2023-4

Regina Reyes-Flores, P.E.
Water Resources & Planning

Date

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

COUNTY OF KAUAI

'23 MAY -5 P3:25

PLANNING DEPT.

DATE: May 2, 2023

TO: To Whom It May Concern

FROM: Janet M. Berreman, M.D., M.P.H.,
District Health Officer (Acting for District Environmental Health Program
Chief)

SUBJECT: RESPONSE_BBCP Kukui'ula Development LLC_TMK : 2-6-15:15

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

By Revised Statute 11-62-31.1 If the parcel is less than 10,000sq feet, an individual onsite waste-water unit may not be possible for future construction. Please contact Sina Pruder at the 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 808-241-3492.

Janet Berreman

Janet M. Berreman, MD, MPH, FAAP

Kauai District Health Officer

Office Phone: (808) 241-3614



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

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

4/27/2023

SUBJECT: Subdivision S-2023-4

Tax Map Key: 260230400000

Applicant: BBCP Kukui'ula Development LLC

Kuku'ula Parcel J1A Subdivision

COUNTY OF KAUAI RECEIVED

'23 MAY -3 P3:26 APR 28 2023

PLANNING DEPT. County of Kauai
Transportation Agency

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 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 4/27/2023)

5/2/2023

CTA HAS NO FURTHER COMMENT ON THIS
PROJECT.

MAHALO!



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

County of Kauai
PLANNING DEPT

4/27/2023

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

SUBJECT: Subdivision S-2023-4
Tax Map Key: 260230400000
Applicant: BBCP Kukui'ula Development LLC
Kuku'ula Parcel J1A Subdivision

'23 APR 31 A4 19

RECEIVED

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 |
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| <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 |
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| <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 4/27/2023)

Wastewater - No comments -
This Subdivision is not within County Sewer
service area.
5/1/23

Draft
Ka Pa‘akai Analysis in Support of a Ka Pa‘akai Assessment
for Parcel J1 of the
Kukui‘ula Community Development Project,
Kōloa Ahupua‘a, Kōloa District, Kaua‘i
TMK: (4) 2-6-015:001 por.

Prepared for
BBCP Kukui‘ula Development, LLC

Prepared by
Kellen Tanaka, B.A.,
David W. Shideler, M.A.,
and
Hallett H. Hammatt, Ph.D.

Cultural Surveys Hawai‘i, Inc.
Kailua, Hawai‘i
(Job Code: KOLOA 101)

March 2023

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Management Summary

Reference	Ka Pa'akai Analysis in Support of a Ka Pa'akai Assessment for Parcel J1 of the Kukui'ula Community Development Project, Kōloa Ahupua'a, Kōloa District, Kaua'i, TMK: (4) 2-6-015:001 por. (Tanaka et al. 2023)
Date	March 2022
Project Number(s)	Cultural Surveys Hawai'i, Inc. (CSH) Job Code: KOLOA 101
Agencies	County of Kaua'i Department of Planning
Land Jurisdiction	BBCP Kukui'ula Development, LLC
Project Location	Parcel J1 is located within the central Kōloa Ahupua'a (eastern) portion of the Kukui'ula Community Development Project, TMK: (4) 2-6-015:001 por. lands on the south shore of Kaua'i. Parcel J1, situated in former cane lands, is bounded by Ala Kukui'ula to the south; Kukui'ula golf course hole #7 to the west; the soon to be developed lands of Parcels K, L, and the rest of J to the north; and a ridge with a portion of Kukui'ula golf course hole #6 to the east. Parcel J1 is approximately 750 m inland from the coast at Ka Lae Ki'i Point and is at approximately 40 foot (ft) elevation on gently rising land. The project parcel is depicted on the 1996 Koloa U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle (Figure 1) and several other maps and aerial photographs.
Project Description	BBCP Kukui'ula Development, LLC is proposing to construct residential lots and associated infrastructure in Parcels J, K, L.
Project Acreage	Parcel J1 is estimated at approximately 7.96 acres (3.22 hectares).
Document Purpose and Regulatory Context	<p>The Kaua'i County Planning Department has indicated a need for Ka Pa'akai Assessment studies to attend applications for Planning Department processing. The Planning Department has kindly supplied a Kaua'i Planning Department Worksheet for Ka Pa'akai Assessment, regarded here as the guiding document.</p> <p>The purpose of the present Ka Pa'akai Analysis and Assessment is to assist the client and the Kaua'i Planning Department in their effort to 1) ensure the applicant has sufficiently assessed that the proposed project/action will not harm traditional and customary practices exercised by Native Hawaiians; and 2) to provide sufficient documentation to support the applicant's assessment.</p> <p>This work is being carried out to address the letter and spirit of the following:</p> <ul style="list-style-type: none"> • Ka Pa'akai O Ka'aina v. Land Use Commission (94 Hawai'i 31), in which the Hawai'i Supreme Court established a three-part analytical framework to assist the

	<p>state and counties in fulfilling their constitutional obligation to preserve and protect traditional and customary practices (TCP [used here as it is in the <i>Kaua'i Planning Department Worksheet for Ka Pa'akai Assessment</i> to refer to "traditional and customary practices"]) exercised by Native Hawaiians, to the extent feasible, and</p> <ul style="list-style-type: none"> • The mandate set forth by the Hawai'i State Constitution (Articles IX and XII), courts, Hawai'i Revised Statutes (HRS), and Hawai'i Administrative Rules (HAR) and other Hawai'i State laws requiring government agencies to promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups.
Results of Background Research	<p>Background research for the proposed project yielded the following information:</p> <ul style="list-style-type: none"> • The project area is well back from the coast (750 m) and it is understood there is no potable water closer than Waikomo Stream which is about 1,500 m away. • Our first detailed information of traditional Hawaiian land use in Kōloa Ahupua'a is in the native tenant Land Commission Award (LCA) data. Native tenant LCAs tended to be clumped near Waikomo Stream more than a kilometer east of the Parcel J1 study area. No native tenant LCAs were located within 600 m of Parcel J1. • The absence of place names on historic maps of 1872, 1896, 1900, 1910, and 1963 indicate little traditional Hawaiian activity in the project area. • The description associated with Queen Emma's estate (west of the project area) states, "the house must have indeed seemed desolate to those accustomed to Honolulu. The surrounding area was an arid, stony pasture, suitable only for grazing" (Forbes 1970:4). • The timeframe when Parcel J1 was in commercial sugarcane production is not completely clear but is believed to extend from very close to 1876 (when McBryde leased Queen Emma's Lāwa'i land) to very close to 1996, or close to 120 years. Aerial photographs from 1951, 1965, and 1978 indicate the project area was in a sea of sugarcane. During this long span of nearly 120 years, it is understood that access inside the project area was restricted to employees of McBryde Sugar Company. • No cultural properties have been identified in the Parcel J1 project area by prior archaeological studies including an archaeological

	<p>inventory survey (Hammatt et al. 1988) and a contemporary field inspection (Hammatt 2023)</p> <ul style="list-style-type: none"> In the cultural impact assessment (CIA), 29 Hawaiian organizations, government agencies, community members, and cultural and lineal descendants with ties to Kukui'ula were contacted to 1) identify potentially knowledgeable individuals with cultural expertise and knowledge of the project area and the surrounding vicinity, and 2) identify cultural concerns and potential impacts within the project area. <p>None of the <i>kama'āina</i> (native born) interviewees who were former residents of the Kukui'ula area knew of any cultural sites in the project area, or could recall anyone entering the project area for any traditional cultural practice. The only interviewees with knowledge of traditional culture within the project area were Dr. William Kikuchi and Mrs. Aletha Kaohi who were acquainted with the area through professional and community service pursuits.</p> <p>Based on the evidence gathered in the CIA it was concluded that no contemporary or continuing cultural practices occur within the project area (Hammatt et al. 2002:i, ii).</p>
Results of Community Consultation	<p>CSH previously completed a CIA (Hammatt et al. 2020) that addressed the Kukui'ula lands including the entirety of Parcel J1.</p> <p>CSH attempted to contact Hawaiian organizations, agencies, and community members as well as cultural and lineal descendants to identify individuals with cultural expertise and/or knowledge of the project area and vicinity. Community outreach letters were sent to 52 individuals or groups by USPS and/or email (typically both). Nine responded (Ka'āhiki Solis, Terry Kuribayashi, Galen Kawakami, Nancy McMahon, and Kalanikumai Ka Maka'uli'uli Puamo'i 'O Nā Ali'i Hanohano [also known as Zacheriah Harmony], Chad Shimmelfennig, Marvin Otsuji, Roslyn Cummings, and Aletha Kaohi).</p>
Identification of Cultural Practices	<p>Background study including review of a CIA that included the Parcel J1 project area, review of a variety of other archaeological and historical data, and responses to the contemporary cultural consultation outreach has identified no cultural, historical, or natural resources where cultural practices (including traditional and customary Native Hawaiian rights) are being exercised in the Parcel J1 project area.</p>
Identification of Impacts to Cultural Practices	<p>Background study and the recent consultation outreach has identified no cultural, historical, or natural resources where cultural practices (including traditional and customary Native Hawaiian rights) are being exercised in the Parcel J1 project area, thus no impacts to cultural practices are indicated.</p>

Mitigation Possibilities Identified During Background Research and Consultation	<p>No mitigation possibilities in the project area per se have been identified during consultation and background research. The absence of traditional cultural properties and practices in the project area relates to the micro-environment of the project area which is well back from the coast and relatively far from freshwater. The project area vicinity prior to commercial sugarcane cultivation was described as “desolate to those accustomed to Honolulu. The surrounding area was an arid, stony pasture, suitable only for grazing” (Forbes 1970:4). The project area was under intensive sugarcane cultivation for nearly 120 years (1876–1996). During this long span of time, it is understood that access inside the project area was restricted to employees of McBryde Sugar Company.</p> <p>This study recommends, and the County of Kaua'i Department of Planning might support, that</p> <ol style="list-style-type: none"> 1. Project construction workers and all other personnel involved in the construction and related activities of the project should be informed of the possibility of inadvertent cultural finds, including human remains. In the event that any potential historic properties are identified during construction activities, all activities will cease and the State Historic Preservation Division (SHPD) will be notified pursuant to HAR §13-280-3. If <i>iwi kūpuna</i> (Native Hawaiian skeletal remains) are identified, all earth moving activities in the area will stop, the area will be cordoned off, and the SHPD, coroner, and Police Department will be notified pursuant to HAR §13-300-40. In addition, in the event of an inadvertent discovery of human remains, the completion of a burial treatment plan, in compliance with HAR §13-300 and HRS §6E-43, is recommended. 2. If <i>iwi kūpuna</i> and/or cultural finds are encountered during construction, project proponents should consult with cultural and lineal descendants of the area to develop a reinterment plan and cultural preservation plan for proper cultural protocol, curation, and long-term maintenance.
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Table of Contents

Management Summary	i
Section 1 Introduction	1
1.1 Project Description	1
1.2 Regulatory Context.....	1
1.3 Document Purpose.....	7
1.4 Natural Environment	7
1.4.1 <i>Nā Makani</i> (Winds)	10
1.4.2 <i>Nā Ua</i> (Rains).....	10
1.4.3 <i>Nā Kahawai</i> (Streams and Freshwater)	10
1.4.4 <i>Ka Lihikai a me Ka Moana</i> (the Coast and Ocean)	10
1.5 Built Environment	11
Section 2 Methods	12
2.1 Archival Research.....	12
2.2 Community Consultation.....	12
2.2.1 Scoping for Participants.....	12
2.2.2 “Talk Story” Sessions.....	12
Section 3 Traditional Accounts	14
3.1 Kōloa <i>Ka’ao</i> and <i>Mo’olelo</i>	14
3.1.1 <i>Nā Inoa ‘Āina</i> (Place Names).....	14
Section 4 Historical Narrative.....	19
4.1 Pre-Contact	19
4.2 Early Historic Period	20
4.3 Māhele and Kuleana Act.....	23
4.4 Description of the Kukui‘ula Lands Before Sugarcane	26
4.5 Early Sugar and Export Crops at Kōloa.....	26
4.6 McBryde Sugar Company and the Kukui‘ula project area	26
4.7 Kōloa Makai Table Lands in the Twentieth Century.....	27
Section 5 Previous Archaeological Research	38
5.1 Previous Archaeological Studies in the Immediate Vicinity	38
5.2 The Archaeological Inventory Survey	38
5.3 2023 Archaeological Field Inspection	60
5.4 Historic Properties Near Parcel J1	66
5.4.1 Identifications near Parcel J1	66
5.4.2 Burial Sites in the Vicinity.....	66
5.4.3 <i>Heiau</i> Sites in the Vicinity.....	67
Section 6 Consultation Results.....	68
6.1 Cultural Impact Assessment Including the Parcel J1 Project Area.....	68
6.2 Community Outreach Table.....	71
6.3 Community Outreach Results.....	76

Section 7 Cultural Practices and Resources Identified During Consultation	
Associated with the Project Area/ Greater Ahupua'a	79
7.1 Native Gathering Practices for Plant Resources	79
7.2 Native Hawaiian Hunting Practices	79
7.3 Agricultural Practices	79
7.4 Coastal and Marine Resources	80
7.5 Freshwater Resources	80
7.6 Cultural Historic Properties	80
7.7 Any Other Resources Detected	80
7.8 <i>Nā Inoa 'Āina</i> (Place Names)	80
7.9 Burials	80
7.10 Trails	81
Section 8 Ka Pa'akai Analysis	82
8.1 Summary of Cultural Practices and Resources Identified during Background Research and Consultation	82
8.2 Summary of Community Outreach and <i>Kama 'āina</i> Perspectives	83
8.3 Assessment of Impacts Posed to Cultural Practices and Cultural Resources	83
8.3.1 Individual's Comments or Thoughts on the Potential Impacts the Proposed Project may have on Ongoing Traditional Cultural Practices and Cultural Resources within the Proposed Project Area and Greater <i>Ahupua'a</i>	83
8.3.2 Comments or Thoughts on the Potential Impacts the Proposed Project may have on Cultural Properties and <i>Wahi Pana</i> within the Proposed Project Area and Greater <i>Ahupua'a</i>	84
8.3.3 CSH Assessment of Impacts Posed to Cultural Practices and Cultural Resources, Integrating Perspectives from Consultation, and Evidence from Background Research	84
8.4 Mitigation Possibilities Identified during Consultation and Background Research	84
Section 9 References Cited	86
Appendix A Community Outreach Letter	97
Appendix B Testimony of Manawaiakea (Roslyn Cummings)	103
Appendix C Testimony of Zacheriah Harmony	108

List of Figures

Figure 1. Portion of 1996 Koloa USGS 7.5-minute-series topographic map, showing the location of the Parcel J1 project area	2
Figure 2. Tax Map Key (TMK) (4) 2-6-015, showing Parcels J1 within the Kukui'ula Community Development project area (Hawai'i TMK Service 2013).....	3
Figure 3. Aerial photograph showing Parcel J1 within the Kukui'ula Community Development project area (ESRI 2016).....	4
Figure 4. Site plan for the Kukui'ula Parcel J1 (courtesy of client)	5
Figure 5. Portion of a 1996 Koloa USGS topographic quadrangle, with overlay of <i>Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii</i> (Foote et al. 1972; USDA SSURGO 2001), indicating soil types within and surrounding the study area	9
Figure 6. Portion of 1996 Koloa USGS 7.5-minute series topographic quadrangle, showing the Kukui'ula Community Development area within Lāwa'i and Kōloa Ahupua'a and the location of Parcel J1 in Kōloa Ahupua'a.....	15
Figure 7. Map showing estimated distribution of population for Kaua'i in 1853 (Coulter 1931:16)	21
Figure 8. 1996 Koloa USGS topographic quadrangle, showing the distribution of native tenant LCA parcels in Kukui'ula, and vicinity	25
Figure 9. 1872 Gay map of Lāwa'i and Keke'e showing the western Kukui'ula Community Development area and the location of Parcel J1	28
Figure 10. 1896 Monsarrat map of 'Ele'ele to Kōloa (RM 1842) showing the location of Parcel J1 of the Kukui'ula Community Development area	29
Figure 11. 1900 Monsarrat map of McBryde sugar lands (RM 2145) showing the location of Parcel J1 of the Kukui'ula Community Development area	30
Figure 12. 1910 Hanapepe and Lihue USGS topographic quadrangles, showing Parcel J1 of the Kukui'ula Community Development area.....	31
Figure 13. 1922 map of McBryde Sugar Company (from Condé and Best 1973:193) showing McBryde fields extending east to Waikomo (Kōloa) stream and showing the Kukui'ula Development Area and the location of Parcel J1 (mostly within field 22 B).....	32
Figure 14. 1951 USGS aerial photograph of Lāwa'i (UH MAGIS) showing the Kukui'ula Development Area and the location of Parcel J1 (see inset)	34
Figure 15. Portion of the 1963 Koloa USGS topographic quadrangle showing the location of the Kukui'ula Development Area and Parcel J1	35
Figure 16. 1965 USDA aerial photograph (UH MAGIS) showing the Kukui'ula Development Area and the location of Parcel J1 under sugarcane cultivation (see inset)	36
Figure 17. 1978 Koloa USGS orthophotoquad aerial photograph showing the Kukui'ula Development Area and the location of Parcel J1 under sugarcane cultivation (see inset)	37
Figure 18. Portion of 1996 Koloa USGS topographic quadrangle, showing parcel J1 and previous archaeological studies at the Kukui'ula Community Development project area and vicinity	39

Figure 19. Portion of 1996 Koloa USGS topographic quadrangle showing parcel J1 and historic properties identified during previous archaeological studies at the Kukui'ula Community Development project area and vicinity	48
Figure 20. Location of future entrance into Parcel J, K, and L (cart road just off Ala Kukui'ula), view to northwest (from Hammatt 2023:11).....	61
Figure 21. Location of future entrance into Parcel J, K, and L, view to northwest (from Hammatt 2023:11)	61
Figure 22. Overview photo of project area taken from the southeast, view to northwest (from Hammatt 2023:12)	62
Figure 23. Overview photo taken from approximate center of project area, view to north (from Hammatt 2023:13)	63
Figure 24. Overview photo taken from approximate center of project area, view to east (from Hammatt 2023:13)	63
Figure 25. Overview photo taken from approximate center of project area, view to southeast (from Hammatt 2023:14)	64
Figure 26. Overview photo taken from approximate center of project area, view to southwest (from Hammatt 2023:14)	64
Figure 27. Overview photo taken from approximate center of project area, view to west (from Hammatt 2023:15)	65
Figure 28. Overview photo project area taken from the northwest area, view to southeast (from Hammatt 2023:15)	65

List of Tables

Table 1. Land Commission Awards at Kukui'ula Kōloa.....	24
Table 2. Previous archaeological studies in the vicinity of the project area.....	40
Table 3. Archaeological historic properties in the Kukui'ula Community Development project	49
Table 4. Results of community consultations reported in the CIA (Hammatt et al. 2002:32–33).....	69
Table 5. Summary table of cultural consultation outreach regarding Parcel J1	71

Section 1 Introduction

1.1 Project Description

BBCP Kukui'ula Development, LLC is proposing to construct residential lots and supporting infrastructure in Parcel J1, estimated at approximately 7.96 acres (3.22 hectares), within the central Kōloa Ahupua'a (eastern) portion of the Kukui'ula Community Development Project, TMK: (4) 2-6-015:001 lands on the south shore of Kaua'i. Parcel J1, situated in former cane lands, is bounded by Ala Kukui'ula to the south; Kukui'ula golf course hole #7 to the west; the soon to be developed lands of Parcels K, L, and the rest of J to the north; and a ridge with a portion of Kukui'ula golf course hole #6 to the east. Parcel J1 is approximately 750 m inland from the coast at Ka Lae Ki'i Point and is at approximately 40 foot (ft) elevation on gently rising land. The project parcel is depicted on the 1996 Koloa U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle (Figure 1), a tax map plat (Figure 2), a 2016 aerial photograph (Figure 3), and a client-provided site plan (Figure 4).

1.2 Regulatory Context

The Kaua'i County Planning Department has indicated a need for Ka Pa'akai Assessment studies to attend applications for Planning Department processing. The Planning Department has kindly supplied a Kaua'i Planning Department Worksheet for Ka Pa'akai Assessment which is regarded here as the guiding document (text supplied below). We have added (in bold and italics) after each subheading where in the present study the point has been addressed.

Kaua'i Planning Department Worksheet for Ka Pa'akai Assessment

In *Ka Pa'akai O Ka'aina v. Land Use Commission* (94 Hawai'i 31), the Hawai'i Supreme Court established a three-part analytical framework to assist the State and Counties in fulfilling their constitutional obligation to preserve and protect traditional and customary practices (TCP [used here as it is used in the *Kaua'i Planning Department Worksheet for Ka Pa'akai Assessment* to refer to "traditional and customary practices]) exercised by Native Hawaiians, to the extent feasible. The analytical framework was developed to assist with balancing both the rights of Native Hawaiians to exercise their TCPs, and the private landowners.

Before determining an application is complete for processing, the Planning Department will review the application to ensure: 1) the applicant has sufficiently assessed that the proposed project/action will not harm TCP rights exercised by Native Hawaiians; and 2) the applicant has provided sufficient documentation to support its assessment. The applicant's documentation should provide sufficient information for the Planning Department to apply the Ka Pa'akai 3-step analytical framework as set forth below.

- 1. Identify whether any valued cultural, historical, or natural resources are present within the project area, and identify the extent to which Native Hawaiian TCP rights are exercised.**

Depending on the project, the applicant's documentation may include but not be limited to the following information and documentation:

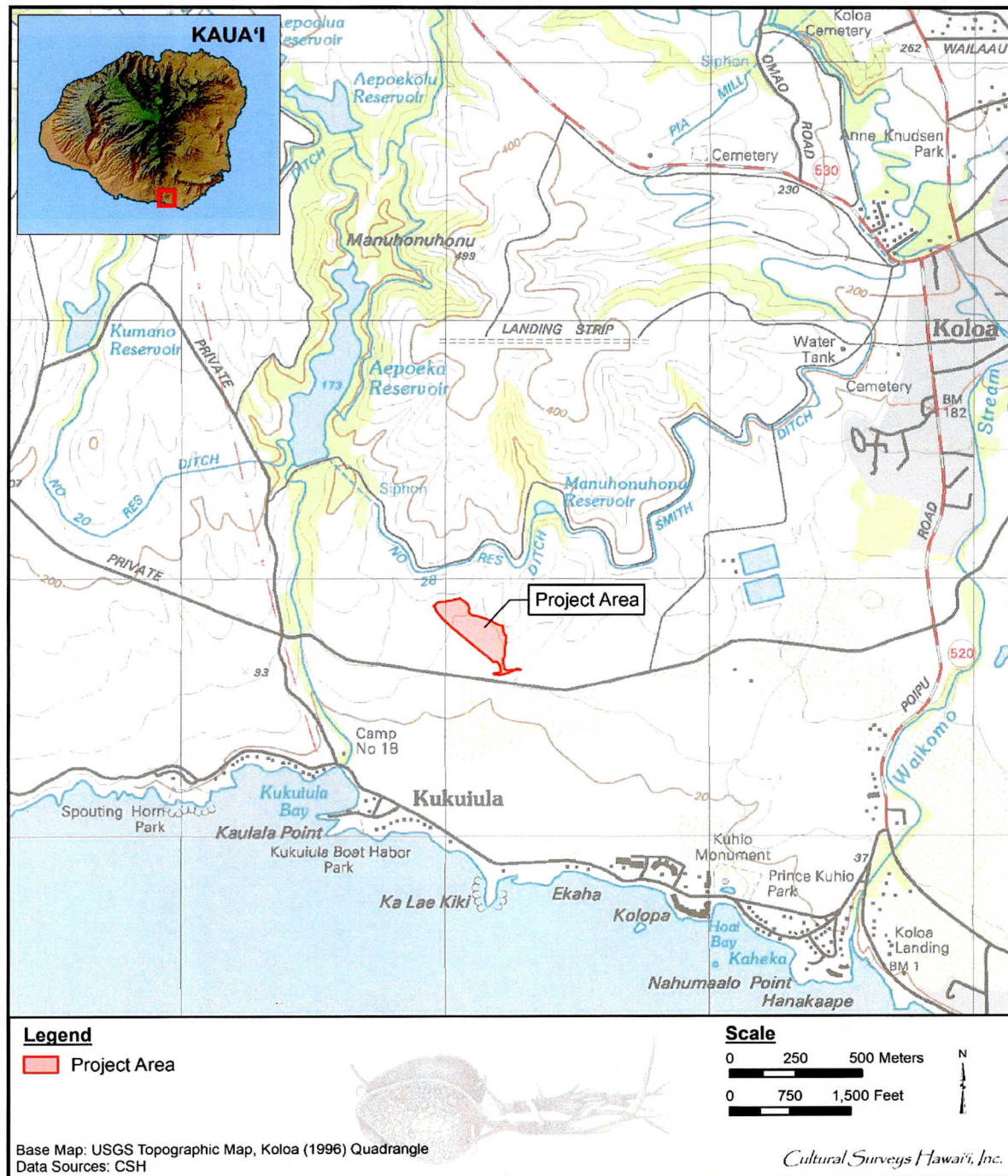


Figure 1. Portion of 1996 Koloa USGS 7.5-minute-series topographic map, showing the location of the Parcel J1 project area

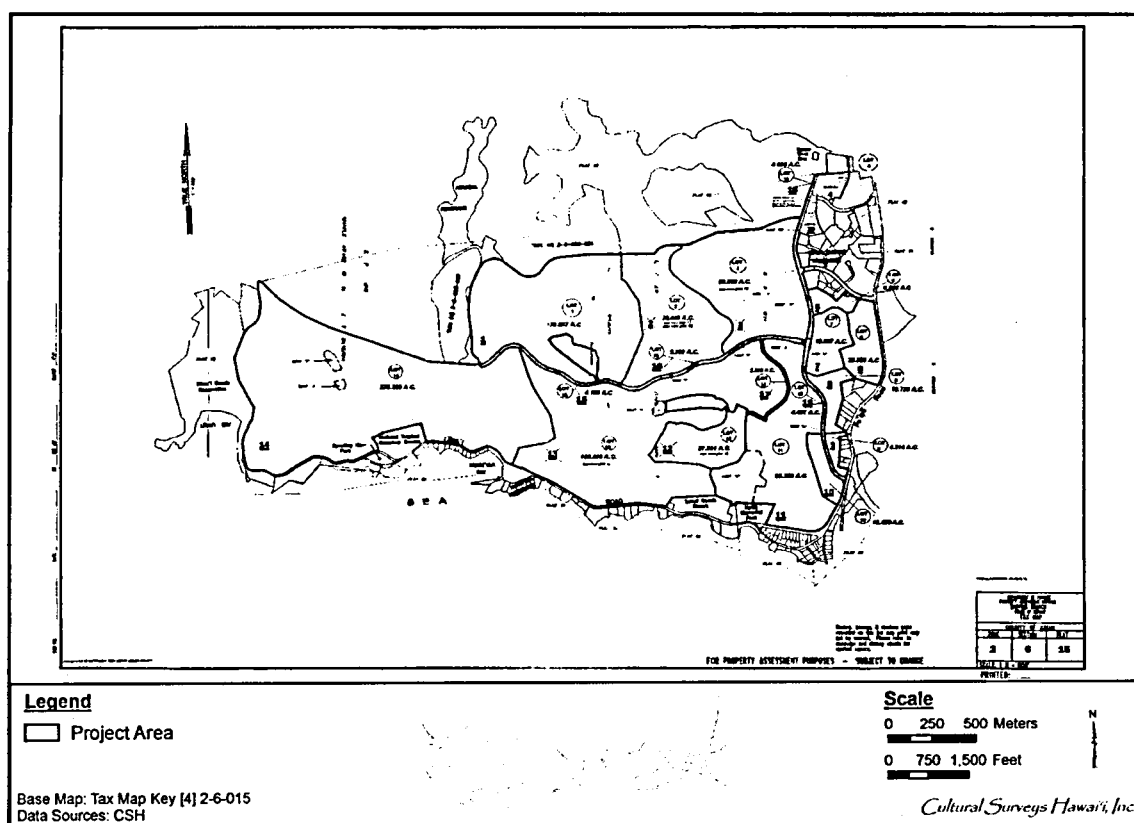


Figure 2. Tax Map Key (TMK) (4) 2-6-015, showing Parcels J1 within the Kukui'ula Community Development project area (Hawai'i TMK Service 2013)

Ka Pa'akai Assessment for Parcel J1 of the Kukui'ula Community Development Project, Kōloa, Kaua'i

3

TMK: (4) 2-6-015:001 por.



Figure 3. Aerial photograph showing Parcel J1 within the Kukui'ula Community Development project area (ESRI 2016)

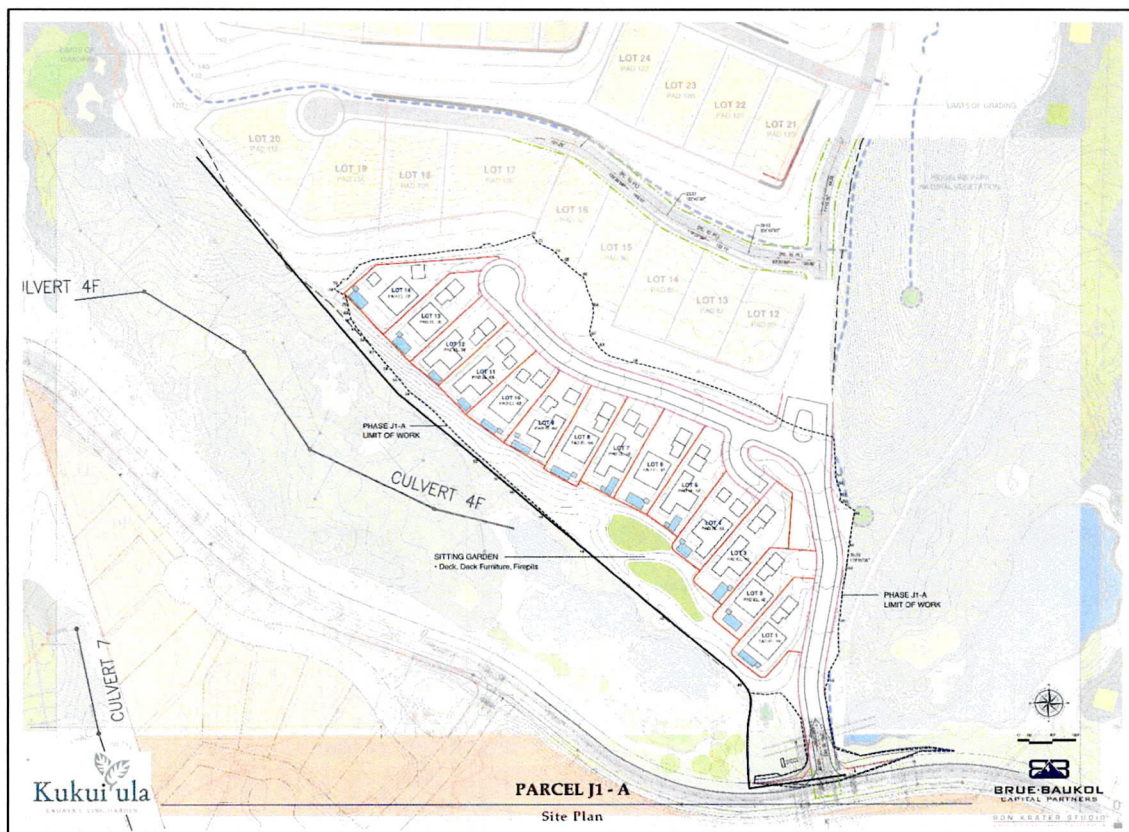


Figure 4. Site plan for the Kukui'ula Parcel J1 (courtesy of client)

Ka Pa'akai Assessment for Parcel J1 of the Kukui'ula Community Development Project, Kōloa, Kaua'i

5

TMK: (4) 2-6-015:001 por.

a. **A detailed map of the project area**

The map shall include any proposed development in relation to the *ahupua'a* [traditional land division]. This includes land commission awards (LCA), *kuleana* lands (including *kama 'āina* [native born] testimony during the Commission to Quiet Land Titles hearing), trails (within the *ahupua'a* and lateral to the *ahupua'a*), streams, shoreline. *[We have included overlays of the project area on 20 maps and aerial photographs to better analyze and present the history of traditional cultural practices in the project area and ahupua'a.]*

b. **Cultural consultation** with families, Native Hawaiian Organizations, Office of Hawaiian Affairs, and the Aha Moku Advisory Council who may have a relationship or knowledge of the *ahupua'a* and specific project area, including TCP of gathering, hunting, religious ceremonies, etc. *[Cultural consultation outreach to 52 parties is summarized in Section 6 and Section 7.]*

c. **Summary of community outreach** if any, that may include community concerns, especially from Native Hawaiians, about destruction of resources, denial of access, etc. *[The cultural consultation outreach and responses are summarized in Section 6.]*

d. **Archaeological Inventory Survey** that includes the names of LC Awardees and *kuleana* awardees to identify potential descendants of the *ahupua'a*, archival research of previous archaeological studies, including the *mo'olelo* (stories) of the *ahupua'a* and adjacent areas, cultural consultations, etc., identification of known cultural and historic resources, including burials, *heiau* [pre-Christian place of worship], cemeteries, *lo'i kalo* terraces, etc.; and history of the land uses from pre-contact to present, including agricultural uses, grading and grubbing, habitation, vacant lands, etc. *[The findings of the archaeological inventory survey and other archaeological studies are presented in Section 5 of this study. Additional information on the history of land use in Kōloa Ahupua'a is provided in Section 4.]*

e. **Cultural Impact Assessment** that includes ethnographic interviews, identification of cultural, historic, and natural resources and TCP. *[The cultural impact assessment (CIA) and findings are summarized in Section 6.1.]*

f. **Environmental Studies** that include botany studies about potential native plants, and other relevant information.

2. **Determine the extent to which the identified resources and rights will be affected or impaired by the proposed project. This will be case-by-case depending on the facts, but consider the following:**

a. Overlay the known trails, access, sensitive areas, historic sites, cultural sites (including burials), LCAs, etc. over the proposed project, including installation of utilities, to determine the proposed project's potential impacts

to the valued cultural, historic, and natural resources; *[The relationship of identified resources and rights to the project area are summarized in Section 8.J and*

- b. Information in the material provided by the applicant or during the public meetings or hearings from *ahupua'a* descendants or members of the community regarding potential impacts. *[Addressed in Section 8]*
3. **Specify any feasible action, if any, to be taken to reasonably protect Native Hawaiian rights if they are found to exist, either currently or possibly in the past. This will be case-by-case depending on the facts, but consider the following:**
 - a. Information in the material provided by the applicant or during the public meetings or hearings from *ahupua'a* descendants or members of the community regarding any feasible action to preferably avoid impacts, and if avoidance is not possible then potential mitigation measures; *[Addressed in Section 8]* and
 - b. Consider a condition that Cultural Descendants who have traditionally and customarily fished, hunted, or gathered in the area shall have right to access the subject property to fish, hunt, or gather, and they shall coordinate access with the landowner in advance, and this right shall run with the land. *[Addressed in Section 8]*

1.3 Document Purpose

The purpose of the present Ka Pa'akai Analysis and Assessment is to assist the client and the Kaua'i Planning Department in their effort to 1) ensure the applicant has sufficiently assessed that the proposed project/action will not harm traditional and customary practices exercised by Native Hawaiians; and 2) to provide sufficient documentation to support the applicant's assessment.

This work is being carried out to address the letter and spirit of the following:

- Ka Pa'akai O Ka'aina v. Land Use Commission (94 Hawai'i 31), in which the Hawai'i Supreme Court established a three-part analytical framework to assist the state and counties in fulfilling their constitutional obligation to preserve and protect traditional and customary practices exercised by Native Hawaiians, to the extent feasible, and
- The mandate set forth by the Hawai'i State Constitution (Articles IX and XII), courts, Hawai'i Revised Statutes (HRS), and Hawai'i Administrative Rules (HAR) and other Hawai'i State laws requiring government agencies to promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups.

1.4 Natural Environment

The Kukui'ula Community Development area is located in the *ahupua'a* (land division usually extending from the uplands to the sea) of Lāwa'i and Kōloa in Kōloa District, on Kaua'i Island (see Figure 6). The Parcel J1 project area of concern is the parcel designated J1 located on moderately sloping table lands within the eastern Kōloa Ahupua'a portion of Kukui'ula.

The bedrock is composed of massive flows of *pāhoehoe* of the post-erosional Kōloa Volcanic Series, which date to the Pleistocene (Macdonald and Abbott 1970:387–388). According to the U.S. Department of Agriculture (USDA) Soil Survey Geographic (SSURGO) database (2001) and soil survey data gathered by Foote et al. (1972), the soils within Parcel J1 consist of (from northwest to southeast) Lihue silty clay (LhD and LhB), Nonopahu clay, 2 to 10% slopes (NnC), Hanamaulu silty clay, 3 to 8% slopes (HsB), Waikomo stony silty clay (Wt), and Koloa stony silty clay, 15 to 25% slopes (KvD) (Figure 5)

Lihue series soils are described as follows:

[...] well-drained soils on uplands on the island of Kauai. These soils developed in material weathered from basic igneous rock. They are gently sloping to steep. [...] These soils are used for irrigated sugarcane, pineapple, pasture, truck crops, orchards, wildlife habitat, woodland, and homesites. The natural vegetation consists of lantana, guava, koa haole, joe, kikuyugrass, molassesgrass, guineagrass, bermudagrass, and Java plum. [Foote et al. 1972:82]

Nonopahu series soils are described as follows:

[...] moderately well drained soils on uplands on the island of Kauai. These soils developed in material weathered from basic igneous rock relatively high in olivine. They are gently sloping to moderately sloping. [...] These soils are used for irrigated sugarcane and pasture. The natural vegetation consists of koa haole, klu, and feather fingergrass. [Foote et al. 1972:100]

Hanamaulu series soils are described as follows:

[...] consists of well-drained soils on stream terraces and steep terrace breaks on the island of Kauai. These soils developed in alluvium washed from upland soils. They are nearly level to strongly sloping. [...] These soils are used for sugarcane, pasture, wildlife habitat, and water supply. The natural vegetation consists of guava, pandanus, glenwoodgrass, ricegrass, hau, and mango. [Foote et al. 1972:39]

Waikomo series soils are described as follows:

[...] consists of well-drained, stony and rocky soils on uplands on the island of Kauai. These soils developed in material weathered from basic igneous rock, probably with a mixture of ash and alluvium in places. These soils are gently sloping. [...] These soils are used for sugarcane, pasture, wildlife habitat, and homesites. The natural vegetation consists of lantana, koa haole, Java plum, pricklypear cactus, swollen fingergrass, bermudagrass, and guineagrass. [Foote et al. 1972:132]

Koloa series soils are described as follows:

[...] consists of well-drained soils on slopes of old volcanic vents and upland ridges on the island of Kauai. These soils are underlain by hard rock at a depth of 20 to 40 inches. They developed in material weathered from basic igneous rock. They are gently sloping to moderately steep. [...] These soils are used for irrigated sugarcane. The natural vegetation is mainly koa haole. [Foote et al. 1972:74]

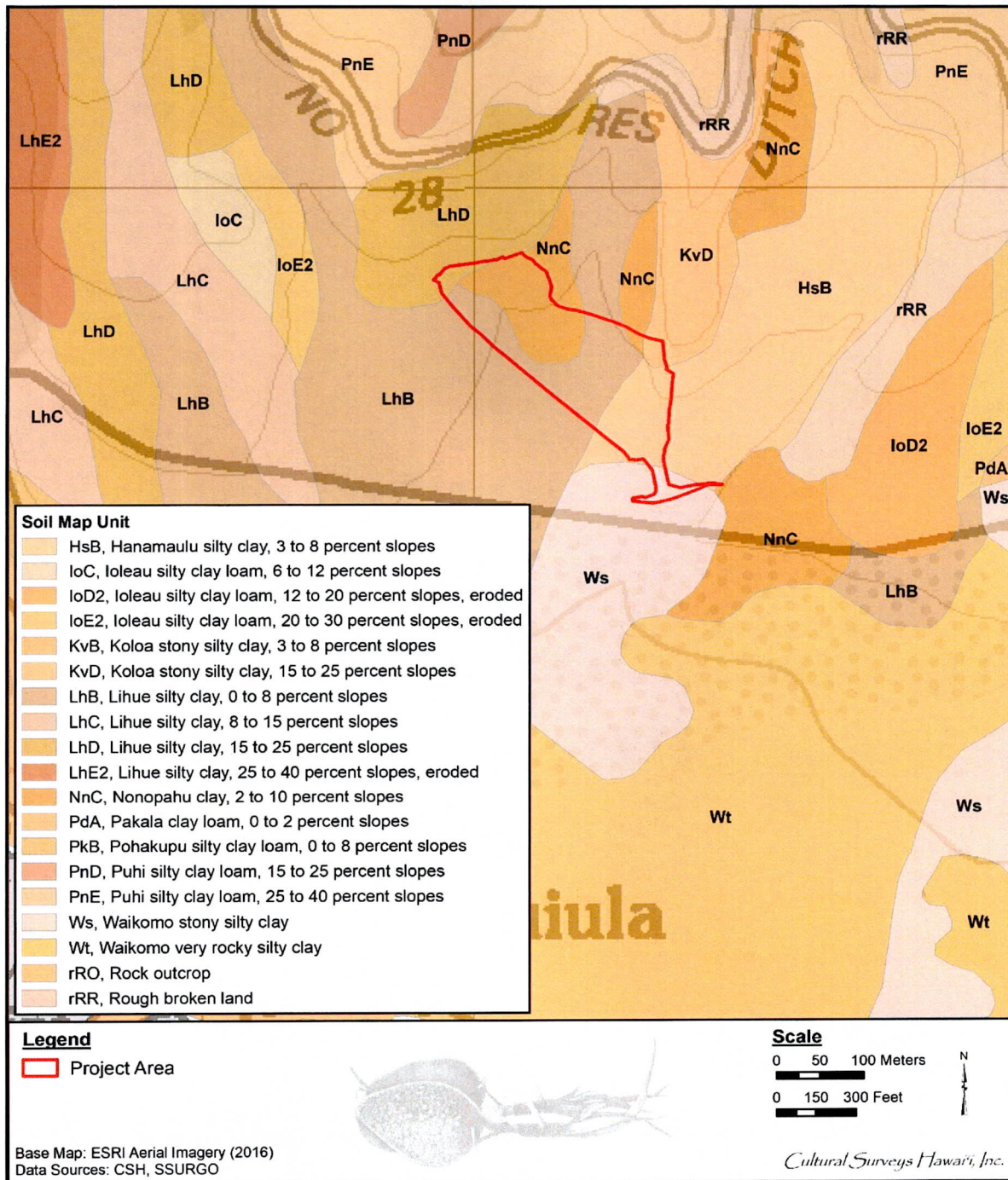


Figure 5. Portion of a 1996 Koloa USGS topographic quadrangle, with overlay of *Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii* (Foote et al. 1972; USDA SSURGO 2001), indicating soil types within and surrounding the study area

The annual rainfall at the neighboring Kukuiula Station is 1,069.2 mm (42.1 inches) (Giambelluca et al. 2013) which is suggested to be marginal for non-irrigated agriculture.

1.4.1 *Nā Makani* (Winds)

Northeasterly trade winds prevail throughout the year, although their frequency varies from 80 to 95% of the time during the summer months, when high-pressure systems tend to be located north and east of the Hawaiian Islands. During the winter months, the high-pressure systems are located farther to the south, decreasing the occurrence of the trade winds to about 50 to 80% of the time (WRCC 2010).

The Wind Gourd of La'amaomao tells the story of Pāka'a and his son Kuāpāka'a, descendants of the wind goddess La'amaomao, who are given control over the winds of Hawai'i which are contained in a gourd. Each wind could be called forth by chanting their names (Nakuina 1992). Pāka'a's chant traces the winds of Kaua'i found in the *ahupua'a* of Lāwa'i and Kōloa. *Makani* is the general Hawaiian word for wind. The A'e is the trade wind named for Lāwa'i.

When the Hawaiian goddess, Pele, traveled to Kaua'i, she recited the winds of Kaua'i to her lover Lohi'au and his people.

Wahiawa has an Unulau wind ...	<i>He Unulau ko Wahiawa..</i>
Kalāheo has a Kiuanu wind	<i>He Kiuanu ko Kalāheo</i>
Lāwa'i has an 'Aoa wind...	<i>He 'Aoa ko Lāwa'i...</i>
Kōloa has a Holomālani wind...	<i>He Holomālani ko Kōloa...</i>
Hanaka'ape has an Ulumano wind	<i>He Ulumano ko Hanaka'ape</i>

[Ho'oulumāhiehie 2008a:16–17; Ho'oulumāhiehie 2008b:16–17]

There are at least two different Hawaiian names for the winds found in the Kōloa Ahupua'a: Malanai, a gentle breeze, the trade wind of Kōloa (Nakuina 1990:149), and "Holomālani wind" (Ho'oulumāhiehie 2008:16).

1.4.2 *Nā Ua* (Rains)

Relatively few rain names are known for Kaua'i and the name of the rain in Lāwa'i is uncertain. There is at least one named *ua* (rain) of Kōloa, the cold Noe rain (Akana 2015:154).

1.4.3 *Nā Kahawai* (Streams and Freshwater)

Kōloa Ahupua'a is dominated by one major stream, Waikomo Stream. In a ranking of stream resources, Waikomo Stream is ranked as of outstanding cultural (includes stream-related cultural sites) value, moderate recreational value (includes stream pools, waterfalls, and banks that provide recreational opportunities), moderate aquatic resource (includes fish, mollusks, and crustaceans) value and substantial riparian (includes streamside or terrestrial natural resources) value (Commission on Water Resource Management 1993:23).

1.4.4 *Ka Lihikai a me Ka Moana* (the Coast and Ocean)

The coastline of Kōloa Ahupua'a is blessed with great resources including Kukui'ula Bay (Kukui'ula Small Boat Harbor) that provides considerable protection for small craft (Clark 1990:65) and Kōloa Landing that was a focus for whale ships.

Kōloa Landing:

was established in Hanaka'ape Bay in a natural cove cut into the shoreline by Waikomo Stream. Before the turn of the century [1900], an average of 40 to 60 ships, including whalers, called each year at the landing. There they discharged and picked up cargo and passengers and took on supplies. With the introduction of modern means of transportation, the old sugar landings fell into disuse. Koloa Landing was used into the 1920s, but today little more than its name remains to identify this once busy site. [Clark 1990:65]

The availability of marine resources is attested to:

The south shore of Kaua'i from Lawa'i to Po'ipu is considered one of the best sport diving and spearing areas on the island. These waters are especially attractive because of the normally calm seas, extensive reefs, excellent underwater visibility, and close proximity to residential and resort communities. [Clark 1990:65]

"Beach House Beach," Prince Kūhiō Park, Po'ipū Beach, Wai'ōhai Beach, Po'ipū Beach Park, and Brennecke Beach are still popular places for coastal access at Kōloa (Clark 1990:65–72).

1.5 Built Environment

The majority of the Kukui'ula Community Development area was planted in commercial sugarcane from very close to 1876 (when McBryde leased Queen Emma's Lāwa'i land) to very close to 1996, or nearly 120 years. Aerial photographs from 1951 (see Figure 14), 1965 (see Figure 16), and 1978 (see Figure 17) indicate the project area was in a sea of sugarcane.

Portions of the Kukui'ula Community Development area have undergone substantial changes (see Figure 3 and Figure 4) with the presence of roads, including a bypass road and a roundabout, the construction of the Kukui'ula Shopping Village, the private golf course, and the clubhouse including club cottages and bungalows. The current project area consists largely of fallow, former cane fields and is surrounded by the Kukui'ula Golf Course with housing developments to the south and east (see Figure 3, as well as Figure 20 through Figure 28).

Section 2 Methods

2.1 Archival Research

Research centers on Hawaiian activities including *ka'ao* (legends), *wahi pana* (storied places), *ōlelo no 'eau* (proverbs), *oli* (chants), *mele* (songs), traditional *mo'olelo* (stories), traditional subsistence and gathering methods, ritual and ceremonial practices, and more. Background research focuses on land transformation, development, and population changes beginning with the early post-Contact era to the present day.

Cultural documents, primary and secondary cultural and historical sources, historic maps, and photographs were reviewed for information pertaining to the study area. Research was primarily conducted at the CSH library. Other archives and libraries including the Hawai'i State Archives, the Bishop Museum Archives, the University of Hawai'i at Mānoa's Hamilton Library, Ulukau, the Hawaiian Electronic Library (Ulukau.org 2014), the State Historic Preservation Division (SHPD) Library, the State of Hawai'i Land Survey Division, the Hawaiian Historical Society, and the Hawaiian Mission Houses Historic Site and Archives are also repositories where CSH cultural researchers gather information. Information on Land Commission Awards (LCAs) were accessed via Waihona 'Aina Corporation's Māhele database (Waihona 'Aina 2022), the Office of Hawaiian Affairs (OHA) Papakilo Database (Office of Hawaiian Affairs 2015), and the Ava Konohiki Ancestral Visions of 'Āina website (Ava Konohiki 2015).

2.2 Community Consultation

2.2.1 Scoping for Participants

The CSH cultural department commences our consultation efforts by utilizing our previous community contact list to facilitate the interview process. We then review an in-house database of *kūpuna* (elders), *kama'āina*, cultural practitioners, lineal and cultural descendants, Native Hawaiian Organizations (NHOs; includes Hawaiian Civic Clubs and those listed on the Department of Interior's NHO list), and community groups. CSH also contacts agencies such as SHPD, OHA, and the appropriate Island Burial Council where the proposed project is located for their response on the project and to identify lineal and cultural descendants, individuals and/or NHO with cultural expertise and/or knowledge of the study area. CSH is also open to referrals and new contacts. Outreach was attempted to 52 parties.

2.2.2 "Talk Story" Sessions

Prior to the interview, CSH cultural researchers explain the nature of cultural consultation, how the consent process works, the project purpose, the intent of the study, and how their *'ike* (knowledge) and *mana'o* (thought, opinion) will be used in the report. The interviewee is given an Authorization and Release Form to read and sign.

"Talk Story" sessions range from the formal (e.g., sit down and *kūkā* [consultation, discussion] in the participant's place of choice over set interview questions) to the informal (e.g., email, telephone, Zoom-type, or face-to-face consultation, hiking to cultural sites near the study area and asking questions based on findings during the field outing). In some cases, interviews are recorded and transcribed later.

CSH also conducts group interviews, as appropriate, which range in size. Group interviews usually begin with set, formal questions. As the group interview progresses, questions are based on interviewees' answers. Group interviews are always transcribed and notes are taken. Recorded interviews assist the cultural researcher in 1) conveying accurate information for interview summaries, 2) reducing misinterpretation, and 3) adding missing details to *mo'olelo*.

CSH seeks *kōkua* (assistance) and guidance in identifying past and current traditional cultural practices of the study area. Those aspects include general history of the *ahupua'a*; past and present land use of the study area; knowledge of cultural sites (for example, *wahi pana*, archaeological sites, and burials); knowledge of traditional gathering practices (past and present) within the study area; cultural associations (*ka'ao* and *mo'olelo*); referrals; and any other cultural concerns the community might have related to Hawaiian cultural practices within or in the vicinity of the study area.

2.2.3 Interview Completion

After an interview, CSH cultural researchers transcribe and create an interview summary based on information provided by the interviewee. Cultural researchers give a copy of the transcription and interview summary to the interviewee for review and ask that they make any necessary edits. Once the interviewee has made those edits, CSH incorporates their *'ike* and *mana'o* into the report. When the draft report is submitted to the client, cultural researchers then prepare a finalized packet of the participant's transcription, interview summary, and any photos taken during the interview. We also include a thank you card and honoraria.

"*I ulu no ka lālā i ke kumu*—the branches grow because of the trunk," is an *'ōlelo no'eau* (#1261) shared by Mary Kawena Pukui with the simple explanation: "Without our ancestors we would not be here" (Pukui 1983:137). As cultural researchers, we often lose our *kūpuna* but we do not lose their wisdom and words. We routinely check obituaries and gather information from other community contacts if we have lost our *kūpuna*. CSH makes it a point to reach out to the *'ohana* of our *kūpuna* who have passed on and pay our respects including sending past transcriptions, interview summaries, and photos for families to have on file for genealogical and historical reference.

Section 3 Traditional Accounts

Traditionally, the island of Kaua'i was divided into five *moku* (districts): Halele'a, Kona, Ko'olau, Nāpali, and Puna. However, after the battle of Wahiawa in 1824, the land of Kaua'i was redistributed and district boundaries changed. The new district names became Hanalei, Kawaihau, Līhu'e, Kōloa, and Waimea. The Kōloa District consisted of seven of the 14 *ahupua'a* formerly within Kona Moku. 'Ele'ele was also added to the Kōloa District. Traditionally, 'Ele'ele was an *'ili* (smaller land division) of Hanapēpē Ahupua'a in Kona Moku, but it was separated during the redistribution. 'Ele'ele subsequently became an *ahupua'a* of the Kōloa District, and Hanapēpē became an *ahupua'a* of the Waimea District. Thus, currently the eight Kōloa *ahupua'a* are 'Ele'ele, Wahiawa, Kalāheo, Lāwa'i, Kōloa, Weliweli, Pā'ā, and Māhā'ulepū, from west to east. The Kukui'ula Community Development project includes portions of Lāwa'i and Kōloa *ahupua'a*; the Parcel J1 study area is in Kōloa Ahupua'a (Figure 6).

3.1 Kōloa Ka'ao and Mo'olelo

3.1.1 Nā Inoa 'Āina (Place Names)

Nā wahi pana translations presented in this subsection are from *Place Names of Hawaii* (Pukui et al. 1974), unless indicated otherwise. Lloyd Soehren (2013) has lately compiled all the place names from mid-nineteenth century land documents into an online database. He presents spelling and meanings of names from the Pukui et al. book (1974). When no meaning from this book is given, Soehren often suggests meanings for simple names based on meanings from Pukui and Elbert's (1986) *Hawaiian Dictionary*.

It is of interest to note that Puki et al. (1974:146) give the name for the hill below which the Parcel J1 project area is located as "Manuhonoho," translated as "bad smelling bird." However, modern USGS maps (see Figure 1) give the name for the same region as "Manuhonuhonu." The name of the reservoir and dam north of parcel J1 is also taken from this modern spelling variant.

The name Kōloa has several derivations. Kōloa is the name for the large, soft Hawaiian sugarcane (*Saccharum officinarum*) once grown by the Hawaiians; Kōloa is also the name of a steep rock, called Paliokōloa, on the banks of Waikomo Stream, from where the *ahupua'a* got its name. This bank of the river was called Kōloa, after the native Hawaiian duck (*Anas wyvilliana*) (Kikuchi 1963:46; Pukui et al. 1974:116).

The Kōloa Ahupua'a is well watered by constantly flowing streams. Two of these, the 'Ōma'o, "green," and Pō-'ele'ele, "dark night," feed the Pīwai (a variety of wild duck) in the area. Where they join, the stream becomes Wai-komo, "entering water," which flows down the center of the land, bringing life to the drier regions toward the seashore. It is so named because from time to time "the stream disappears for a bit before reappearing farther down the slope" (Wichman 1998:40). The *ahupua'a* is watered by several other streams: the Aepe, Waihohonu ("deep water," named for a hole formed when Palila felled a forest of trees with one stroke [Pukui et al. 1974:222]), Weliweli, and the Weoweopilau.

Kōloa is bordered by Lāwa'i Ahupua'a to the west, Weliweli Ahupua'a to the east and Ha'ikū Ahupua'a to the north and northeast (Figure 6). The boundary with Lāwa'i ends on the eastern shore of Kukui'ula Bay near the mouth of Aepe Stream and extends inland to the peaks Pu'u Kolo and Kāhili, where it extends along the boundary of Hā'iku Ahupua'a on the *mauka* (inland, toward

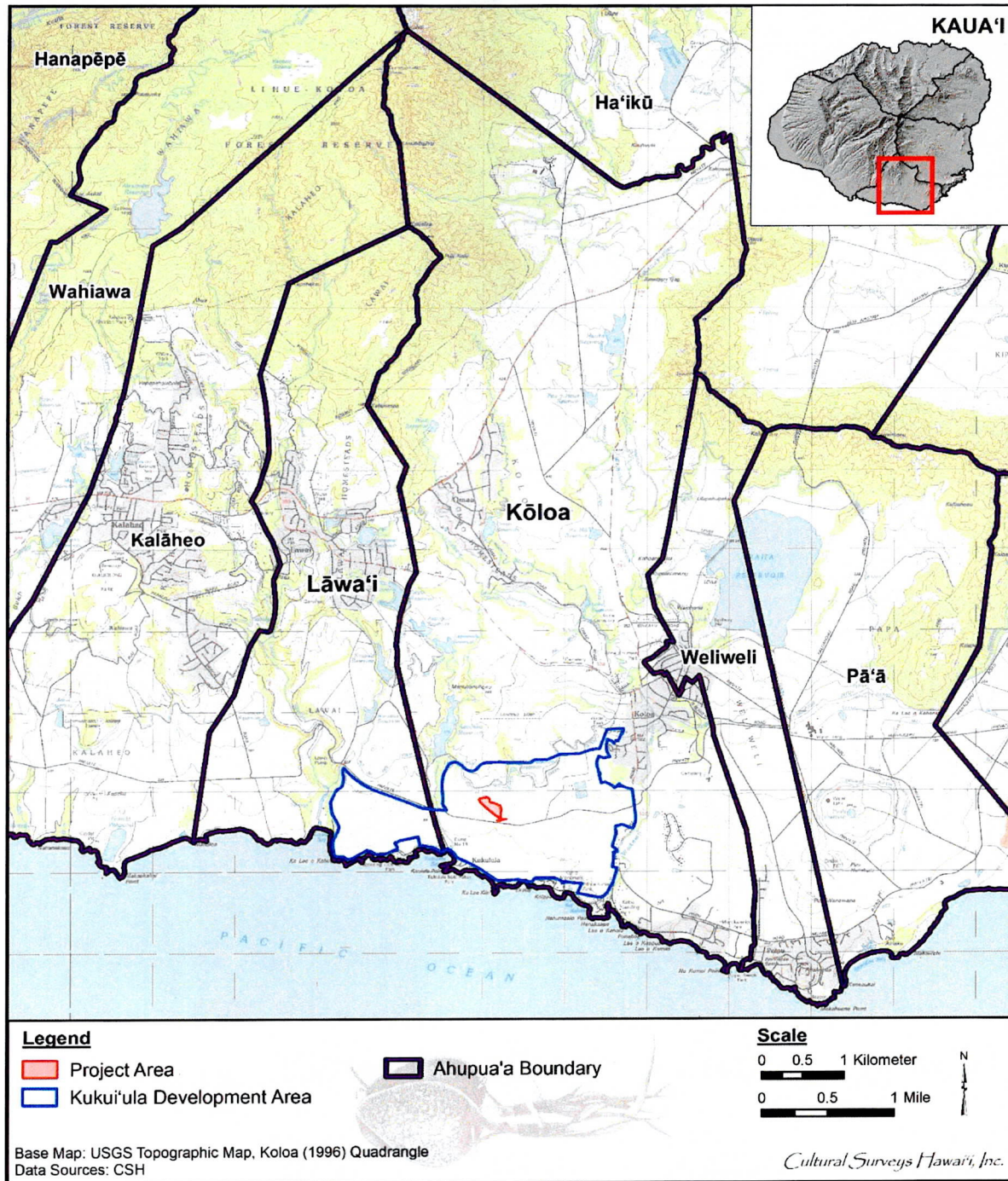


Figure 6. Portion of 1996 Kōloa USGS 7.5-minute series topographic quadrangle, showing the Kukui'ula Community Development area within Lāwa'i and Kōloa Ahupua'a and the location of Parcel J1 in Kōloa Ahupua'a

the mountains) side. The northeast corner of the *ahupua'a* is at Lā'aukahī ("lone tree"). At the shore, it is separated from Weliweli at a place called Poapoko.

Sixty-six *'ili* are listed in mid-nineteenth century land documents, emphasizing the importance of this well-watered *ahupua'a* and the dense population that it could support. The *'ili* (land divisions smaller than *ahupua'a*) are Aea, 'Awikiwiki, Hālālī'i, Halehinahina, Kaakaupuawa, Ka'auwailalo ("the lower ditch"; Soehren 2013), Kaauwailuna ("the upper ditch"; Soehren 2013), Kahoai, Kahoana ("the whetstone"), Kahoiwai, Ka'ili'ili ("the pebble"), Kalehuaoka'ele, Kalua'alamihī, Kamaemae, Kamaloula ("the red loincloth"; Soehren 2013), Kamanomano, Ka'ōhi'a ("the 'ōhi'a tree"; Soehren 2013), Kāpala'alaea ("daub of ocher"; Soehren 2013), Kapalakea ("a variety of taro"; Soehren 2013), Kapalau, Kapo'o, Kapuna ("the spring"), Kaukahōkū ("the star appears"), Kaulia ("hung, suspended"; Soehren 2013), Kauluolona, Kaunuolono ("the altar of Lono"; Soehren 2013), Kawailehua, Keaku, Keanakaha'ia, Kekui, Kihinui, Kīkīaola ("container acquired by Ola"), Kioea ("bristle-thighed curlew"; Soehren 2013), Kiona ("Zion, or dung heap, privy"; Soehren 2013), Kōloa Hikina ("east Kōloa"; Soehren 2013), Kōloa Komohana ("west Kōloa"; Soehren 2013), Kualu, Kuunameheala, Lapapōhaku ("stone ridge"; Soehren 2013), Lauuluhaa, Lepoakua, Makapala ("sore beginning to heal"), Mākea ("fallow land, or a variety of *kalo* or *awa*"; Soehren 2013), Malaula, Maneneha'aha'a ("low plantain"), Manini, Ma'uliuli, Mauna Pōhaku, Milohai, 'Ōma'o ("green"), Opuohaku, Palaulalo, Paoa, Pipipi'eu'eu ("lively mollusk, *Theodoxus neglectus*"; Soehren 2013), Poahonu, Pō'ele'ele ("black night"), Pōhakuomakali'i ("stone of Makali'i"; Soehren 2013), Puahehu, Puhaku, Punahelu, Puokahaku, Pu'u Holo, Pu'u o Haku ("Haku hill"; Soehren 2013), Waikomo ("entering water"; Soehren 2013), Wailā'au (sap of plants, or a liquid medicine; Soehren 2013), and Waiohai.

Five *heiau* (pre-Christian place of worship) are listed in Kōloa: Hō'ai (probably "to feed"; Soehren 2013) (Site 75; Bennett 1931:117) at Kūhiō Park on the west bank of Waikomo Stream, Kanehale (Site 92; Bennett 1931:122) on the east branch of 'Ōma'o Stream, destroyed before Bennett's 1930s publication, Kaneiolouma (Site 81; Bennett 1931:118) on the shore near Kihouna Heiau (site 80; Bennett 1931:118–119), and Kūhāhāpō ("Kū feeling at night") at Lae o Kahala.

Evidence of a rich history within Kōloa is offered in a Lahainaluna document. This document appears to be based on an oral historical project. On 7 September 1885 a student from Lahainaluna Schools (HMS 43 #17) interviewed Makea—"a native who is well acquainted with Koloa"—and recorded "what she said about the well-known places in the olden times." More than 64 years after the abolition of the *kapu* system and almost as many years of contact with westerners, Makea was able to describe, in detail, 14 *heiau* within the Kōloa area, for example:

Maulili was the first *heiau* of south Koloa. Kapulauki was the first chief of Koloa, Kiha came next. That is the chief I know of. He was a ruling chief of Kaua'i in the olden days, when the *heiau* was standing there. It had already been built and men had been sacrificed on its altars. This Kiha was called Kiha-of-the-luxuriant-hair. Another name for him was Kakae and another was Ka-pueo-maka-walu (Eight-eyed-owl).

This *heiau* was also famous for this reason—it was the first *heiau* to which Kawelo was carried after he had swooned in Wahiawa, in the battle where stones were used as missiles.

The location of this *heiau* was not known, but a deaf mute knew and it was he who pointed it out to the chiefs, and that is how it was rediscovered in the olden days.

Kiha lived on the eastern side of the heiau and 'Aikanaka lived on the northeastern side. Aikanaka, was the one with whom Kawelo fought and he was the owner of this heiau at that time. [Lahainaluna School 1885:165]

3.1.2 Legendary and Traditional Accounts of Kōloa Ahupua'a

One *'ōlelo no'eau* (proverb) is associated with Kōloa and aspects of its lifeways:

Aia i Koloa Is at Kōloa

A play on *kō* (drawn) and *loa* (long)—drawn a long way under. Drunk. [Pukui 1983:8]

Several places within Kōloa have legendary associations. The first is Maulili Pool, meaning “constant jealousy,” in Waikomo Stream, a sacred place once located in the present Kōloa Town, in the middle of the *ahupua'a*.

One tale is of the gods Kāne and Kanaloa who slept on the eastern bank of Maulili Pool and left the impressions of their forms on the *'āpapa* (coral flat). “The *apapa* in this vicinity is called an ‘Unu.’ and a ‘Heiau,’ but was never walled in, it is said. [This *heiau* may be the Maulili Heiau]. On the nights of Kāne the drums are heard to beat there, also at the sacred rocks, or *unu's*, of Opuokahaku and Kānemilohae, near the beach of Po'ipū [...]” (Farley 1907:93). Just below the resting places of Kāne and Kanaloa is the “Pali o Kōloa” or “Cliff of Kōloa,” which the district was possibly named after.

Wai-hānau, meaning “birth pool,” is a rock on the eastern bank of the pool. There is a *mele* (chant) about Waihānau:

*Aloha wale ka Pali o Koloa,
Ke Ala huli i Waihanau e, hanau.* [Farley 1907:93]

Below Wai-hānau was a rock shaped like a human tongue called “Ka-‘ōlelo-o-Hawai'i,” “language of Hawai'i.” It is said that Kaweloleimakua, who lived at the end of the 1600s, brought this rock to Kaua'i from the island of Hawai'i. According to Wichman (1998), “Kiha-wahine, the fearsome *mo'o* goddess, lived in this pool. When she was in residence, the water turned red and no one dared to swim there” (Wichman 1998:40). “At the southern end of the Maulili pool started two large *'auwais* [ditch, canal] that watered the land east and west of Kōloa” (Farley 1907:93).

Maulili is also the name of Kōloa's most important *heiau*. It was first built by Ka-pueo-makawalu, the son of Kapu-lau-kī. He had his house on the eastern side of this *heiau*. It was a place of human sacrifice, but once Kapueomakawalu died, it was no longer used and its location was lost (Wichman 1998:41). Many years later, when 'Aikanaka had defeated his cousin Kawelo in the battle of stones on the plains of Wahiawa, 'Aikanaka wanted a place to sacrifice the body. No one was sure of it, but a deaf mute led 'Aikanaka to the place. The place was rebuilt and in the morning 'Aikanaka went to sacrifice the body. He found Kawelo was healed from his wounds and it was 'Aikanaka instead who was sacrificed (Wichman 1998:41).

Kapueomakawalu also built the *heiau* of Louma, which stood on the mountainside of Ho'oleina-ka-pua'a, “place to throw in the pig.” This was beside a small pond *mauka* of Maulili. Louma was a small *heiau* in which hogs, red fishes, and other sacrifices were offered. It was dedicated to Lono-i-ka-ou-ali'i, the god who had come to Kaua'i with La'a-mai-kahiki in the twelfth century. The stones for this *heiau* were brought from O'ahu. It is said that the *menehune* (legendary race of small people who built structures at night) did the actual building (Wichman 1998:41).

According to Wichman (1998), Palila, the legendary figure who wielded a huge war club to save his father, was born during the period of war between the kingdoms of Puna and Kona about AD 1200 at Kamo'oloa. He was raised by his grandmother in the *heiau* of 'Ālana-pō, "night offering," sacred to the gods from the time of darkness (Wichman 1998:39–40).

The following is a *mo'olelo* (story) about the small stream called Weoweo-pilau, "rotten bigeye fish," which is on the plains of Kamo'oloa:

It seems an upland farmer heard that the bigeye fish were running at the beach, so he went down and caught a great number of them. On his way home, an old woman asked him for a few fish but he refused to give her any, saying she could go to the shore and get as many as she wanted. As he continued home, his load of fish became heavier and heavier, the path dustier and dustier, and the sun blazed with heat. When he reached the stream, he put down his fish and plunged in to cool off. When he came out, he smelled that his fish were completely rotten. He then realized that the old lady had been Pele, the volcano goddess, testing his generosity and hospitality. He had been found wanting and was punished. [Wichman 1998:40]

There are also many *mo'olelo* in the *makai* (seaward) area of Kōloa. According to Wichman (1998), Hālau-a-ka-lena, "shed for the 'olena (*Curcuma domestica*), turmeric plant," was dedicated to the *mo'ō* goddess Kihawahine. If she was offended, she would take the form of a sea dragon and patrol the seashore, killing all who dared fish from canoes and along the reef and rocks (Wichman 1998:420). The story of "Ke Kōloa o Kaikapū" is similar (Wichman 1991:88–91) in which a *mo'ō* named Kaikapū guarded the Kōloa shoreline, keeping everyone away from the swimming places and from the food on the reefs and in the sea. She would eat fishermen and swimmers near the shore. Soon no one living in Kōloa would come to the ocean to fish, gather the golden brown *līpoa* seaweed used to flavor their food, or work at the natural rock pans where salt was made. Liko and his grandmother lived on the hill above Kukui'ula bay. Liko's grandmother once expressed that she longed for the taste of *i'a ho'omelu*, the relish made of raw *hīnālea* (brightly colored wrasses, family *Labridae*) fish mixed with red salt, roasted *kukui* (*Aleurites moluccana*) nuts, and brown *līpoa* seaweed. Liko decided his grandmother must have the fish and brought his *kauila* (*Alphitonia ponderosa*) wood spear and his *hīnālea* trap woven from *'inalua* (*Cardiospermum halicacabum*) vine. Liko dove into the water and battled Kaikapū. He defeated her by swimming into the lava tube opening that led to a rocky platform above and trapping her in the narrowing tube. From then on, the seashore was free for everyone to use. Even today when the column of water shoots high into the sky, an angry roar echoes from the tube, *ke kōloa o Kaikapū* (Wichman 1991:88–91).

The early life of the hero Kawelo is also associated with Kōloa. Kawelo grew up in Wailua with two friends, Kauahoa of Hanalei and Aikanaka, the son of the king of Kaua'i. The three were fiercely competitive, and when his grandparents gave Kawelo a canoe, Kauahoa was jealous, so he made himself a kite. As soon as he saw the kite, Kawelo wanted one for himself and he asked his grandparents to make him one. He flew the kite next to Kauahoa and the two entangled, which caused Kauahoa's to break away and fall to the earth in Kōloa, at a place named Kaho'oleināpe'a ("the flying of the kites") after this event (Fornander 1918:5:3–4).

Section 4 Historical Narrative

The purpose of this section is to provide a focused historical narrative for Kōloa Ahupua'a as it provides information regarding patterns of land use at and in the vicinity of Parcels J, K, L.

4.1 Pre-Contact

Chronological analysis from Kōloa and the two neighboring *ahupua'a*, Pā'ā and Weliweli, suggests an early initial occupation within the Kōloa District of ca. AD 535 (Walker and Rosendahl 1990:131). Initial occupation probably was characterized by temporary and/or recurrent occupation. From AD 600-1400, settlements in the Kōloa area were still limited to the coast. By AD 1040, lava tubes were used for burial and temporary habitation in the inland areas of Kōloa (Hammatt et al. 1999:7).

However, it should be noted that recent analysis of radiocarbon dates in Hawai'i suggest more consensus for colonization of the Hawaiian Archipelago between AD 1000 and AD 750 (Rieth and Cochrane 2015). Also, "Paleoenvironmental sequences from O'ahu and Kaua'i have recorded vegetation change and increases in microscopic charcoal consistent with human activities between ~1050 and 850 cal. B.P. [~AD 900 and 1100]" (Rieth and Cochrane 2015:9). (All dates reported in this section taken from the individual analyses as cited have not been independently verified or validated during the background research process and should be understood as provisory.)

One Hawaiian tradition says the islands of Hawai'i were first settled by the chief Punanuikaianaina, who came to the Puna District of Kaua'i from the Marquesas around AD 1000 to 1100 (Fornander 1996:45–46). The early settlers of the Hawaiian archipelago would have been especially attracted to the windward side of Kaua'i, which boasted large river valleys supporting a vast inland region of irrigated pond-fields for *kalo* (taro) cultivation that became the agricultural core of Kaua'i. The greatest of these river valleys were around Wailua and Hanamā'ulu streams. Excavation data near the mouth of Hanamā'ulu Stream indicates early occupation of the area between AD 1170 and 1400 (State Inventory of Historic Places [SIHP] # 50-30-11-01839, Walker et al. 1991). This area was richly endowed with agricultural wealth and was a major residential and religious center for the nobility (Kirch 2010:171). A number of prominent *heiau* and a sacred birthing site were located in the central Wailua area (Bennett 1931:125–128). In approximately AD 1450 (a time estimate based on an average length of generational intervals in chiefly genealogies), the Kaua'i *ali'i* (chief) Manokalānipo is credited "for the energy and wisdom with which he encouraged agriculture and industry, executed long and difficult works of irrigation, and thus brought fields of wilderness under cultivation" (Fornander 1996:93).

On the island of O'ahu in approximately AD 1490, the *'aha ali'i* (council of chiefs) chose Mā'ilikūhahi, an *ali'i kapu* (sacred chief) who was born at the sacred site of Kūkaniloko in the uplands of Waialua, to be the new *ali'i nui* (paramount chief) of O'ahu. After his paramountship was installed at the *heiau* of Kapukapuākea in central Waialua, Mā'ilikūhahi instituted an explicit land division and administrative structure (Kirch 2010:84–90). Although Kaua'i remained politically independent during this time period, a hierarchical land system was also imposed on that island.

4.2 Early Historic Period

The first written accounts of Kaua'i are from travelers, missionaries, and surveying expeditions. Missionary accounts of the first half of the nineteenth century provide the majority of the early written records for this particular part of Kaua'i. The earliest explorers, like Cook and Vancouver, used Waimea for anchorage and victualing, with no mention made of Kōloa. However, their descriptions of well maintained, watered agricultural systems on this dry leeward coast are echoed in the early descriptions of Lāwa'i and Kōloa. Cook notes, "What we saw of their agriculture, furnished sufficient proofs that they are not novices in that art. The vale ground has already been mentioned as one continuous plantation of taro, and a few other things, which all have the appearance of being well tended to" (Cook 1784:244). Vancouver's description records "the low country which stretches from the foot of the mountains toward the sea, occupied principally with the taro plant [...] interspersed with some sugar-cane of luxuriant growth and some sweet potatoes" (Vancouver 1798:1:170).

Reverend Hiram Bingham's account of travelling east from Hanapēpē, in 1824, reports traverse

[...] through a country of good land, mostly open, unoccupied and covered with grass, sprinkled with trees, and watered with lively streams that descend from the forest-covered mountains and wind their way along ravines to the sea. It is a much finer country than the western part of the island. [Bingham 1847:219]

No specifics are supplied.

The earliest documentation of Kōloa district population appears in the 1853 when missionary censuses recorded a total population of 1,296 (Schmitt 1977:12). A population distribution map by Coulter (1931) (Figure 7) indicates the population of Kaua'i ca. 1853 "was concentrated chiefly on the lower flood plains and delta plains of rivers where wet land taro was raised on the rich alluvial soil" (Coulter 1931:14).

The area about Koloa in the southeast was also well populated. Koloa was a port of call for whaling vessels 'to recruit for the Polar Seas.' There 'calabashes of poi, raw fish, bunches of bananas, and bundles of sugar cane [...] [were] offered for sale to the foreigner.' There was a sugar cane plantation of 2,000 acres in this district, the proprietor of which 'was realizing at least one ton per acre of capital sugar.' Tidal flats in this vicinity were used for, evaporating sea water to obtain salt. [Coulter 1931:15-16]

By 1872, the population of Kōloa bottomed out at 833, and then began steadily increasing (reflecting in large part the influx of immigrant labor) to 1,500 in 1884, 1,835 in 1896 and 4,564 by 1900 (Schmitt 1977:13).

While the Coulter reconstruction is a "broad-brush" map, it does show a very large population at Kōloa near Waikomo Stream and the coast and then a gap moving west near the Parcel J1 project area and then the population picks up again from Lāwa'i Bay west, which is suggested to be accurate.

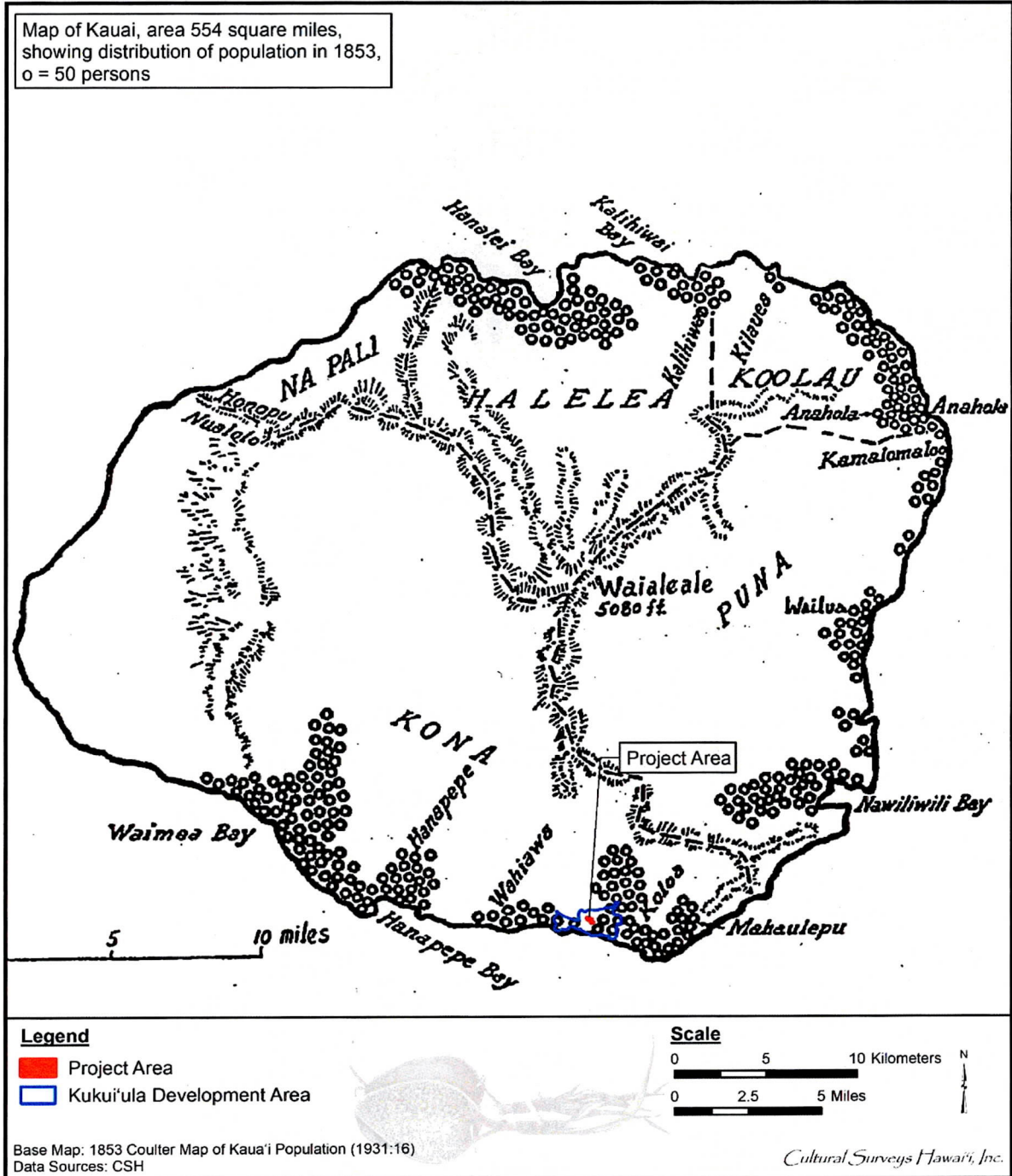


Figure 7. Map showing estimated distribution of population for Kaua'i in 1853 (Coulter 1931:16)

Handy and Handy (1972:152) note that in the early post-Contact period (post-1778), the leeward coast from Waimea to Wailua (including Kōloa) was noted for the inland plantations of breadfruit, bananas grown along the gulches, sweet potatoes and yams grown in the uplands and valleys, and extensive taro terraces throughout the *ahupua'a*. On Kaua'i, the favored places for coconuts were Kōloa and Lāwa'i (Handy 1940:193).

Writing about this general area, Handy (1940) states,

Upland kula lands that were famous for their sweet potatoes were Kukuilono above Lāwa'i (the present park covering the McBride [*sic*] estate) and the elevated kula lands east of Wahiawa Stream. I was unable to obtain any information as to the uplands of Kalihi and Kilauea, but this and much of the kula land from here to Kealia is the same type of terrain and presumably was once used to some extent for growing sweet potatoes by taro planters in these districts. A kamaaina of Wahiawa says that inland of the cliff named Kawaikapuluna, the people used to have taro patches in the gulch, while their houses and potato patches were on the kula land above, bordering the gulch on either side. I was told this arrangement was typical also of Nawiliwili, and presumably also of Hanamaulu, Hanapēpē, Makaweli, and Waimea in the lower sections of their canyons. [Handy 1940:154]

By the early 1800s, Kōloa Landing had become the principal port of Kaua'i and there is much detailed data for Kōloa but little for Lāwa'i.

The fact that the shipment of most of Kaua'i's sandalwood to Asia took place at Kōloa Landing suggests sandalwood was likely harvested in the uplands of Kōloa until the supply of the fragrant wood was exhausted around 1830 (Donohugh 2001:63–64).

In 1835, Thomas Nuttall and John K. Townsend, two American naturalists, visited the Kōloa area. They noted "fields of taro, yam, and maize (possibly sugarcane), irrigation networks and sweet potato patches in the dryer areas" (Townsend 1839:206). Also in the 1830s, J.J. Jarves, in "Sketches of Kauai" (Jarves 1844), remarked on the fields of sugarcane, taro, and yams which indicated more than usual attention to agriculture.

The extensive agricultural fields and their well-maintained appearance indicate a relatively well-populated area. Bernice Judd, in "Kōloa: A Sketch of its Development" (1935), suggests that prior to European contact the population of Kōloa must have been several thousand.

Other evidence indicating the importance of the Kōloa area during prehistorical time includes a relatively large number of *heiau*. A nineteenth century Lahainaluna Schools manuscript records *heiau* and fishing grounds of Kōloa, based on interviews with Kōloa elders in 1885 (Lahainaluna 1885 HMS 43 #17). The manuscript lists 14 *heiau* and one fishing shrine for Kōloa. Of the 14 *heiau*, at least three were *luakini* class and two were *po'okanaka* class. Five were associated with fishing, two were associated with medicine, one with agricultural, and four were of unknown function. One *heiau* is identified as "Kamaloula"; its location is specified: "This *heiau* is located at Kamaloula, that was the site of Make'a's [the woman being interviewed] house, where she lived with her first husband. This *heiau* was built for the purpose of multiplying food plants" (Lahainaluna 1885).

Land Commission Award (LCA) documents and an 1891 government survey map of Kōloa discussed below identify an area within the Kukui'ula project area as "Kamalaula." "Kamaloula"

and “Kamal aula” may be variant spellings for the same area, in which case the *heiau* identified by Makea would likely be located within the Kukui‘ula area.

The first missionary (Protestant Mission, American Board of Commissioners for Foreign Missions [ABCFM]) stationed at Koloa was the Rev. Peter Gulick who moved from the Waimea Station in 1834. In 1835 a grass house some 30 by 60 ft (9.144 by 18.288 m) was erected as the meeting house and school. Gulick also initiated sugarcane cultivation and a cattle herd for the Protestant Mission. In 1837 an adobe church was built and the first mission doctor, Thomas Lafon, arrived. Dr. Lafon moved to Līhu‘e in 1840 and was replaced by Dr. J.W. Smith in 1842. Dr. Smith, as both doctor and missionary, could not continue the farming activities started by Rev. Gulick. He reduced the cattle herd and sent to Honolulu 7,000 pounds of sugar produced from cane grown on mission lands (Stauder 1973:22). At the time of the mid-nineteenth century Māhele, the ABCFM (Protestant Mission) received about 825 acres in Kōloa—some within the present Kukui‘ula lands but most around Kōloa Town.

4.3 Māhele and Kuleana Act

The Organic Acts of 1845 and 1846 initiated the process of the Māhele—the division of Hawaiian lands—which introduced private property into Hawaiian society. In 1848 the crown, the Hawaiian government, and the *ali‘i* received their land titles. Subsequently in the Māhele, LCAs were given to native tenants and others who could prove residency on and use of the parcels they claimed.

The bulk of Kōloa Ahupua‘a was awarded to Moses Kekūāiwa in LCA 7714-B. Kekūāiwa was born 20 July 1829, the son of Kekūānao‘a and Kīna‘u, and the brother of Alexander Liholiho (Kamehameha IV), Lot Kapuāiwa (Kamehameha V), and Victoria Kamāmalu. He died 24 November 1848.

The Kōloa award to Kekūāiwa encompassed approximately 8,620 acres of “West Koloa,” referring to the *ahupua‘a* itself, not the larger district of the same name. The next largest award in the *ahupua‘a* went to the Protestant Mission (ABCFM) and consisted of approximately 825 acres (LCA 387). The majority of the mission lands were located in the vicinity of Kōloa Town, where the parsonage was located. Large parcels just *mauka* of Kōloa Town were utilized for sugarcane cultivation and cattle pasture.

Eleven Kōloa *kuleana* awards to commoners were granted within the Kukui‘ula Community Development project area (Table 1 and Figure 8). All but one of these awards were located at the eastern end of the Kukui‘ula lands near Waikomo Stream, more than 1.0 km east of Parcel J1. A single award—LCA 3026 parcel I to Elemakule II—was located above Kukui‘ula Bay, toward the center of the Kukui‘ula lands, but this was more than 600 m to the southwest. Parcel I is Elemakule’s house lot; he was awarded two additional parcels *mauka* (outside the Kukui‘ula lands) comprising *lo‘i* adjacent to Aepe Stream.

No native tenant LCAs were located within 600 m of Parcel J1. The 11 awarded parcels in the eastern portion of the Kukui‘ula lands include house lots, taro *lo‘i*, and *kula* land. The 1891 map and the LCA records suggest that by the mid-nineteenth century, habitation and agricultural activities were concentrated in the eastern portion of Kukui‘ula where water could be channeled from Waikomo Stream. This may also represent the population focus in traditional Hawaiian times. Toward the central portion of the Kukui‘ula lands, Aepe Stream may not have provided sufficient water on a stable basis to sustain a large population.

Table 1. Land Commission Awards at Kukui'ula Kōloa

LCA #	Claimant	'Ili	Land Use	Description
387	ABCFM	Kamalaula	—	—
3026:1	Elemakuli II (Kaelemakule)	Pua	House lot	Beach <i>makai</i>
3611	Kanonoula	Aea	<i>Kula</i> , 8 <i>lo 'i</i> , house lot	
5313:1	Kenoi	Punahelu	<i>Kula</i> , <i>lo 'i</i> ,	Rock stratum
5314	Kapa	Lepoakua, Paoa	<i>Kula</i> , 8 <i>lo 'i</i> , house lot	Government road, watercourse
5401:1	Hanaole	Punahelu	<i>Lo 'i</i>	<i>'Auwai</i>
5456:2	Mataio	Punahelu	<i>Lo 'i</i>	
5469	Makanui, Apolo	Awikiwiki	<i>Kula</i> , <i>lo 'i</i>	
5482:1	Kanouula, Ino	Paoa	<i>Kula</i> , 4 <i>lo 'i</i>	
5486	Waiwaiole	Kawailehua	<i>Kula</i> , 2 <i>lo 'i</i> , house lot	
10478:3	Naiwi (Naiui)	Aea	House lot	Waste land
10638	Poka I	Punahelu	<i>Kula</i> , 2 <i>lo 'i</i> , sugarcane	

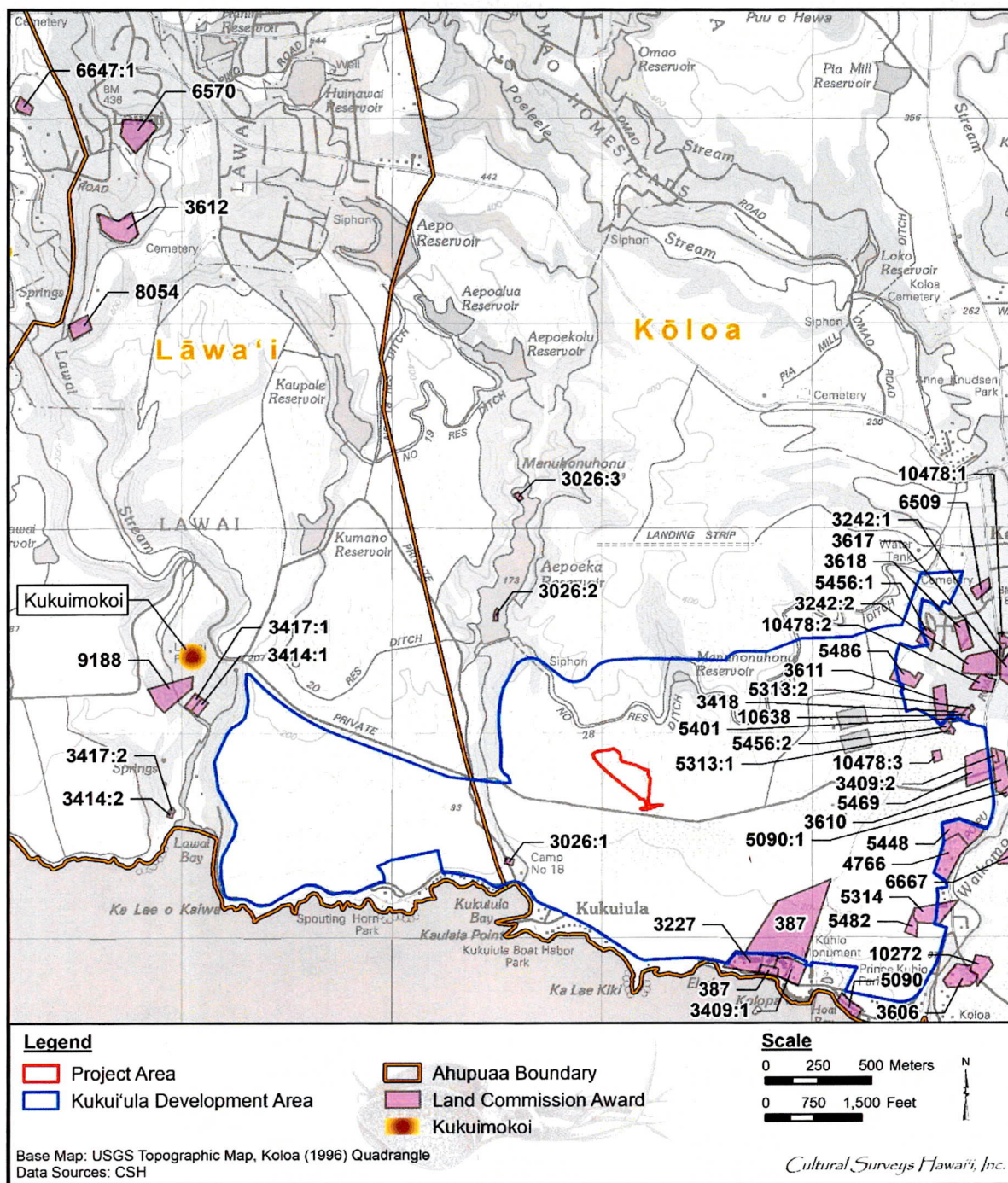


Figure 8. 1996 Koloa USGS topographic quadrangle, showing the distribution of native tenant LCA parcels in Kukui‘ula, and vicinity

4.4 Description of the Kukui'ula Lands Before Sugarcane

While there are many accounts of Kōloa Town and the vicinity of Waikomo Stream down to Kōloa Landing, there are few references to the gently sloping lands of Kukui'ula back from the coast and at a distance from Waikomo Stream. The description associated with Queen Emma's estate (west of the project area), ca. 1870, states, "the house must have indeed seemed desolate to those accustomed to Honolulu. The surrounding area was an arid, stony pasture, suitable only for grazing" (Forbes 1970:4).

4.5 Early Sugar and Export Crops at Kōloa

The Kōloa area is the site of the oldest sugar plantation in Hawai'i. In 1835, Ladd and Company gained the lease of some 1,000 acres at Kōloa for the purpose of growing sugarcane. "The lease allowed the use of the waterfall and an adjoining mill site at Maulili Pool, the right to build roads, and the privilege of unrestricted buying and selling, and freedom from local harbor dues" (Stauder 1973:18). Ladd and Company were not the first to mill sugarcane in the area, as there was a Chinese-operated granite roller mill in operation at Māhā'ulepū in 1830. Ladd and Company were, however, the first "plantation" organized industry in Hawai'i. Along with the lease, the company was allowed to "hire native workers provided they paid the king, Kamehameha III, and Kaikio'ewa, appointed Governor of Kaua'i, a tax for each man employed and paid the men satisfactory wages" (Stauder 1973:18). The plantation set up houses for native workers and a store where the employees could purchase merchandise with the plantation currency in which they were paid.

The cane growing activity of Ladd and Company was not done directly on the present Kukui'ula lands, but the commercial activity initiated by the plantation had widespread ramifications. Kōloa Town and the landing at the mouth of Waikomo Stream became major commercial centers. The landing—or "roadstead" as it was called—was a busy port during the mid-1800s. "An estimate in 1857 stated that 10,000 barrels of sweet potatoes were grown each year at Kōloa, and that the crop furnished nearly all the potatoes sent to California from Hawai'i. Sugar and molasses were also chief articles of export" (Judd 1935: 326). Whalers also used the Kōloa roadstead during this period (1830-1870) and took on provisions of squashes, salt, salt beef, pigs, and cattle. Hawaiians grew the squashes (pumpkins) on the rocky lands north of the landing and numerous salt pans were located along the shore near the landing.

Ladd and Company ceased operating in 1845. Then, following a succession of individual and partnered ownerships, a new enterprise, Koloa Sugar Company, was established in 1880. In 1948, the Koloa Sugar Company became part of Grove Farm Company.

4.6 McBryde Sugar Company and the Kukui'ula project area

Duncan McBryde moved to Wahiawa from his estate in Wailua ca. 1860 (Damon 1931:372). He acquired a lease for lands at Wahiawa from Victoria Kamāmalu, sister of Moses Kekuaiwa. Kamāmalu inherited the unclaimed lands at Wahiawa following the untimely death of Kekuaiwa in 1848. McBryde drove his herd of cattle across the island and began the development of the extensive Wahiawa Ranch. The McBryde family estate, known as Brydeswood, was built in the uplands of Wahiawa, *mauka* of the government road (Damon 1931:372, 552). McBryde acquired land in Wahiawa, later owned in fee simple, and leased land in Kalāheo from the Crown.

Eventually, the plantation covered most of the land of western Kōloa District, including Wahiawa, Kalāheo, Lāwa'i, and the western section of Kōloa Ahupua'a, west of Kōloa (Waikomo) Stream.

By 1870, in addition to ranching, McBryde ventured into sugarcane cultivation. The plantation primarily consisted of land already owned by the McBryde Estate, including the Wahiawa Ranch and lands in neighboring Kalāheo and (from 1876) Lāwa'i (Damon 1931:733, 773). The 1872 Gay map (Figure 9) thus depicts Lāwa'i and western Kōloa just before the radical transformation to sugarcane.

In 1886, after the Queen's death, Mrs. Elizabeth McBryde bought the entire *ahupua'a* of Lāwa'i for \$50,000. The upper lands were planted in sugarcane, and the valley was leased to Chinese rice growers and taro planters (Donohugh 2001:99–100). Queen Emma's Lāwa'i home "Maunakilohana" would continue to be depicted on maps long after her death as one of the few landmarks on the table lands of Lāwa'i and Kōloa back from the coast (Figure 10 and Figure 11).

The commercial activity initiated by the Ladd and Company plantation, which later became Koloa Sugar Company, had widespread ramifications. In 1882, the Koloa Sugar Company announced it had ordered all the components for a plantation railroad. According to the *Planter's Monthly*, Volume 1 of 1882, "It (the railroad) will consist of four miles of 30 inch gauge track, forty cars 5 x 10 feet, and one locomotive [...]" (Condé 1993:28). According to Arthur C. Alexander (1937), "Cut cane was hauled to the mill by oxcart until 1882. In that year, 3½ miles of 30-inch gauge, 18-pound railroad track and 50 cars were purchased" (Condé 1993:28).

Following the success of Koloa Sugar Company, McBryde ventured into sugarcane cultivation by 1870. The plantation primarily consisted of land already owned by the McBryde Estate, including the Wahiawa Ranch and lands in neighboring Kalāheo and Lāwa'i. In 1899, Walter D. McBryde, son of Duncan McBryde, and W.A. Kinney founded the McBryde Sugar Company, formed by combining the lands of the Eleele Plantation in Hanapēpē Ahupua'a, the lands owned by McBryde in Wahiawa, Kalāheo, and Lāwa'i, and the lands owned by the Koloa Agricultural Company (separate entity from the Koloa Sugar Company), which had lands in Kōloa Ahupua'a owned by the Knudsen family, west of Kōloa Stream (McBryde Sugar Company 1949:3).

4.7 Kōloa Makai Table Lands in the Twentieth Century

The history of the *makai* tablelands of Lāwa'i and Kōloa in the twentieth century was largely associated with the McBryde Sugar Company, Ltd. To irrigate the mid-sized plantation (approximately 4,700 planted acres), between 1900 and 1907 the McBryde Sugar Company constructed 30 large and small reservoirs, as well as an extensive system of ditches to collect water from the uplands (Yamanaka and Fuji 2001). In addition to collecting surface water, which became insufficient for the growing plantation, McBryde Sugar Company constructed a series of wells and pumps to collect groundwater (Wilcox 1996)

By 1903, McBryde Sugar Company established the railroad system to the Koloa Fields, including the current project area. As seen in a 1910 map (Figure 12) the railroad ran through the southeast portion of Parcel J1 of the Koloa Community Development area. The 1922 map of McBryde Sugar Company (Figure 13) shows McBryde fields and their railroad infrastructure extending east to Waikomo (Kōloa) stream. Railroad operations ceased in 1947 at McBryde Plantation when there was a change over from locomotives and cane cars to trucks (Condé and Best 1973:192–193) and most of the railways were converted to cane roads. The 1951 aerial

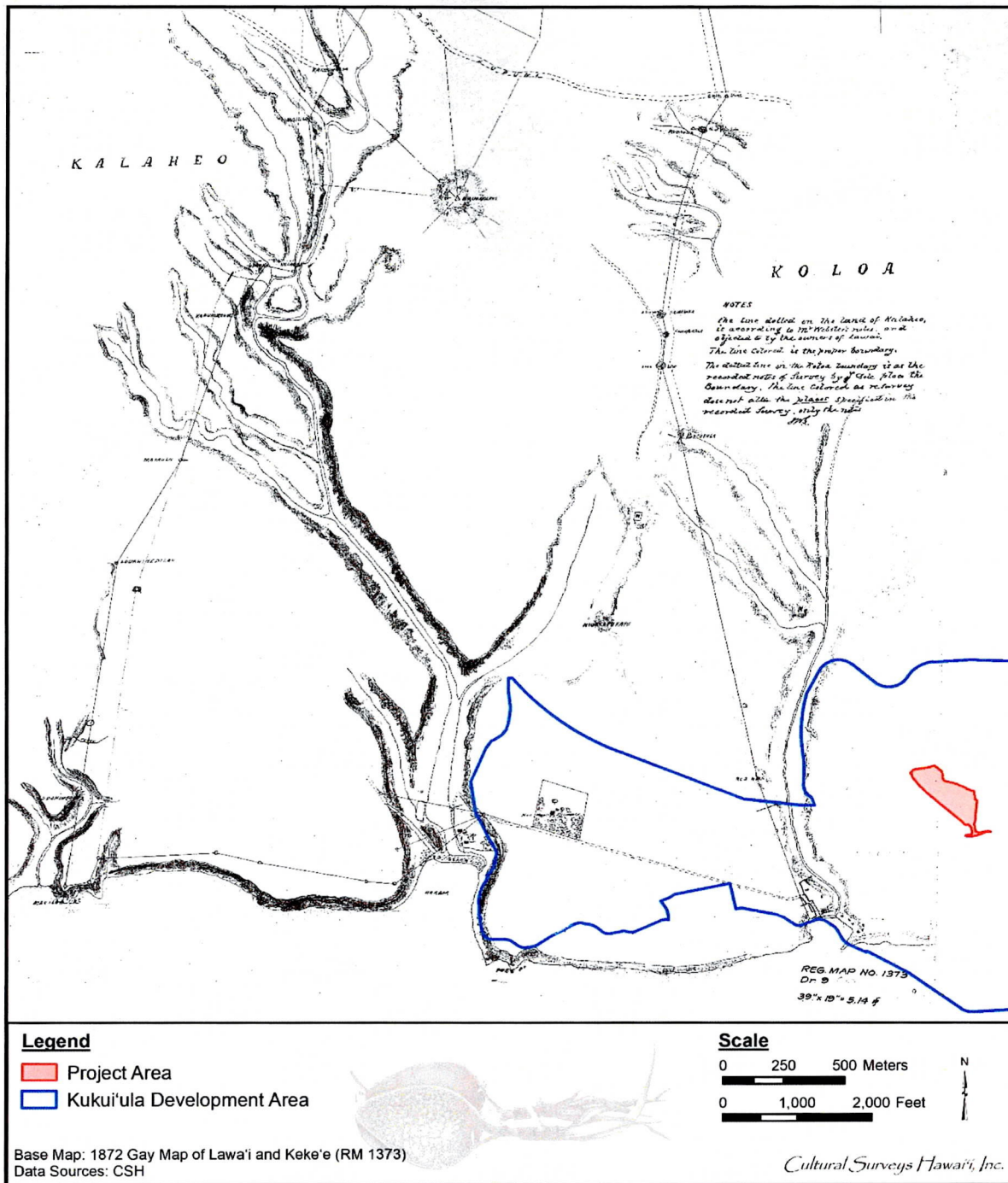
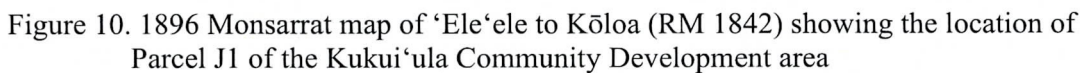


Figure 9. 1872 Gay map of Lāwa'i and Keke'e showing the western Kukui'ula Community Development area and the location of Parcel J1



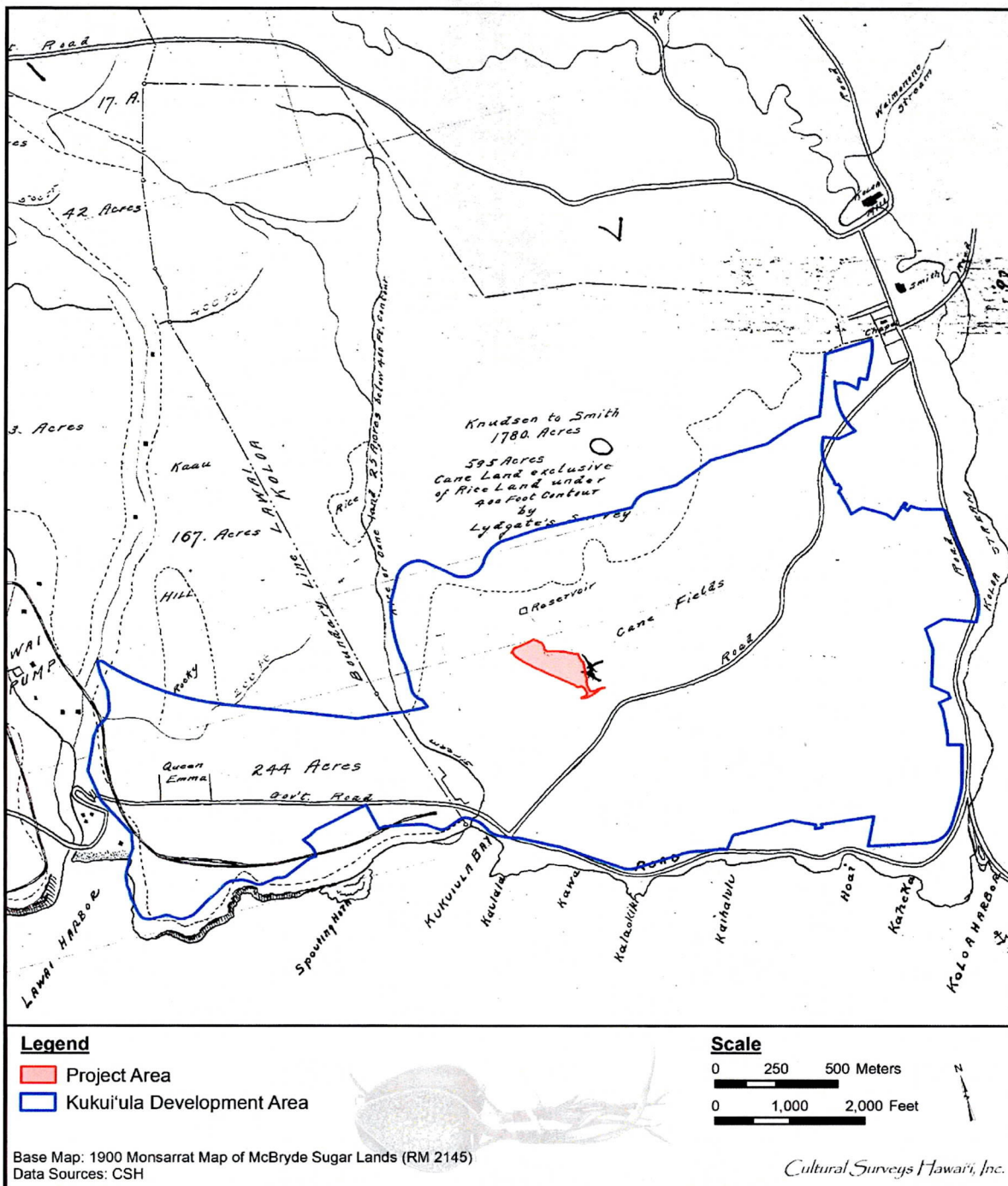


Figure 11. 1900 Monsarrat map of McBryde sugar lands (RM 2145) showing the location of Parcel J1 of the Kukui'ula Community Development area

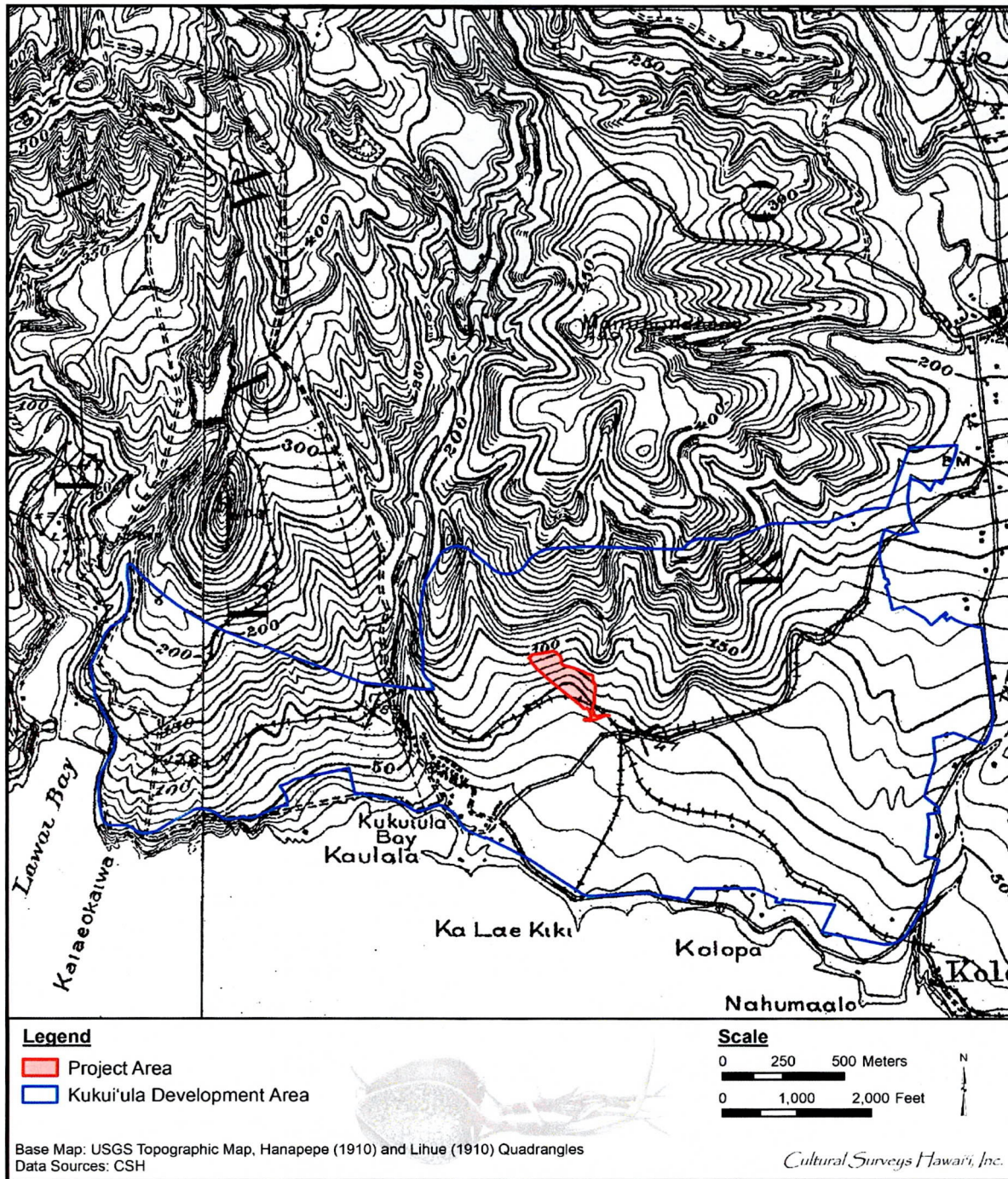


Figure 12. 1910 Hanapepe and Lihue USGS topographic quadrangles, showing Parcel J1 of the Kūkui'ula Community Development area

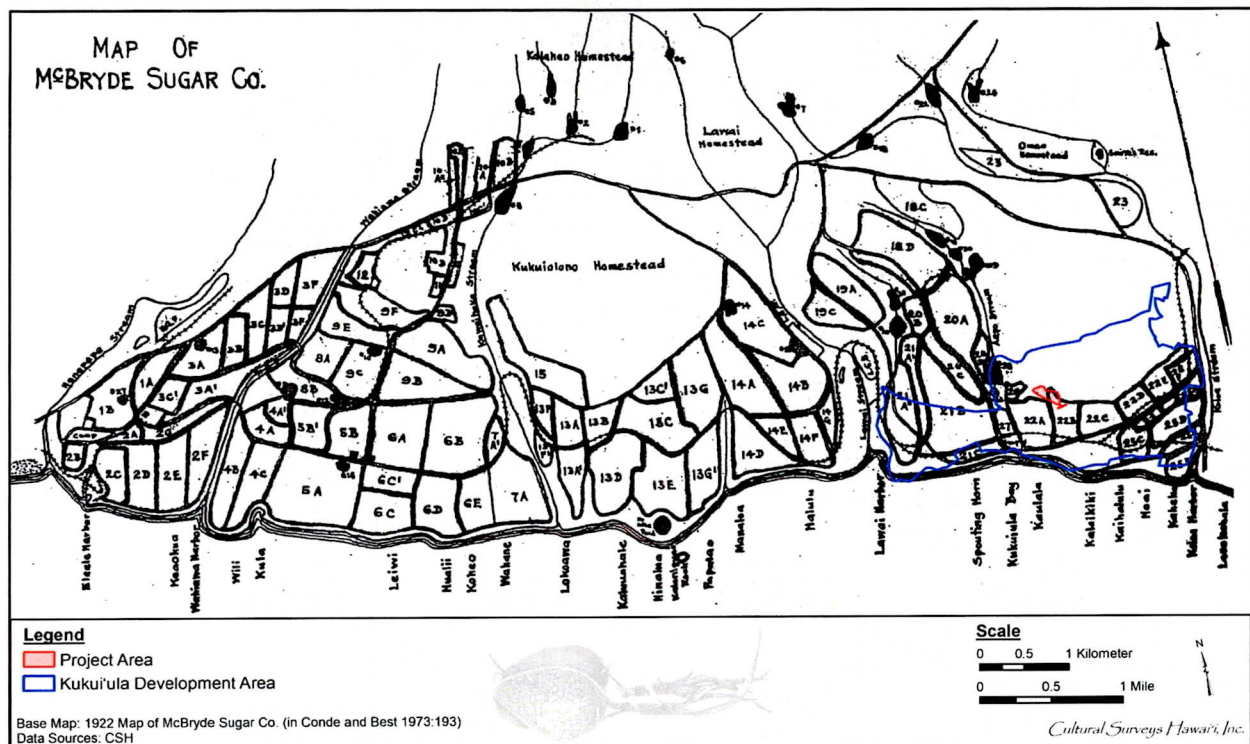


Figure 13. 1922 map of McBryde Sugar Company (from Condé and Best 1973:193) showing McBryde fields extending east to Waikomo (Kōloa) stream and showing the Kukui'ula Development Area and the location of Parcel J1 (mostly within field 22 B)

photograph (Figure 14) depicts the sea of commercial sugarcane at Kukuiula in and around Parcel J1 shortly after the demise of railroads with a main, roughly east/west, cane haul road just south of Parcel J1. The system of improved roads and dirt roads, with the main cane haul road just south of Parcel J1 is depicted in the 1963 map (Figure 15). The three aerial photographs (1951, Figure 14; 1965, Figure 16; and 1978, Figure 17) show Parcel J1 as completely covered with commercial sugarcane fields and within a great sea of commercial sugarcane. McBryde Sugar Company, owned by Alexander and Baldwin, Inc., ground its last crop in 1996 (Dorrance and Morgan 2000:36).

The timeframe in which Parcel J1 was in commercial sugarcane production is not completely clear but is believed to extend from very close to 1876 (when McBryde leased Queen Emma's Lāwa'i land) to very close to 1996, or nearly 120 years. During nearly this entire 120-year span the project area is understood to have been as depicted in the three aerials. During this time it is understood that access inside the project area was restricted to employees of McBryde Sugar Company.

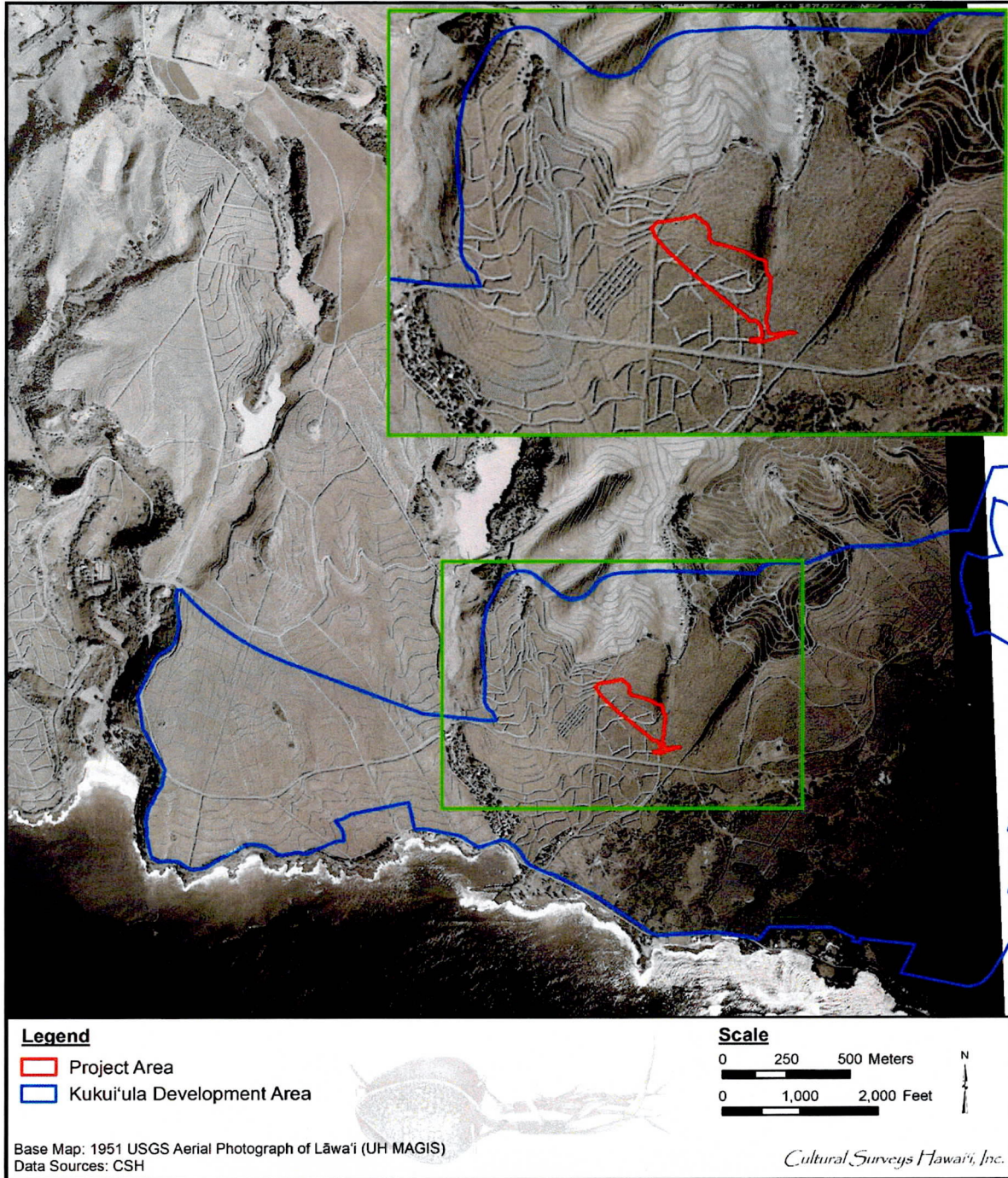


Figure 14. 1951 USGS aerial photograph of Lāwa'i (UH MAGIS) showing the Kukui'ula Development Area and the location of Parcel J1 (see inset)



Figure 15. Portion of the 1963 Koloa USGS topographic quadrangle showing the location of the Kukui'ula Development Area and Parcel J1

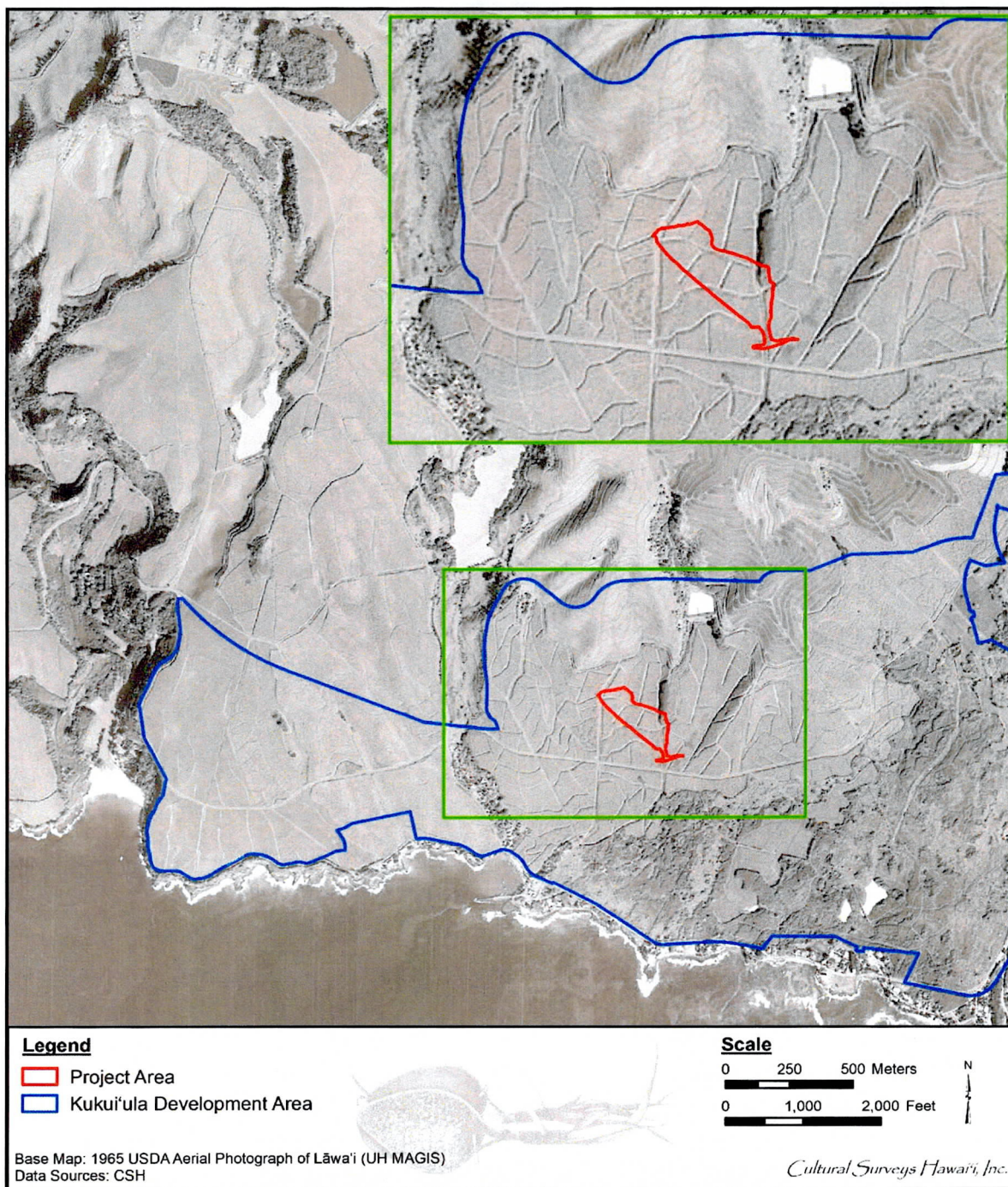


Figure 16. 1965 USDA aerial photograph (UH MAGIS) showing the Kukui'ula Development Area and the location of Parcel J1 under sugarcane cultivation (see inset)

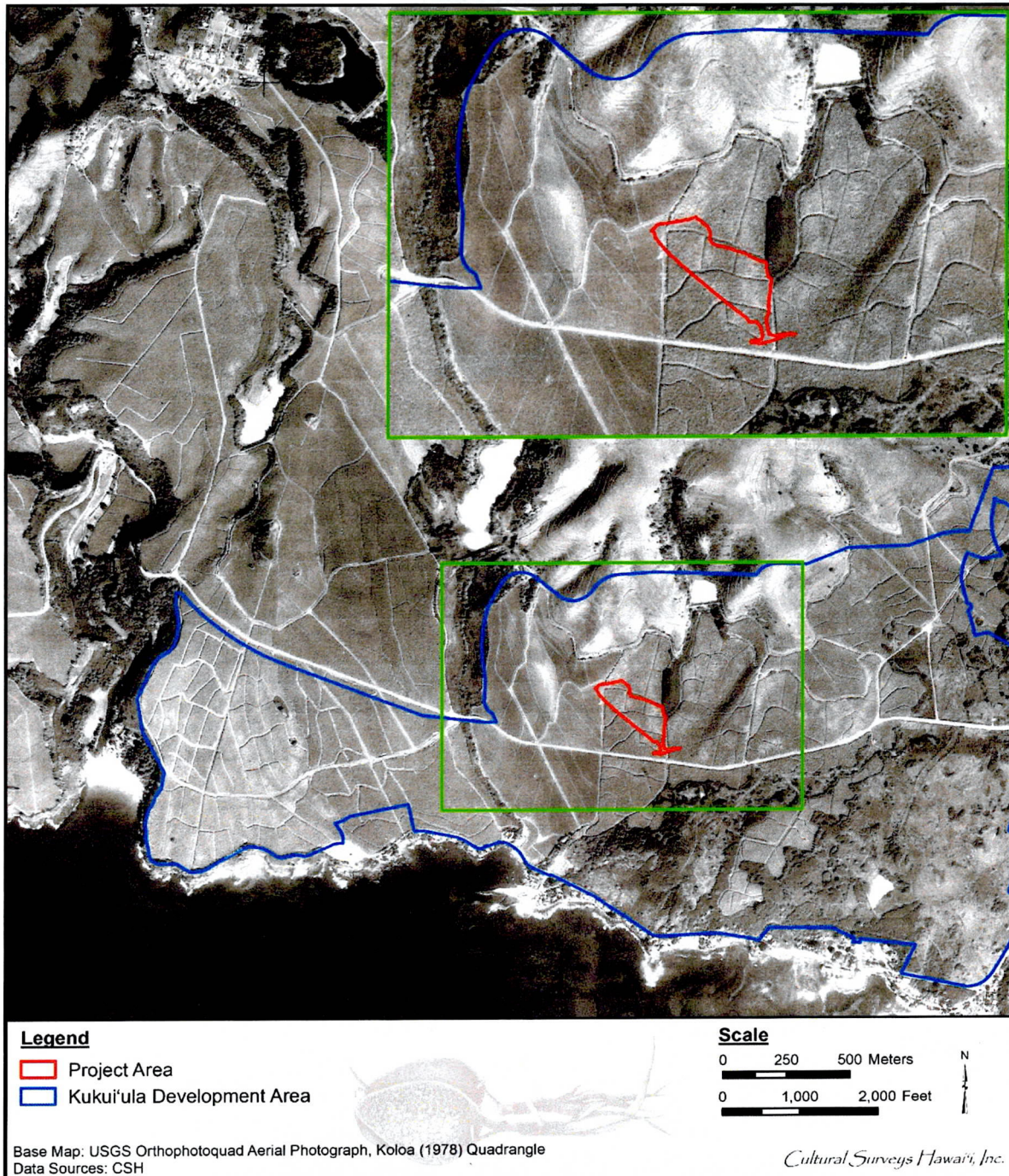


Figure 17. 1978 Koloa USGS orthophotoquad aerial photograph showing the Kukui'ula Development Area and the location of Parcel J1 under sugarcane cultivation (see inset)

Section 5 Previous Archaeological Research

5.1 Previous Archaeological Studies in the Immediate Vicinity

This discussion of previous archaeological studies and previously identified archaeological resources in the project area vicinity is included to inform understandings of land and local communities from the initial Hawaiian discovery and settlement of the islands through the historic era, and to provide additional context for the historic documentation, traditional cultural practices, and oral histories associated with the project area and vicinity. Archaeological studies document the presence or absence of trails, burials, *heiau*, and other traditional Hawaiian religious structures. Archaeological inventory surveys are to evaluate any archaeological sites which may

[...] have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out at the property or due to associations with traditional beliefs, events, or oral accounts—these associations being important to the group's history and cultural identity. [HAR §13-284-6(b)(5)]

Previous archaeological studies in the vicinity of the project area are depicted in Figure 18 and summarized in Table 2. The locations of previously identified historic properties in the vicinity of the project area are depicted in Figure 19; these are summarized in Table 3.

5.2 The Archaeological Inventory Survey

The entirety of Parcel J1 of the Kukui'ula Community Development project was addressed in an *Archaeological Inventory Survey of the Proposed Kukui'ula Bay Planned Community, Kōloa, Kaua'i* (Hammatt et al. 1988) (see Figure 18) that addressed a much larger area. That 1,000-acre project area stretched from Po'ipū Road on the east side to the edge of Lāwa'i Valley on the west side.

A total of 58 archaeological sites comprising 150 individual features were located, mapped, and described (no SIHP designations) in that (Hammatt et al. 1988) archaeological inventory survey (AIS) but none were within the Parcel J1 project area (an *'auwai* designated SIHP # 50-30-10-01902 was located just to the east, see Figure 19). A majority of the sites were located in the non-cultivated lands in the eastern and southeastern portions of the project area (see Figure 19). Both pre-Contact and historic sites were identified. The traditional Hawaiian sites are remnants of the formerly extensive late pre-Contact (early historic) irrigated agricultural complex that stretched eastward from Lāwa'i Valley to Weliweli. This complex includes *'auwai*, fields, house sites, shelters, modified lava tubes, burials, and two *heiau*. Historic-era sites included cattle walls, abandoned cane fields, a house site, and remnants of a railroad berm. Many of the archaeological sites were in remnant condition due to modern land disturbance.

The 1988 study was reviewed by the State Historic Preservation Officer, who agreed with the adequacy of the survey and that sufficient information had been gathered to evaluate site significance (Nagata to Hammatt, 30 June 1988).

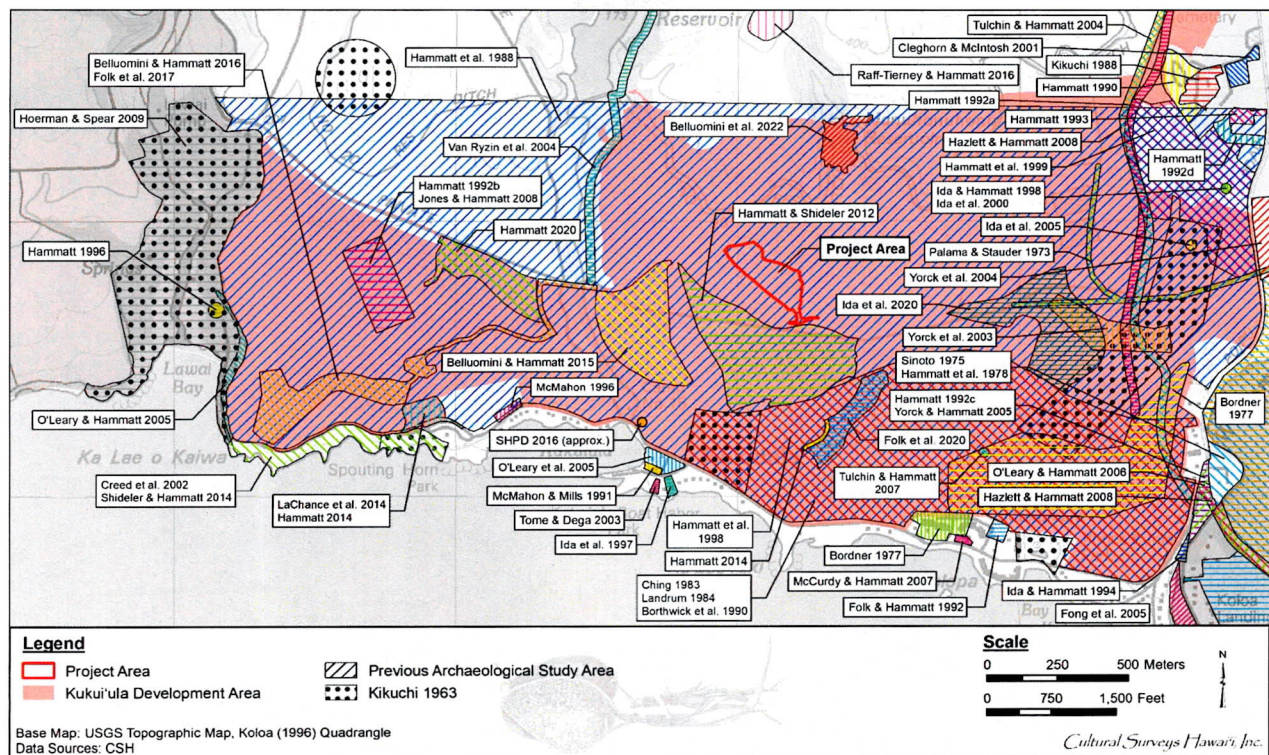


Figure 18. Portion of 1996 Koloa USGS topographic quadrangle, showing parcel J1 and previous archaeological studies at the Kukui'ula Community Development project area and vicinity

Table 2. Previous archaeological studies in the vicinity of the project area

Reference	Type of Study	Location	Results (SIHP # 50-30-10****)
Bennett 1931	Site survey	Island-wide	Site 72 (Niukapukapu Heiau), Site 74 (fishing shelter), and Site 75, Kūhiō Park Complex identified
Kikuchi 1963	Archaeological surface survey and test excavations	Kōloa District (including several discrete areas)	Discusses several sites in coastal Lāwaʻi including: SIHP #s -03067:A Storied rock; -03067:B Springs -03067:C Taro fields; -03067:D Storied rock; -03067:E Path; -03070 Shelter cave; -03071 Shelter cave; and -03072 Shelter cave
Palama and Stauder 1973	Archaeological reconnaissance	Proposed cane haul road between McBryde Plantation lands and Kōloa Mill	SIHP #s -03015 (wall), -03173 (wall), -03174 (platform), -03175 (wall), -03176 (enclosure), -03177 (platform), -03178 (modified outcrop), -03179 (habitation cave), -03180 (habitation cave), and -03181 (agricultural complex) identified
Sinoto 1975	Archaeological reconnaissance	Roughly 400+ acres of Knudsen Trust Lands bounded by Poʻipū Rd on S and W, and by private cane-haul roads on the N and E	Most of the central, northern, and western portions of survey area had been cleared, usually by bulldozing and dragging; large, relatively undisturbed concentrations of sites occur in southern and eastern fringe areas; provides overview of 155 sites
Bordner 1977	Archaeological reconnaissance	Area between Waikomo Stream and Prince Kūhiō Hotel	SIHP # -01934, agricultural complex documented
Hammatt et al. 1978	Archaeological reconnaissance	460-acre Kiahuna Golf Village area, bounded S by main Poʻipū Rd, to W by Waikomo Stream, as well as Poʻipū Rd	Discusses 36 archaeological complexes with 583 features recorded indicating intensive Hawaiian settlement both in pre- and post-Contact times as indicated by various habitation structures including 175 stone enclosures, and 108 stone house platforms
Ching 1983	Archaeological reconnaissance	Kōloa and Lāwaʻi <i>ahupuaʻa</i>	Identified remnants of walls, <i>loʻi</i> , <i>ʻauwai</i> , flumes, agricultural terraces, and historic railroad berm; all part of Kōloa Field System
Landrum 1984	Archaeological reconnaissance	Kōloa Ahupuaʻa	Documented 37 various pre-Contact and historical feature areas, ranging from agricultural features to habitation sites to ceremonial/religious structures

Reference	Type of Study	Location	Results (SIHP # 50-30-10****)
Hammatt et al. 1988	Archaeological inventory survey	1,000 acres of Kukui'ula Bay Community	Recorded 58 pre-Contact and historic-era archaeological sites comprising 150 individual features (some previously identified); many sites remnants of former extensive late pre-Contact and early post-Contact irrigated agricultural complex (Kōloa Field System)
Kikuchi 1988	Archaeological reconnaissance	Pa'anau Camp	SIHP # -04015 (Pa'anau Plantation Camp); identified ten features associated with camp
Borthwick et al. 1990	Archaeological data recovery: preliminary reports	Kukuiula Bay Planned Community	Provides overview of tasks accomplished (see Hammatt et al. 1998)
Hammatt 1990	Archaeological inventory survey	Pa'anau Camp	SIHP # -01828 (post-Contact wall) identified
McMahon and Mills 1991	Inadvertent discovery—tooth	Eastern shore of Kukui'ula Bay	Designated SIHP # -01867, turned over to OHA representative on Kaua'i
Hammatt 1992a	Archaeological inventory survey	Kukui'ula Community Phase I, Western Bypass Rd	No historic properties identified
Hammatt 1992b	Letter report on preserve area rock pile	Preserve area rock pile	Investigating large rock pile to determine origin and age; identified as field clearance mound
Hammatt 1992c	Letter report	Pō'ipū Rd and Lāwa'i Rd junction	No significant finds; project area previously extensively graded
Hammatt 1992d	Archaeological reconnaissance survey	L-shaped 2.1-acre parcel on W side of Pō'ipū Rd south of Kōloa Town	No historic properties identified (notes extensive prior bulldozing)
Hammatt 1993	Archaeological reconnaissance	1.75-acre property fronting Pō'ipū Rd, south Kōloa Town	No historic properties identified, discusses bounding lot wall
Ida and Hammatt 1994	Archaeological literature review and field inspection	11,460 sq ft lot adjacent to Ho'onani Rd Bridge across Waikomo Stream	No historic properties identified

Reference	Type of Study	Location	Results (SIHP # 50-30-10****)
Hammatt 1996	Subsurface testing report	Posited location of Queen Emma's Cottage, east beach, and alluvial terrace at mouth of Lāwa'i Valley	Identified 1) Lihue Soda Works bottle at 5 ft below surface in alluvial fill of Str. II; 2) cement slabs believed to be bases for arrangement of potted plants; and 3) stone and mortar path, feature of garden landscape
McMahon 1996	Archaeological reconnaissance	Visitor Center for National Tropical Botanical Gardens	SIHP # -03015 (wall) identified and documented
Ida et al. 1997	Archaeological monitoring	Kukui'ula house lot	SIHP # -00630 (seven sets of human remains and one burial pit) documented; two sets preserved in place and five sets reinterred on site
Hammatt et al. 1998	Archaeological data recovery (Vols I, II, and III)	Kukui'ula Planned Community, Phase I	Conducted data recovery in 33 of sites documented by Hammatt et al. (1988)
Ida and Hammatt 1998	Historic research	SIHP # 50-30-10-01911, Kukui'ula Bay Community Phase II	Further findings pertaining to SIHP # -01911 previously identified by Hammatt et al. (1988); recommends data recovery of site rather than preservation due to its poor condition
Hammatt et al. 1999	Archaeological data recovery	Kukui'ula Bay Community Phase II	Performed data recovery on five sites: SIHP #s -01905 through -01907, -01909, and -01910 identified by Hammatt et al. (1988); large amount of midden and numerous traditional Hawaiian and historic artifacts (930) collected
Ida et al. 2000	Mitigation study	Kukui'ula	Mitigation study for SIHP # -01911, historic research and three interviews pertaining to history of a Portuguese oven SIHP # -01911 previously identified by Hammatt et al. (1988)
Cleghorn and McIntosh 2001	Archaeological inventory survey	2.0-acre parcel on corner of Pa'anau Rd and Po'ipū Rd	Five houses mapped, described, and photographically documented
Creed et al. 2002	Archaeological inventory survey	11.5-acre <i>makai</i> lands in coastal Lāwa'i (west of Spouting Horn Park)	SIHP #s -03071 and -03072 (overhang shelter), -03073 (walls and pavement)

Reference	Type of Study	Location	Results (SIHP # 50-30-10****)
Tome and Dega 2003	Archaeological monitoring	4646 Amio Rd, E side of Kukui'ula Bay	Documented and recovered seven incomplete sets of human skeletal remains identified as SIHP # -00353
Yorck et al. 2003	Data recovery	Kukui'ula	Identified SIHP #s -03075 (habitation and burial caves), and -03076 (<i>heiau</i>)
Tulchin and Hammatt 2004	Archaeological inventory survey	Offsite portion of Western Bypass Rd	Data recovery for SIHP #s -01918 through -01921 and -01923 previously identified by Hammatt et al. (1988)
Van Ryzin et al. 2004	Archaeological inventory survey	Aepo water line, 'Ōma'o, Kōloa Ahupua'a	No historic properties identified in vicinity of Kukui'ula Community Development area
Yorck et al. 2004	Addendum to an archaeological inventory survey	Three proposed well sites and appurtenances in vicinity of Pīwai Reservoir	No historic properties identified
Fong et al. 2005	Archaeological inventory survey	0.947-acre parcel located W of Po'ipū Sheraton Resort and S of Po'ipū Rd, in coastal Kōloa, generally referred to as Kōloa Landing	Identified three historic properties: SIHP # -03912 consists of two historic features associated with railroad system, Feature A, footing for a bridge support; Feature B identified as soil and basalt berm; SIHP # -03913 consists of two historic features; Feature A identified as a concrete pedestal; Feature B identified as trash mound(s), possibly accumulated during heavy use of Kōloa Landing; SIHP # -03928 consists of three historic features interpreted as remnants of Kōloa Landing; Feature A, western dock formation; Feature B, eastern dock formation; Feature C, later addition to landing, functioning as small boat ramp
Ida et al. 2005	Archaeological monitoring	SIHP # -03075B in Kukui'ula	No new archaeological findings at SIHP # -03075B
O'Leary and Hammatt 2005	Archaeological inventory survey	40-ft wide corridor along eastern edge of Lāwa'i Bay	No historic properties identified
O'Leary et al. 2005	Archaeological inventory survey	Kukui'ula Bay	Seven trenches excavated within project area; no surface or subsurface sites observed during this study

Reference	Type of Study	Location	Results (SIHP # 50-30-10****)
Yorck and Hammatt 2005	Archaeological inventory survey	Intersection of Lāwa'i and Pō'ipū roads	Majority of project area previously disturbed by construction of existing roads; SIHP # -03895 (basalt stone and mortar foundation) identified
O'Leary and Hammatt 2006	Archaeological inventory survey (called an archaeological assessment in absence of finds)	686 m corridor located along Po'ipū Rd running SE from its intersection with Lāwa'i Rd to Po'ipū Water Reclamation Facility	No historic properties identified
McCurdy and Hammatt 2007	Burial recovery report	Lawai Beach Resort Kamala'ula (Kamalo'ula) Cemetery	Documents disinterment of 68 sets of human burials at SIHP # 50-30-10-1985; 31 (46%) of burials complete and undisturbed for most part; remaining 37 (54%) partial with evidence of disturbance; skeletal remains reinterred in more protected site inland
Tulchin and Hammatt 2007	Inadvertent discovery	Kukui'ula Bay Community area, TMKs: (4) 2-6-016:014 and 094	SIHP # -00682 (lava tube and human remains) identified; remains reinterred at SIHP # -01927A (lava tube with burial), a designated burial preserve located within Kukui'ula Community Development area
Hazlett and Hammatt 2008	Archaeological monitoring	Western Bypass Rod	No cultural deposits or human remains encountered
Jones and Hammatt 2008	Archaeological monitoring	SIHP #s -1903 and -1904, <i>pu'u</i> (hill)	Implementation of (Hammatt et al. 2000) preservation plan for SIHP #s
Hoerman and Spear 2009	Archaeological inventory survey	90-acre parcel at mouth of Lāwa'i Valley, Lāwa'i Ahupua'a	Six historic properties newly identified: SIHP #s -00893 agricultural terraces; -00894 multi-feature habitation site; -00895 two terraces; -00896 a <i>lo'i</i> complex; -00897 a habitation terrace; -00898 a wall; and previously identified -03067C series of <i>lo'i</i> terraces, and -03069 a wall
Hammatt and Shideler 2012	Archaeology and cultural impact concerns	Parcel DD at Kukui'ula	SIHP #s -01903 and -01904 including vegetation clearing and select rock removal

Reference	Type of Study	Location	Results (SIHP # 50-30-10****)
Hammatt 2014	Archaeological monitoring	Lot 14A at Kukui'ula	Discusses SIHP # -02205, wall identified during the AIS (LaChance et al. 2014); no newly identified historic properties
LaChance et al. 2014	Archaeological inventory survey	Lot 14A in Kukui'ula Development area, just <i>mauka</i> of Lāwa'i Rd and Spouting Horn	SIHP # -02205 (historic wall) identified
Shideler and Hammatt 2014	Archaeological monitoring	Coastal Lāwa'i (west of Spouting Horn Park)	Discusses SIHP #s -00990, -03071, and -003072
Belluomini and Hammatt 2015	Archaeological inventory survey (called an archaeological assessment in absence of finds)	W/ central Kukui'ula Parcel H in Development area, between golf course holes # 9 and # 10	No historic properties identified
Belluomini and Hammatt 2016	Archaeological inventory survey	Kukui'ula Community Development Parcel A project, Lāwa'i and Kōloa <i>ahupua'a</i>	One historic property identified: SIHP # -02310, plantation infrastructure
Raff-Tierney and Hammatt 2016	Archaeological inventory survey (called an archaeological assessment in absence of finds)	Manuhonuhonu Borrow Site Phase 3, TMK: (4) 2-6-003:001	No historic properties identified

Reference	Type of Study	Location	Results (SIHP # 50-30-10****)
KNIBC Minutes 2016 (SHPD 2016)	SHPD burial recovery	Kukui'ula Harbor "where the ditch runs into the ocean" believed to have been found approx. 550 m ESE of Parcel J1 study area	Kaua'i Ni'ihau Islands Burial Council (KNIBC) minutes of 21 Sept 2016: "Mary Jane [Naone] introduced herself explaining my role is to identify if it's human or not, I was called out by a landscaper and he was doing ground keeping at Kukui'ula the harbor where the ditch runs into the ocean. Aside the slope is packed red dirt and human remains were exposed. Following my conclusion of human remains I notified Kauanoe and she it took over after that. Kauanoe Hoomanawanui explains she and Councilmember Sandi Quinsaats made a site visit and secured the remains. Following consultation with Kukui'ula we scheduled a reinternment in the burial preserve. I, Councilmember Quinsaats and Kimo Burgess reinterred the remains for long term preservation"; no SIHP # assigned, no additional information
Folk et al. 2017 (draft)	Supplemental archaeological inventory survey	Kukui'ula Community Development Parcel A project, Lāwa'i and Kōloa Ahupua'a	One historic property identified: SIHP # -02310, plantation infrastructure Features 1, 2, and 3 described
Folk et al. 2020	Archaeological monitoring	S/central Kukui'ula Parcel FF, Phase 1 project	No historic properties identified
Hammatt 2020	Field inspection letter report for improvements	Parcel E (in <i>mauka</i> west portion of), Kukui'ula Community Development project	No historic properties identified
Ida et al. 2020	Archaeological monitoring	E/central Kukui'ula Parcel U/AA project	No historic properties identified
Belluomini et al. 2022	Archaeological literature review and field inspection	Kukui'ula Manuhonuhonu Reservoir Alteration project	Two potential historic properties observed: portion of Smith Ditch (SIHP # -00364) in southeast corner of project area, and Manuhonuhonu Dam and Reservoir (designated CSH 2)

Reference	Type of Study	Location	Results (SIHP # 50-30-10****)
Hammatt 2022 (draft)	Archaeological literature review and field inspection	Parcel A2, F2, and F3 of Kukui'ula Community Development project	Discusses land use history, previous finds, and 2022 field inspection with particular attention to remnants of former railroad
Hammatt 2023	Archaeological literature review and field inspection	Parcel J1 of the Kukui'Community Development project	No historic properties identified

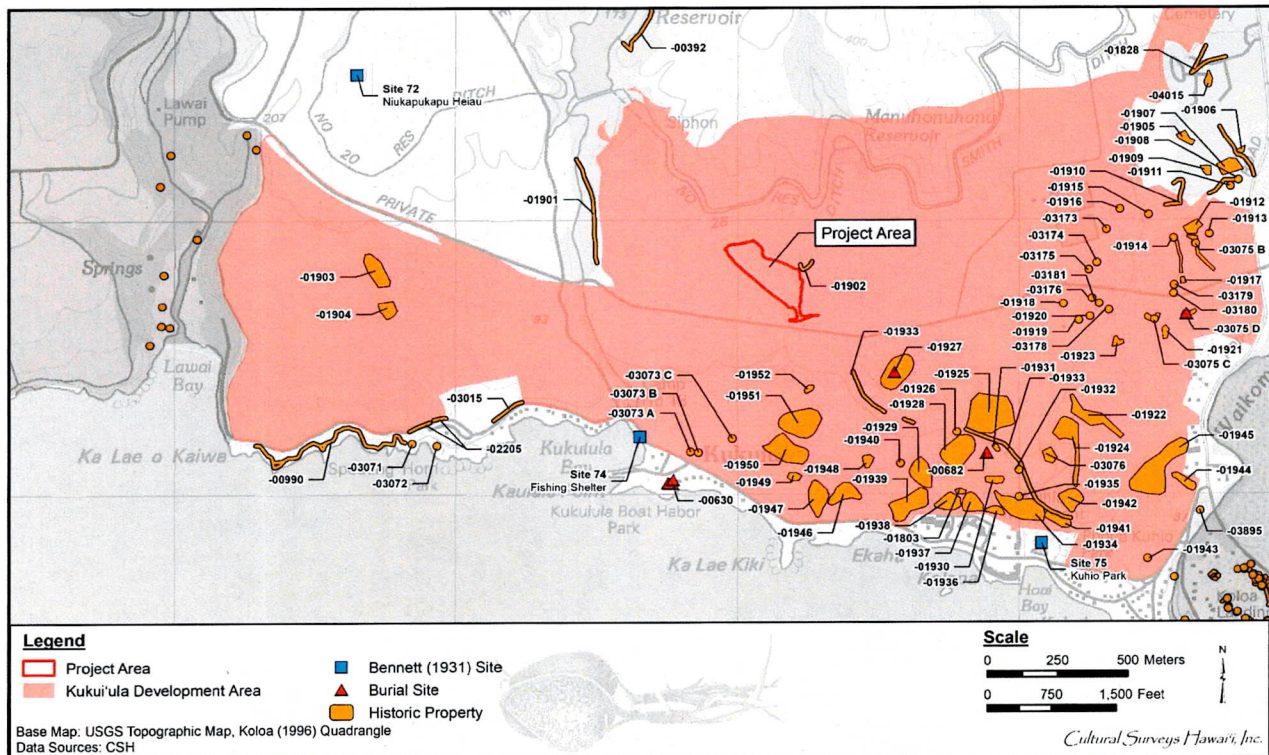


Figure 19. Portion of 1996 Koloa USGS topographic quadrangle showing parcel J1 and historic properties identified during previous archaeological studies at the Kukui'ula Community Development project area and vicinity

Table 3. Archaeological historic properties in the Kukui'ula Community Development project

SIHP # (50-30-10)	Type	Reference	Description/Comment
00072	<i>Heiau</i> (Niukapukapu Heiau)	Bennett 1931	On the top of Niukapukapu hill, on the east bluff of Lāwa'i valley. The outside measurements of this <i>heiau</i> are 46 by 95 feet.
00074	Fishing shelter	Bennett 1931	On the shore near the mouth of Kukui'ula valley. It is 5 feet high, and 6 feet wide at the base. It is arched up of stone and used principally for a wind break.
00075	Kūhiō Park complex	Bennett 1931	On the shore west of Waikomo stream, Kōloa. Taro patches, a small heiau, an oven, paved house platform, fish pond, game ground with seats around, and a fishing shrine are the principal features
00392	Irrigation ditch	Van Ryzin et al. 2004	Irrigation ditch (Feature A) cited as extending for 2,600 m, site includes culverts (Features B through D), a pump and pump house (Feature E), and an abandoned concrete filter (Feature F)
00630	Human burial	Ida et al. 1997	A total of seven sets of human remains, five were disinterred and 2 were left in place, posited to have been a burial area
00682	Human burial	Tulchin and Hammatt 2007	A concentration of basalt boulders was observed sitting atop the ledge at the southern edge of the cave. Small bird bones and a human vertebrae fragment were observed on the top of the basalt boulders. Relocated to the SIHP # -01927 Feature A burial preserve.
00990	Trail	Creed et al. 2002	A discontinuous shoreline trail which traverses the coastal cliffs. For most of its length, the trail is simply a dirt path. This trail site includes four separate features; Feature A is the paved curb stone section of the trail; Feature B is a short retaining wall section of the trail; Feature C is a short section of cut basalt block stairs with an associated wall section; and Feature D is another short section of cut basalt block stairs.
01803	Habitation complex	Hammatt et al. 1988, Hammatt et al. 1998	A temporary habitation with two habitation platforms (Feature A and Feature B) and an agricultural mound (Feature C) Subject of data recovery (CSH temporary site # 42)

SIHP # (50-30-10)	Type	Reference	Description/Comment
01828	Wall	Hammatt 1990	The wall is 1 meter to 1.2 meters wide and 50-60 cm. high. It is constructed of stacked boulders with a smaller rock core filling. The wall is of fairly recent construction and was built as a boundary wall between the school and adjacent properties including cane fields and Pa'anau Rd.
01901	'Auwai	Hammatt et al. 1988, Van Ryzin et al. 2004	An 'auwai, 1-2 m in width, 50-80 cm in depth for a length of approximately 40 meters with mortar covered basalt scattered near its confluence with the stream (CSH temporary site # 1)
01902	'Auwai	Hammatt et al. 1988	The 'auwai is discontinuous, but traceable for approximately 121.9 m. The distinct sections have mostly a cut bank upslope side with soil and stone lining for the downslope embankment (CSH temporary site # 2)
01903	Possible <i>heiau</i> remnant	Hammatt et al. 1988, Hammatt et al. 2000	A possible <i>heiau</i> which has been impacted by cane field bulldozer clearing and the growth of three large banyan trees. The remaining structure is a maximum of 24.4 m wide NE/SW by 91.4 m long NW/SE. It consists of five (5) terrace levels that share a virtually continuous, mostly undisturbed, boulder faced slope (which ranges in height from 0.9 to 3.0 m. South to North) on the eastern side. The western side of the structure has been the most impacted by cane field bulldozing. This includes positing of large boulders and soil onto the structure. This is addressed in a Preservation Plan (CSH temporary site # 3)
01904	Site remnant	Hammatt et al. 1988, Hammatt et al. 2000	A probable site remnant, located some 121.9 m <i>makai</i> (south) of SIHP # -1903, and like SIHP # -01903, it appears as an "islan" of dense vegetation within the cane fields. This site appears as an approximately 30.5 m in diameter large boulder pile. There is a barely discernable curved alignment 12.1 m long E/W by 0.9 to 1.2 m wide and 0.3 m high on the <i>makai</i> (south side) which may have been a retaining wall or enclosure wall. However, the entire perimeter and portions of the interior have been impacted by bulldozing for cane field clearing. No paved or leveled areas were observed on this boulder pile (CSH temporary site # 4).

SIHP # (50-30-10)	Type	Reference	Description/Comment
01905	Platforms	Hammatt et al. 1988, Hammatt et al. 1999	Consists of two adjacent platforms understood as pre-Contact. The larger platform is roughly rectangular in shape and measures a maximum of 26.1 m. N/S by 7.62 m. E/W and 0.61 m. high. The smaller of the two platforms and its dimensions are 3.3 m. E/W by 3.3 m. N/S and is roughly triangular in shape (CSH temporary site # 5)
01906	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1999	A pre-Contact complex of probable habitation and associated agricultural features. Features associated with Site -1906 include an <i>'auwai</i> , large, probable <i>lo 'i</i> - type fields, a smaller walled field, 2 probable habitation enclosures and 2 probable habitation terraces (CSH temporary site # 6)
1906E	<i>'Auwai</i>	Hammatt et al. 1988, Hammatt et al. 1999	An <i>'auwai</i> located on the southern or <i>makai</i> side of the site traceable for 274. 3 m. suggested as traditionally used for taro cultivation, which was then used during historic times, probably for cane (part of CSH temporary site # 6)
01907	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1999	A pre-Contact complex of agricultural and probable habitation features, the agricultural features include walls, fields and enclosed fields. The probable habitation features include a platform and a C-shaped structure (CSH temporary site # 7)
01908	Historic structure foundations	Hammatt et al. 1988,	Cement platforms for wooden frame houses, believed to be the home of Mr. Frank Vasconcelles (CSH temporary site # 8)
01909	Pavement and <i>'auwai</i>	Hammatt et al. 1988, Hammatt et al. 1999	Consists of a probably pre-Contact habitation pavement and adjacent <i>'auwai</i> traceable for 90 m (CSH temporary site # 9)
01910	<i>'Auwai</i>	Hammatt et al. 1988, Hammatt et al. 1999	Includes a surface scatter of historic artifacts (old bottles), a large L-shaped wall section and an <i>'auwai</i> traceable for 55 m (CSH temporary site # 9 and CSH temporary site # 10)
01911	Historic house site	Hammatt et al. 1988	Portuguese oven, believed to have been used by Mr. Frank Vasconcelles' mother (CSH temporary site # 11)
01912	Agricultural complex	Hammatt et al. 1988	A complex of agriculturally related walls and an enclosure. The enclosure is a well-defined agricultural field 15.2 m. N/S by 24.4 m.) E/W with a soil interior (CSH temporary site # 12)

SIHP # (50-30-10)	Type	Reference	Description/Comment
01913	Platform	Hammatt et al. 1988	A probable habitation platform, rectangular in shape, measures 6.706 m. NW/SE by 7.9 m. NE/SW and is a maximum of 0.61 m high (CSH temporary site # 13)
01914	Habitation cave (entrance)	Hammatt et al. 1988	The opening to this lava tube is from a modified sink area roughly 3.0 m. in diameter and 1.2 m. The tube is easily negotiable for some 121.9 m. deep (CSH temporary site # 14)
01915	Platform and 'auwai	Hammatt et al. 1988	A temporary habitation platform, subject of data recovery (CSH temporary site # 16)
01916	Mound	Hammatt et al. 1988	A rectangular boulder and cobble mound, a probable agricultural rock clearance mound (CSH temporary site # 17)
01917	Platform	Hammatt et al. 1988	The intact platform consists of two levels, a <i>makai</i> (southern) level 3.0 m. by 10.0 m. and 7.6 m. by 10.1 m. mauka level. The makai level is cobble paved with the mauka level being 0.15 m. higher and boulder paved (CSH temporary site # 18)
01918	Platform	Hammatt et al. 1988	The rectangular platform measures 3.7 m. N/S by 4.6 m. E/W and is a maximum of 0.5 m. high. The surface of the platform is boulder slab paved with pebbles in the cracks between the slabs creating a relatively level surface (CSH temporary site # 20)
01919	Platform	Hammatt et al. 1988	The rectangular platform measures 4.6 m. NE/SW and is a maximum of 0.61 m. high. The surface of the platform is a relatively level boulder pavement (CSH temporary site # 21)
01920	Modified outcrop	Hammatt et al. 1988	Modification includes piling of boulders around the perimeter of the outcrop, especially the western side. The piling of rocks on the western side is 9.1 m. N/S long by 6.1 m. E/W wide and 0.9 m. high. The center of the outcrop is unmodified exposed bedrock. This site is a possible habitation feature, but more probably an agricultural rock clearance mound (CSH temporary site # 22)

SIHP # (50-30-10)	Type	Reference	Description/Comment
01921	Habitation/ agricultural complex	Hammatt et al. 1988	The habitation feature of this site is the modified top surface of a <i>pāhoehoe</i> bedrock bluff. Modifications include piecing of boulders and cobbles along the north, east, and south sides of the high point of the bluff, then leveling the top with pebbles and cobbles. The agricultural features include narrow soil terraces with piled rock retaining walls on the south facing bluff slope and a large soil planting area at the base of the slope (CSH temporary site # 25)
01922	Agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	Included an ' <i>auwai</i> (270 m long) and associated features including poorly defined agricultural fields, (probable <i>lo 'i</i>), and a probable habitation feature. Subject of data recovery (CSH temporary site # 26)
01923	Modified outcrop	Hammatt et al. 1988, Hammatt et al. 1998	Modifications include a possible ' <i>auwai</i> section and paved areas on the outcrop itself (CSH temporary site # 27)
01924	Agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	The features consist of a rectangular field, discontinuous linear mounds and stacked boulder walls, rock clearance mounds, and an L-shaped terrace (CSH temporary site # 28)
01925	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	This is a habitation and agricultural site complex including a C-shape, platforms, fields and walls. Subject of data recovery (CSH temporary site # 29)
01926	Wall	Hammatt et al. 1988,	A stacked wall remnant 5.5 m. long with a maximum height of 1.0 m. and width of 0.9 m. This wall is constructed of boulders stacked up to six courses high (CSH temporary site # 30)
01927	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	Included two areas of cave shelters, a terrace, and associated agricultural features. Subject of data recovery (CSH temporary site # 31)
01928	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	A habitation and agricultural complex of 8 designated features, including C-shapes, platforms, and enclosures. Subject of data recovery (CSH temporary site # 32)

SIHP # (50-30-10)	Type	Reference	Description/Comment
01929	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	This complex includes an irrigation ditch, walls, platforms, mounds, and enclosures. The general area is rocky <i>pāhoehoe</i> with a number of ditches (<i>'auwai</i>) some of which are distinct and others of which are barely discernible. Subject of data recovery (CSH temporary site # 33)
01930	Habitation complex	Hammatt et al. 1988, Hammatt et al. 1998 15139	Described as a <i>heiau</i> complex built on and around a large modified bedrock outcrop, adjacent to a large modified boulder filled sink. Subject of data recovery (CSH temporary site # 34)
01931	Platforms	Hammatt et al. 1988, Hammatt et al. 1998	A probable habitation site or field work shelter area including two small platforms. Subject of data recovery (CSH temporary site # 35)
01932	Platform	Hammatt et al. 1988,	A rather mounded platform that was thought to probably be a rock clearance feature. Subject of data recovery (CSH temporary site # 36)
01933	Railroad berm	Hammatt et al. 1988, Hammatt et al. 1998	Designates the old railroad berm which runs through much of the project area, generally running from the northwest in the direction of the McBryde Mill toward the southeast and Koloa Landing. Subject of data recovery (CSH temporary site # 37)
01934	Agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	Consisting of terraces, retaining walls, ditches (<i>'auwai</i>), fields, and a circular platform. Subject of data recovery (CSH temporary site # 38)
01935	Enclosure	Hammatt et al. 1988	This small rectangular enclosure measuring 1.5 m. N/W by 2.4 m. E/W (interior dimensions) with a back wall 0.61 m. high and 0.91 m wide built on the edge of a bedrock bluff is a probable habitation enclosure or field shelter. Subject of data recovery (CSH temporary site # 39)
01936	Agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	This is a continuation of agricultural fields and the raised <i>'auwai</i> of SIHP # -01934. This site designation includes an U-shaped shelter and a bulldozed remnant of what was probably once a sizeable platform. Subject of data recovery (CSH temporary site # 40)

SIHP # (50-30-10)	Type	Reference	Description/Comment
01937	Habitation complex	Hammatt et al. 1988, Hammatt et al. 1998	Includes a number of minor modifications within and abutting a sink containing standing water and an enclosure damaged by bulldozing. Subject of data recovery (CSH temporary site # 41)
01938	Habitation/agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	Consists of six designated features (including 3 terraces, an L-shaped wall, and 2 platforms which probably include both habitation and agricultural constructions. Subject of data recovery (CSH temporary site # 43)
01939	Habitation/agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	A habitation and agriculture complex comprising thirteen designated features, associated with the branching of a major well-defined 'auwai. Subject of data recovery (CSH temporary site # 44)
01940	Platform	Hammatt et al. 1988	A platform that had been greatly impacted by the growth of a large banyan tree that grows through a portion of the structure. Historic modifications and modern bulldozing also appeared to have affected the site. Subject of data recovery (CSH temporary site # 45)
01941	Agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	Consists of five designated features: three enclosures, a C-shape, and a field wall which are in reality a continuation of Site -1934 to the west. Subject of data recovery (CSH temporary site # 46)
01942	Habitation/agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	A habitation and agricultural complex comprised of three features. Feature -1942/A consist of a modified bedrock outcrop, Feature -1942/B consists of adjacent structures including an oval stone-lined pit, a small rectangular enclosure, a C-shape enclosure, and a platform. Feature -1942/C consists of a small rectangular enclosure. Subject of data recovery (CSH temporary site # 47)
01943	Site remnant	Hammatt et al. 1988	Consists of a habitation platform, rock clearance pile, an L-shape and a section of 'auwai. Subject of data recovery (CSH temporary site # 48)
01944	Platforms	Hammatt et al. 1988, Hammatt et al. 1998	Consists of two platforms (designated Features -1944/A and -1944/B), both of which have been severely impacted by bulldozing, and two enclosures. Subject of data recovery (CSH temporary site # 49)

SIHP # (50-30-10)	Type	Reference	Description/Comment
01945	Agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	A large rectangular walled enclosure and adjacent enclosure remnants. Subject of data recovery (CSH temporary site # 50)
01946	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	A habitation and agricultural complex of seven designated features including C-shapes, enclosures, a platform, and mounds. These structures are situated in an area with several field remnants. Subject of data recovery (CSH temporary site # 52)
01947	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	This complex consists of eight designated features including enclosures, platforms, C-shapes, mounds, and walls. Subject of data recovery (CSH temporary site # 53)
01948	Habitation complex	Hammatt et al. 1988, Hammatt et al. 1998	A habitation and agricultural complex made up of an agricultural platform, a habitation enclosure, paved area with a possible cupboard, a C-shape shelter, and a rectangular mound. Subject of data recovery (CSH temporary site # 54)
01949	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	A temporary habitation and agricultural complex made up of a habitation enclosure, a habitation U-shape, an agricultural mounded wall, and two habitation mounds. Subject of data recovery (CSH temporary site # 55)
01950	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	An agricultural and temporary habitation complex that consists of C-shapes, L-shapes, U-shapes, modified outcrops, terraces, walls, a ramp-like feature or possible elevated 'auwai section, and a stacked boulder wall. Subject of data recovery (CSH temporary site # 56)
01951	Habitation/ agricultural complex	Hammatt et al. 1988, Hammatt et al. 1998	Comprises a large enclosure and associated habitation and agricultural features. The large oval enclosure measures approximately 73.1 m. NE/SW by 42.6 m. NW/SE with a stacked boulder constructed wall ranging in height from 75 cm. to 1.24 m. This site included linear mounds, oval mounds, and U-shapes and L-shapes with associated soil planting areas. Subject of data recovery (CSH temporary site # 57)
01952	Wall/ platform	Hammatt et al. 1988, Hammatt et al. 1998	Probably an agricultural site, and includes a wall remnant and platform with a crypt-like feature. Subject of data recovery (CSH temporary site # 58)

SIHP # (50-30-10)	Type	Reference	Description/Comment
02205	Wall	LaChance et al. 2014	A discontinuous, small to large, subangular, basalt boulder wall remnant (likely plantation era)
03015	Wall	McMahon 1996	The wall displays a traditional Hawaiian, mortarless core-filled construction technique.
03071	Overhang shelter	Creed et al. 2002	A rock shelter located along the coastal cliff near Spouting Horn. The site consists of a natural rock overhang that measures 10.0 m N/S at the entrance by 5.7 m E/W. The interior heights of the ceiling have a maximum of 2.6 m. No midden or artifacts were observed. The site correlates with Kikuchi Site 56. It appears that the site has been looted, used in modern times, and affected by wave action.
03072	Overhang shelter	Creed et al. 2002	A rock shelter located along the coastal cliff near Spouting Horn. The site consists of a natural rock overhang that measures 6.1 m NW/SE at the entrance by 2.1 m NE/SW. The interior heights of the ceiling have a maximum of 1.4 m. Two dirt piles located outside the entrance may correlate with looting activities. No midden or artifacts were observed. The site correlates with Kikuchi site 57. It appears that the site has been looted, used in modern times and affected by wave action.
03073A	Wall	Kikuchi 1963	A rough wall 1 1/2 feet high by 1 1/2 feet wide was seen running 180 degrees magnetic bearing and approximately 20 feet long. The wall ran parallel to an incline which it probably delineated.
03073B	Wall	Kikuchi 1963	A stone wall 2-3 feet wide and about 3 feet tall covered by bushes and shrubs was noted. Only 50 to 70 feet of the wall could be easily discerned. The wall was seen to be built in the traditional way of filling small stones in between a frame of larger stones. Notes an unusual slab of vesicular basalt with a circular depression 6 inches in diameter.

SIHP # (50-30-10)	Type	Reference	Description/Comment
03073C	Pavement	Kikuchi 1963	On the area where the Loran station once stood were several foundation stands for the towers. The towers are now destroyed. The site of the towers and the instrument house stands on a 3 foot high outcropping of <i>pāhoehoe</i> lava. Upon examination of the site it was found that the <i>pāhoehoe</i> outcropping was dressed by inserting slabs of stone between the crevices and by building up, artificially, of the sides of the outcropping with stones to build pavements and terraces.
03075A	Habitation cave (entrance)	Kikuchi 1963, Hammatt et al. 1988	A large modified lava tube, that is a probable habitation refuge cave which has been extensively used during historic times. The lava tube was used by the County of Kaua'i as a Civil Defense Bomb Shelter (CSH temporary Site # 15)
03075B	Habitation cave (entrance)	Kikuchi 1963, Hammatt et al. 1988	A modified sink and probable habitation cave, Modifications to the sink include: a road-like feature, a rough boulder alignment, and a paved area fronting the cave opening. The road-like feature cuts across the sink in an East/West orientation and is constructed of stacked boulders with a compact boulder and cobble surface (CSH temporary Site # 23)
03075C	Habitation/ burial cave (entrance)	Kikuchi 1963, Hammatt et al. 1988	A probable habitation and burial cave. Midden was noted on the cave floor. A low platform, possible burial feature was observed and preserved in place (addressed in a Hammatt and Shideler 2001 preservation plan) (CSH temporary Site # 24)
03075D	Human burial	Hammatt et al. 1988	A possible burial feature (low platform which measures 0.9 by 2.1 m) abutting the NE wall of the main chamber of a lava tube
03076	<i>Heiau</i>	Kikuchi 1963, Hammatt et al. 1988, Hammatt et al. 1998	A large terraced platform and probable <i>heiau</i> (Kamaloula Heiau?) measuring about (24.4 by 24.4 m.) and consisting of five relatively discrete terrace levels. Subject of data recovery (CSH temporary site # 51)
03173	Wall	Palama and Stauder 1973	Constructed of stacked <i>pāhoehoe</i> rocks, 0.75 m. high, 0.50 m. wide and running for an undetermined distance.

SIHP # (50-30-10)	Type	Reference	Description/Comment
03174	Platform	Palama and Stauder 1973	Constructed of large faced <i>pāhoehoe</i> slabs on the perimeter and filled with <i>pāhoehoe</i> rubble. This feature utilizes a <i>pāhoehoe</i> outcropping on the northeast side.
03175	Wall	Palama and Stauder 1973	This wall utilizes some upright stones in its construction with the bulk of construction being stacked <i>pāhoehoe</i> . The dimensions are 1 m. high by 1 m. wide and runs for approximately 6 m.
03176	Enclosure	Palama and Stauder 1973	Consists of a rectangular enclosure with a L-shape appendage on the north side. The appendage and enclosure entrance faces west. Dimensions are approximately 3 m. wide by 9 m. long. The walls which are deteriorated stand approximately .50 m. high by 2 m. wide.
03178	Modified outcrop	Palama and Stauder 1973	This feature is probably a pen. The wall runs on and around a large <i>pāhoehoe</i> outcrop. This feature encloses an area approximately 20 m. square.
03179	Habitation cave (entrance)	Palama and Stauder 1973, Hammatt et al. 1988	This feature exhibits modification on both the exterior and interior. On the exterior of the cave are two walls, the entrance of the cave faces on to a flat open space. The interior of the cave has been cleared, the entrance modified and the ceiling fire blackened. There is one, possibly two walls toward the back of the cave. The soil appears to be relatively undisturbed. It appears that both the interior and exterior of this cave has been utilized for habitation.
03180	Habitation cave	Palama and Stauder 1973	This feature is similar to SIHP # -03179 except this dwelling cave utilizes more exterior modifications. These modifications consist of a well built walled enclosure fronting the entrance to the cave, stone alignments and walls.
03181	Agricultural complex	Palama and Stauder 1973	Although this is the only defined agricultural area in the corridor, the evidence of 'auwai(s) and the ethnohistorical material all indicate that the entire area was once under intense agriculture, both <i>kula</i> and <i>kalo</i> .
03895	Stone and mortar foundation	Yorck and Hammatt 2005	Consists of a foundation measuring 4.6 by 3.0 m. constructed of cut basalt stones and mortar. Thought to be associated with the Kōloa railroad.

SIHP # (50-30-10)	Type	Reference	Description/Comment
04015	Pa'anau Plantation Camp	Kikuchi 1988	Noted concrete E-shaped forms of unknown function, concrete foundations, platforms, and pits, a latrine drainage ditch, and a concrete crock

5.3 2023 Archaeological Field Inspection

On 23 February 2023, at the request of BBPC Kukui'ula Development, LLC, a field inspection of Parcel J1 was conducted under archaeological fieldwork permit number 23-30, issued by the Hawai'i SHPD per HAR §13-13-282. Fieldwork for Parcel J1 was completed by CSH archaeologist Missy Kamai, B.A, under the general supervision of Principal Investigator Hallett H. Hammatt, Ph.D. This work required approximately 1 person-day to complete. The Hammatt 2023 field inspection relates the following:

Parcel J1 is situated just west of a ridge, between two holes of Kukui'ula's golf course, hole #7 to the west and hole #6 to the east. A maintenance cart road and part of the golf course including a pond and landscaping vegetation is currently situated where the road to Parcels J, K, and L will be constructed. A small portion of Parcel J1's east edge is located within a heavily vegetated area of *haole koa* and waist high grass, while the majority of the parcel consisted of ankle high grass, allowing for good ground visibility [present Figure 20 through Figure 28].

The parcel, situated in former cane land was part of the McBride Company in the 19th and 20th centuries. SIHP # 50-30-10-01902 described as a historic dirt lined ditch, tapped from Aepo Stream, and most likely associated with sugar cane cultivation located just outside the east edge of Parcel J1 (Hammatt et al. 1988:159, see Figure 19) could not be relocated during this field inspection.

Based on the results of the field inspection of Parcel J1, the results of previous archaeological studies in the larger project area and the long history of land use-under cultivation of sugarcane, the Hammatt (2023) study requested concurrence of SHPD with a project effect determination of 'no historic properties affected.'

The Hammatt (2023) study asserted that the no historic properties affected determination for the project effect should be applied to the development of Parcel J as a residential subdivision, and to the individual building permits for homes within the Parcel J subdivision.

Future individual building permittees would still be subject to the 2013 Kukui'ula Community Development Project guidelines titled *Kukui'ula Construction Rules*, specifically the "Archaeological Protocol" section that states two critical steps: 1) if [human] remains are inadvertently found during ground disturbing activities, all activities will cease in the immediate vicinity of discovery and Kukui'ula Site Superintendent will be immediately contacted. The Site Superintendent shall report the inadvertent findings to the State Historic Preservation Division; and 2) temporary barricades will be installed at a minimum distance of 15 feet from the inadvertent discovery to secure the area [per HRS 300].



Figure 20. Location of future entrance into Parcel J, K, and L (cart road just off Ala Kukui'ula), view to northwest (from Hammatt 2023:11)



Figure 21. Location of future entrance into Parcel J, K, and L, view to northwest (from Hammatt 2023:11)



Figure 22. Overview photo of project area taken from the southeast, view to northwest (from Hammatt 2023:12)



Figure 23. Overview photo taken from approximate center of project area, view to north (from Hammatt 2023:13)



Figure 24. Overview photo taken from approximate center of project area, view to east (from Hammatt 2023:13)



Figure 25. Overview photo taken from approximate center of project area, view to southeast (from Hammatt 2023:14)



Figure 26. Overview photo taken from approximate center of project area, view to southwest (from Hammatt 2023:14)



Figure 27. Overview photo taken from approximate center of project area, view to west (from Hammatt 2023:15)



Figure 28. Overview photo project area taken from the northwest area, view to southeast (from Hammatt 2023:15)

5.4 Historic Properties Near Parcel J1

5.4.1 Identifications near Parcel J1

No historic properties have been identified within Parcel J1 and only one historic property, SIHP # 50-30-10-01902 was located within 250 m of Parcel J1. SIHP # -01902 was described as follows:

[CSH temporary site # 2....] is an 'auwai remnant situated on the makai (southern) end of a brush covered ridge *makai* (south) of Manuhonuhonu Reservoir. The 'auwai is discontinuous, but traceable for approximately 400 ft (121.9 m.). The distinct sections have mostly a cut bank upslope side with soil and stone lining for the downslope embankment. The 'auwai averages 3 ft (.914 m) wide and 1 to 2 ft (.305 to .610m.) deep in the more defined sections. There are also a few indistinct agricultural rock clearance mounds on the downslope side of the 'auwai. The 'auwai is possibly prehistoric, but more likely it is related to early commercial cane cultivation. Presently [1988, the SIHP # -01902] area is a 'peninsula' into cultivated cane fields [Hammatt et al. 1988:45–46]

This site was determined to be no longer significant (following the AIS documentation) and there were no recommendations for further historic preservation work (Hammatt et al. 1988:178).

On 23 February 2023 a field inspection of Parcel J1 was conducted that searched for any remnant of SIHP # -01902 (described in Hammatt et al. 1988) but this site could not be confirmed during this field inspection.

5.4.2 Burial Sites in the Vicinity

Burial sites have been reported from four locations at Kukui'ula:

The archaeological inventory survey and data recovery investigations documented the presence of two traditional Hawaiian burials in the totality of the Kukui'ula project area. Human skeletal remains were encountered in a lava tube (SIHP # -01927 Feature A) approximately 350 m southeast of the Parcel J1 project area (these were addressed in a Hammatt and Shideler 2001 burial treatment plan and were preserved in place).

A low platform, possible burial feature was reported in lava tube designated SIHP # -03075C, located 1.2 km east of parcel J1 and the lava tube was preserved (addressed in a Hammatt and Shideler 2001 preservation plan).

In 2007 one human vertebrae was inadvertently discovered in another lava tube (SIHP # -00682) in Kōloa Ahupua'a approximately 850 m east of the Parcel J1 project area (Tulchin and Hammatt 2007; these were relocated to the SIHP # -01927 Feature A burial preserve).

A CSH (Reveal and Hammatt May 2014) study documents the identification of fragmentary human skeletal remains in sediment samples from SIHP # -01927A. This circumstance was shared with the Kaua'i/Ni'ihau Island Burial Council (KNIBC) at the meeting of 21 May 2014 with proposed reinterment back in SIHP # -01927A. Reinterment was completed in SIHP # -01927A in October 2017.

There was an inadvertent discovery of human skeletal remains on 9 August 2016 at Kukui'ula. Bay (near the Kōloa/Lāwa'i *ahupua'a* boundary approximately 700 m southwest of the Parcel J1 project area) reported to the KNIBC. KNIBC minutes relate that:

Mary Jane [Naone] introduced herself explaining my role is to identify if it's human or not, I was called out by a landscaper and he was doing ground keeping at Kukui'ula the harbor where the ditch runs into the ocean. Aside the slope is packed red dirt and human remains were exposed. Following my conclusion of human remains I notified Kauanoe and she it took over after that. Kauanoe Hoomanawanui explains she and Councilmember Sandi Quinsaas made a site visit and secured the remains. Following consultation with Kukui'ula we scheduled a reinterment in the burial preserve. I, Councilmember Quinsaas and Kimo Burgess reinterred the remains for long term preservation. [KNIBC Minutes, 21 September 2016]

It appears no SIHP # was assigned and there is no additional information available regarding the nature of the find. The find is believed to be approximately 550 m east-southeast of the Parcel J1 study area. These *iwi* (skeletal remains) were reinterred at the Kukui'ula reinterment location in a lava tube (designated SIHP # -01927 Feature A, known as the "*piko* preserve") approximately 400 m southeast of the Parcel J1 project area.

We also wish to note in passing that there was a Kamala'ula Cemetery (Kamaloula), (SIHP # -01985) at the Lawai Beach Resort (described in detail in McCurdy and Hammatt 2007) but this was not in Kukui'ula lands, nor was it in Lāwa'i Ahupua'a, and it was approximately 2.0 km distant east of the Parcel J1 project area.

During archaeological investigations of surface sites, no burials were encountered within the project area. Concerns related to this possibility of burials in the Parcel J1 project area are addressed below.

The *kama'āina* interviewees for the CIA were not aware of any burials within the entirety of the Kukui'ula project area. Several, however, spoke of a former cemetery located outside and *makai* of the Kukui'ula project area, on the site of the present Lawai Beach Resort. The interviewees recalled that it was a formal cemetery with grave markers and some fencing at its boundaries, and that interments continued into the first half of the twentieth century.

5.4.3 Heiau Sites in the Vicinity

A possible *heiau* on a distinctive *pu'u* (hillock) in the Lāwai portion of Kukui'ula 1,200 m to the west of Parcel J1, designated SIHP # -01903, has been preserved and addressed in a Preservation Plan (Hammatt et al. 2000)

A probable *heiau* (SIHP # -3076) located inland of Prince Kūhiō Park approximately 1.0 km southeast of Parcel J1 has been preserved in a 16-acre archaeological preserve and addressed in a preservation plan (Chiogioji and Hammatt 2003).

Section 6 Consultation Results

6.1 Cultural Impact Assessment Including the Parcel J1 Project Area

CSH carried out a CIA of an approximately 1,000-acre property—identified as the Kukui'ula project area—in the *ahupua'a* of Kōloa and Lāwa'i that included the Parcels J, K, L (Hammatt et al. 2002). The study gathered information from historical documentation, archaeological investigations, and *kama'āina* interviews.

The outreach included 29 Hawaiian organizations, government agencies, community members, and cultural descendants with ties to Kukui'ula who were contacted to 1) identify potentially knowledgeable individuals with cultural expertise and knowledge of the project area and the surrounding vicinity; and 2) identify cultural concerns and potential impacts within the project area (Table 4).

Based on recommendations from organizations and the community, eight *kūpuna* and *kama'āina* were identified with whom interviews were conducted. The eight interviewees were Mr. James Burgess, Mr. Kanichi Funamura, Mrs. Aletha Kaohi, Dr. William "Pila" Kikuchi, Mr. Abel Medeiros, Mr. James Miyake, Mr. Ilato Muraoka, and Mr. Earl Smith.

The ages of the eight *kūpuna* informants, at the time they were interviewed, ranged from 67 to 90 years. The oldest interviewee lived at Kukui'ula from 1912 until the 1980s. Two other interviewees resided in Kukui'ula during the 1920s, '30s, '50s, and '60s. The remaining interviewees had knowledge of the Kukui'ula project area through professional or cultural contact. The CIA is thus particularly valuable for the depth of firsthand remembrance of Kukui'ula in the early twentieth century it was able to capture.

Generally, only the eight *kūpuna* interviewees spoke to the aspects of this study mentioned in the letter above. Primarily, the others contacted made no claim to specific knowledge of traditional cultural resources, practices, beliefs, or related cultural concerns within the Kukui'ula project area, but gave referrals to knowledgeable potential interviewees. Dr. Holly McElowney of the Culture and History Branch of the State Historic Preservation Division suggested the study treat place names in the Kukui'ula project area.

The study notes,

Sugarcane and ranching were the dominating land use activities within the project area throughout the past century. These activities—and the sense that the project area was private property—restricted access inside the project area to employees of McBryde Sugar Company. None of the *kama'āina* interviewees who were former residents of the Kukui'ula area knew of any cultural sites in the project area, or could recall anyone entering the project area for any traditional cultural practice. The only interviewees with knowledge of traditional culture within the project area were Dr. William Kikuchi and Mrs. Aletha Kaohi who were acquainted with the area through professional and community service pursuits.

Based on the evidence gathered for the assessment, at present no contemporary or continuing cultural practices occur within the project area. [Hammatt et al. 2002:i, ii]

Table 4. Results of community consultations reported in the CIA (Hammatt et al. 2002:32–33)

Key:

Y=Yes

N=No

A=Attempted (at least two attempts were made to contact individual or organization, with no response)

U=Unable to contact, i.e., no phone or forwarding address, phone number unknown

Name	Affiliation	Contacted	Comments
Ahahui	Hawaiian organization	A	
Burgess, James	Royal Order of Kamehameha I, Kaumuali'i Chapter No. 3	Y	Interviewed 17 Sept 2002 in Līhu'e, Kaua'i
Chun, Dennis	Hawaiian Studies Program, Kaua'i Community College	A	
Cobb, Rowen B.	Descendant of Blake family of Kōloa	Y	Provided information on Judge Henry K. Blake of Kōloa
Creamer, Annette	Kaua'i Representative, Alu Like, Inc.	Y	Gave referrals
Funamura, Kanichi	Kukui'ula resident, 1912–1980s	Y	Interviewed 8 Sept 2002 in Kukui'ula
Kaohi, Aletha	Hawaiian culture resource advisor, West Kaua'i Visitor Center; former member of Kaua'i Historic Preservation Review Commission	Y	Interviewed 13 Sept 2002 in Waimea, Kaua'i
Kapaka-Arboleda, LaFrance	Office of Hawaiian Affairs; Kaua'i/ Ni'ihau Islands Burial Council	Y	Gave referrals
Kapeliela, Kana' i	Burial Sites Program, State Historic Preservation Division	A	
Kaua'i Hawaiian Civic Club	Hawaiian organization	A	
Kaui, Trinette	A&B Properties, Kaua'i	Y	Gave referrals
Keala, Jalna	Hawaiian Rights Division, Office of Hawaiian Affairs	Y	Gave referrals
Keli'ipio, Sheryl	Ho'o Lahui Hawai'i	Y	Gave referrals
Kikuchi, William "Pila"	Professor emeritus, Kaua'i Community College	Y	Interviewed 8 Aug 2002 in Kukui'ula

Name	Affiliation	Contacted	Comments
Kula family descendant	Former Kukui'ula resident family	U	
McEldowney, Holly	Culture and History Branch, State Historic Preservation Division	Y	Suggested areas of concern in study
McMahon, Nancy	Kaua'i archaeologist, State Historic Preservation Division	Y	Gave referrals
Medeiros, Abel	Former McBryde Sugar Company employee; cattle rancher in Kukui'ula project area	Y	Interviewed 19 July 2002 in Kukui'ula
Miyake, James	Former Kukui'ula resident, 1921–1936	Y	Interviewed 5 Aug 2002 in 'Āina Haina, O'ahu
Moke family descendant	Former Kukui'ula resident family	U	
Muraoka, Ikito	Former Kukui'ula resident, 1951–1964	Y	Interviewed 2 Aug 2002
Palama family descendant	Former Kukui'ula resident family	A	
Perry, Warren	Royal Order of Kamehameha I, Kaumuali'i Chapter No. 3	Y	Gave referrals
Queen Lili'uokalani Children's Center, Kaua'i Unit	Queen Lili'uokalani Children's Center, Kaua'i Unit	A	
Requilman, Mary A.	Kaua'i Historical Society	Y	Gave referrals, assistance with research materials
Sagum, Scott	Ho'o Lahui Hawai'i	Y	Gave referrals
Shigemoto, Tom	A&B Properties, Kaua'i Superintendent	Y	Gave referrals
Smith, Earl	Former McBryde Sugar Company employee, 1958–1978 in Kukui'ula	Y	Interviewed 8 Aug 2002
Waialeale family descendant	Former Kukui'ula resident family	A	

As noted in the table (above), efforts were made to contact descendants of families of Hawaiian ancestry identified as having resided in the Kukui'ula area in the past. Despite repeated efforts, CSH was unable to contact these descendants.

6.2 Community Outreach Table

Cultural consultation outreach specifically addressing Parcel J1 (as a subset of parcels J, K, L) was initiated in mid-May 2022. A summary of cultural consultation outreach to 52 parties including Parcel J1 is provided below in Table 5.

Table 5. Summary table of cultural consultation outreach regarding Parcel J1

Name	Affiliation	Comments
Ahuna, Dan	Office of Hawaiian Affairs (OHA); Represents the islands of Kaua'i and Ni'ihau as an OHA Trustee	Letter and figures sent via USPS 17 May 2022; Letter and figures sent via email 19 May 2022
Blackstead, Ronald	<i>Kama'āina</i> of Lawa'i	Letter and figures sent via USPS 17 May 2022
Blaich, Beryl	Kaua'i Island Council – Hawaiian Islands Land Trust; Malama Maha-ulepu Group Coordinator; Executive Secretary to the Board; Board of Advisors of Malama o Manoa, board member; Manoa Valley Heritage Foundation, Waipa	Letter and figures sent via USPS 17 May 2022
Brun, Paul	<i>Kama'āina</i> (resident of Koloa; son of Tina Brun)	Letter and figures sent via USPS 17 May 2022; Left text message 26 May; Reply from Paul but no response regarding project areas; Left text message 2 June; Reply from Paul but no response regarding project areas
Brun, Tina	<i>Kupuna/Kama'aina</i> (resident of Koloa and former resident of Kukui'ula Camp 18; mother of Paul Brun)	Letter and figures sent via USPS 17 May 2022
Bukoski, Lopaka Kaluawaiapele Nakaahikikane Kealiikanaka-oleaipoalani	<i>Kumu Hula</i> Participated in prior Piko ceremonies with Aunty Stella Burgess; family from Kōloa/Po'ipū	Letter and figures sent via USPS 17 May 2022; Left text message 26 May (no reply); Left text message 2 June; (understand he may be away)
Chang, Pi'ilani	Cultural historian	Letter and figures sent via USPS 17 May 2022

Name	Affiliation	Comments
Chock, Chucky Boy	Director of Kaua'i Museum	Letter and figures sent via email 19 May 2022
Cobb, Rowena	Real estate	Letter and figures sent via USPS 17 May 2022
Cowden, Felicia	Kauai County Council, Councilmember	Letter and figures sent via USPS 17 May 2022
Cummings, Roslyn	Concerned party	Email sent out 19 May 2022; follow-up by email 24 May 2022; phone call on 25 May 2022 and 2 June 2022 Provided testimony presented verbatim in Appendix B
Dipietro, Jeri	President, Kōloa Community Association	Letter and figures sent via USPS 17 May 2022
Gage, Reginald	Kaua'i Historical Society	Letter and figures sent via USPS 17 May 2022
Haviland, Rick and Julie	Founders of Outfitters Kauai; members of Lawai Kai Citizens Advisory Committee	Letter and figures sent via USPS 17 May 2022 Letter and figures sent via email 19 May 2022
Hayes, Terrie	Potentially concerned party	Letter and figures sent via email 19 May 2022
Hoomanawanui, Kauano M.	Burial Site Specialist, SHPD (Hawai'i and Kaua'i)	Letter and figures sent via email 19 May 2022
Isoda, Stanley	<i>Kama'āina</i>	Letter and figures sent via USPS 17 May 2022
Kaiaokamaile, Leanora Dizol	County long-range planner, ties to Kōloa	Letter and figures sent via USPS 17 May 2022
Kalanikumai Ka Maka'uli'uli Puamo'i 'O Nā Ali'i Hanohano (Zacheriah Branch Harmony)	Potentially concerned party	Letter and figures sent via email 19 May 2022 Provided testimony presented verbatim in Appendix B
Kaohelaui'i, Billy	<i>Kama'āina</i> of Kōloa; Aha Moku, Kona District Representative; Hui Malama o Kanelolouma	Letter and figures sent via USPS 17 May 2022

Name	Affiliation	Comments
Kaohi, Aletha Kawelukawahine-hololoolimaloa Goodwin	<i>Kupuna</i> ; descendant of King Kaumuali'i (six generations); Manager of the West Kaua'i Visitor Center; President of Friends of King Kaumuali'i; contributed to initial cultural survey at Kukui'ula; called upon by Kukui'ula to conduct blessings	Letter and figures sent via USPS 17 May 2022 Left e-mail message 26 May Left voicemail message 2 June Responded by email 5 June "...yes I have read the Kukuiula Development. While serving on the County of Kaua'i Historic Preservation committee, appointed by Mayor Kunimura many years ago, we visited an irrigation system that went uphill and lava tubes. May have been closer to Prince Kūhiō Park. Sorry I don't have historical and cultural <i>mo'olelo</i> in those three parcels."
Kauwe, Chris	Canoe Surfing Kauai; owner of Honi Honi Honey; cultural practitioner; member of Hui Mālama O Kāneiolouma; Malama Huleia Board of Directors	Letter and figures sent via USPS 17 May 2022
Kawakami, Galen	Former Forester, Forestry and Wildlife Kaua'i Branch Manager, DLNR	Letter and figures sent via USPS 17 May 2022 Letter and figures sent via email 19 May 2022 Mr. Kawakami replied via email 19 May 2022 declining to submit any comments CSH replied via email 20 May 2022
Kekua, Kehaulani	Director of Kaua'i Culture & Heritage Center; <i>Kumu Hula</i>	Letter and figures sent via USPS 17 May 2022 Letter and figures sent via email 19 May 2022
Kruse, John	Former Kaua'i Burial Council	Letter and figures sent via USPS 17 May 2022
Kuribayashi, Paul	Kukui'ula Store and former resident of Kukui'ula Camp 18	Letter and figures sent via USPS 17 May 2022 Terry Kuribayashi (wife) responded by telephone on 19 May 2022 Left message 20 May Left message 2 June Received text message reply declining to participate

Name	Affiliation	Comments
Kyono, Alvin	Forestry Consultant, formerly at Forestry and Wildlife, DLNR	Letter and figures sent via USPS 17 May 2022 Letter and figures sent via email 19 May 2022
Larson, Carlyn	KHPRC Chair	Letter and figures sent via USPS 17 May 2022 letter and figures sent via email 19 May 2022
Lee, Sam	<i>Kupuna/Kama'aina</i> Resident of Po'ipu	Letter and figures sent via USPS 17 May 2022 Call to home phone (no answer) 25 May Call to home phone (no answer) 2 June
Lindsey, Elizabeth	Potentially concerned party	Letter and figures sent via email 19 May 2022
Matsumoto, Sandra	Manager, Koloa Neighborhood Center	Letter and figures sent via USPS 17 May 2022 letter and figures sent via email 19 May 2022
McMahon, Nancy	Exploration Associates LTD; former Kaua'i archaeologist for SHPD	Letter and figures sent via USPS 17 May 2022 Letter and figures sent via email 19 May 2022 Ms. McMahon replied 31 May 2022 [regarding practices with several traditional practitioners at SIHP # 01903 (and maybe SIHP# -1904) in Lāwa'i Ahupua'a] at the lamakū. and requesting that access still be allowed for the lamakū ceremonies. Made referral to Sandi, the Kauai burial council chair, as one of the leaders of the group of practitioners.
Muraoka, Ikito "Ike"	Potentially concerned party	Letter and figures sent via USPS 17 May 2022
Nakamura, Nadine	State Representative of House District 14; former Kaua'i County Representative; member of Lawai Kai Citizens Advisory Committee	Letter and figures sent via email 19 May 2022
Oi, Tommy	Potentially concerned party	Letter and figures sent via USPS 17 May 2022
Okinaka, Elizabeth	Save Koloa	Letter and figures sent via email 19 May 2022

Name	Affiliation	Comments
Otsuji, Marvin	Owner – Seasport Divers Master Steersman – OluKai Canoe Crew	Letter and figures sent via USPS 17 May 2022 Sent text message (no reply) 25 May Sent text message 2 June Replied 2 June “It looks like you have way more than I know. I was trying to contact some of my friends parents that lived in the area but either passed or not in condition to tell their history. Wish I could add but you are on it”
Perry, Warren	Lawyer	Letter and figures sent via USPS 17 May 2022 Letter and figures sent via email 19 May 2022
Punohu, Anne	Potentially concerned party	Letter and figures sent via USPS 17 May 2022
Reid, Aston	Potentially concerned party	Signed testimony to planning commission Aston Carbonel
Rogers, Nani	<i>Kanaka maoli, Mano O Kalanipo Aha Moku Advisory Council</i>	Letter and figures sent via USPS 17 May 2022
Sakimae, Bruce	<i>Kama 'āina</i> of Kōloa	Letter and figures sent via USPS 17 May 2022
Santos, Kaliko	Beneficiary Services Agent, OHA Nā Kuleana o Kānaka 'Ōiwi <i>Mano O Kalanipo Aha Moku Advisory Council</i>	Letter and figures sent via USPS 17 May 2022 Letter and figures sent via email 19 May 2022
Say, Barbara	Kaua'i/Ni'ihau Island Burial council member; North Shore	Letter and figures sent via USPS 17 May 2022
Schmimmelfennig, Chad	<i>Kahu</i> of Kamalo'ula (historic village at Prince Kūhiō Park); Executive Director at Kawaikini Charter School; owner of Kaua'i Knifeworks; instructor at Kaua'i Community College	Letter and figures sent via USPS 17 May 2022 Sent text message (reply but no feedback regarding Kukui'ula project areas) 25 May Sent text message 2 June Replied 2 June “I did receive it, and am currently working with scheduling with Fern. Mahalo for setting up.”
Segum, Scott and Roland	Royal Order of Kamehameha	Letter and figures sent via USPS on 24 May 2022
Shigemoto, Tom	Former Kaua'i Burial Council; Kauai Realty, Inc.	Letter and figures sent via USPS 17 May 2022

Name	Affiliation	Comments
Solis, Ka'āhiki	Cultural historian (O'ahu, Kaua'i, and Ni'ihau)	Letter and figures sent via email 19 May 2022 Ms. Solis replied via email 23 May 2022 recommending "look[ing] at the Kaua'i Island Burial Council meeting minutes." As a result, CSH reviewed available records of the Kaua'i/ Ni'ihau Burial Council back through January 2014. CSH replied via email 23 May 2022
Stoddards, Alex	Potentially concerned party	Letter and figures sent via email 19 May 2022
Summers, Molly "Kaimiloa"	Retired educator: Hawaiian Language/Studies, Kaua'i Community College	Letter and figures sent via USPS 17 May 2022
Torres, Johnny	Retired from McBryde Sugar Co.	Letter and figures sent via USPS 17 May 2022
Wichman, Randy	Former Kauai Historical Society	Letter and figures sent via USPS 17 May 2022 Letter and figures sent via email 19 May 2022

6.3 Community Outreach Results

Mr. Galen Kawakami replied via email 19 May 2022: "I will not be submitting any comments for this Ka Pa'akai Analysis. Thank you for the opportunity to test my memory. Aloha, Galen."

Ms. Terry Kuribayashi (wife) responded by telephone on 19 May 2022 and was directed to researcher La'amai.

Ms. Ka'āhiki Solis replied via email 23 May 2022, "I suggest you look at the Kauai Island Burial Council meeting minutes." CSH replied via email 23 May 2022. As a result, CSH reviewed available records of the Kaua'i/Ni'ihau Burial Council back through January 2014.

Ms. Nancy McMahon responded by email 31 May 2022:

I do practice with several traditional practitioners at the lamakū [understood as with specific reference to a locus in Lāwa'i Ahupua'a]. Years ago have also helping reinter remains at the lava tube in Kukui'ula I showed this group several heiau sites that are close to the project area.

Therefore I request access still be allowed for the lamakū ceremonies.

I refer you to Sandi the Kauai burial council chair as one of the leaders of my group of practitioners.

"Lamakū ceremonies" are understood to relate to "large torch, signal fire, lantern" (Pukui and Elbert 1984:177) ceremonies understood relate to the place name Kukui'ula ("red light"; Pukui et al. 1974:123) and a possible signal fire which may have been at one or both of two designated

historic properties more than 1.2 km west of Parcel J1 (SIHP #s -01903 and -01904, see Figure 19 for location and geographic relationship).

Mr. Kalanikumai Ka Maka'uli'uli Puamo'i 'O Nā Ali'i Hanohano (Zachariah Harmony) replied by email on 1 June 2022. He expressed concerns elsewhere in Kōloa (away from Kukui'ula lands) and indicated his intention to consult with his peers and 'ohana (family) concerning our (Kukui'ula project areas) request for consultation and expressed his intention to consider responding as appropriate. CSH thanked him. He provided testimony presented verbatim in Appendix B.

Mr. Chad Shimmelfennig replied 2 June 2022, "I did receive it [outreach letter], and am currently working with scheduling with Fern. Mahalo for setting up" indicating a prospect for further consultation.

Mr. Marvin Otsuji replied 2 June 2022, "It looks like you have way more than I know. I was trying to contact some of my friends parents that lived in the area but either passed or not in condition to tell their history. Wish I could add but you are on it" understood as concluding consultation.

Ms. Roslyn Cummings responded by text on 2 June, "Aloha I will work on it tomorrow as we are very busy [referenced ongoing concerns and work elsewhere in Kōloa]." She provided testimony presented verbatim in Appendix B.

Ms. Aletha Kaohi responded by email 5 June 2022, "yes I have read the Kukuiula Development. While serving on the County of Kaua'i Historic Preservation committee, appointed by Mayor Kunimura many years ago, we visited an irrigation system that went uphill and lava tubes. May have been closer to Prince Kūhiō Park. Sorry I don't have historical and cultural mo'olelo in those three parcels."

Ms. Kaohi is correct that the referenced irrigation system and lava tubes are closer to Prince Kūhiō Park in the eastern portion of the Kukui'ula lands.

CSH previously completed a CIA (Hammatt et al. 2002) that addressed the Kukui'ula lands including the entirety of Parcel J1.

CSH attempted to contact Hawaiian organizations, agencies, and community members as well as cultural and lineal descendants to identify individuals with cultural expertise and/or knowledge of the project area and vicinity. Community outreach letters were sent to 52 individuals or groups by U.S. Postal Service (USPS) and/or email (typically both) with additional follow-up by text and telephone. As of 6 June 2022, nine had responded (Galen Kawakami, Terry Kuribayashi, Ka'āhiki Solis, Nancy McMahon, Kalanikumai Ka Maka'uli'uli Puamo'i 'O Nā Ali'i Hanohano [also known as Zachariah Harmony], Chad Shimmelfennig, Marvin Otsuji, Roslyn Cummings and Aletha Kaohi).

Background study including review of a CIA that included the Parcel J1 project area, review of a variety of other archaeological and historical data, and the responses to the contemporary cultural consultation outreach has identified no cultural, historical, or natural resources where cultural practices (including traditional and customary Native Hawaiian rights) are being exercised in the Kōloa J1 project area.

The consultation outreach has identified no cultural, historical, or natural resources where cultural practices (including traditional and customary Native Hawaiian rights) are being exercised in the Kōloa J1 project area, thus no impacts to cultural practices are indicated.

Ms. McMahon does raise a potential issue of access, understood as expressing concern regarding access to one or both of two designated historic properties more than 1.2 km west of Parcel J1 (SIHP #s -01903 and -01904, see Figure 19 for location and geographic relationship) for the purpose of "lamakū ceremonies." This request has been discussed with owner/developer interests (BBCP Kukui'ula Development, LLC) and it is believed such access can continue to be accommodated on an ad hoc basis with the understanding of possibly restricted vehicular access and reasonable concerns for safety.

Access was addressed in a *Preservation Plan for Archaeological Sites, 50-30-10-1903 and 50-30-10-1904 on A & B Properties Lands at Kukui'ula Lāwa'i Ahupua'a, Kaua'i (TMK: 2-6-03:1)* as follows

5. Access to the Sites and Possible Use for Cultural Practices

Contact with potentially concerned Hawaiian organizations and individuals is recommended in association with site rehabilitation outlined above. No clear cultural practices are associated with these sites at this time. The desire of any individuals or organizations to visit these two sites might well be easily facilitated in an ad hoc manner. [Hammatt et al. 2000:16]

Section 7 Cultural Practices and Resources Identified During Consultation Associated with the Project Area/ Greater Ahupua'a

Throughout the twentieth century, the Kukui'ula project area comprised a 1,000-acre portion of the sugarcane fields and cattle pasture lands of the McBryde Sugar Company. This pervasive transformation of the project area for western commercial agriculture and ranching pursuits has obscured or eliminated much of the physical evidence of traditional Hawaiian life within the area. At the same time, the western concepts of private ownership and private property effectively blocked access by non-employees of McBryde who might have wished to continue practices associated with traditional Hawaiian culture in the area. Finally, with modern development of shoreline areas *makai* of the Kukui'ula project area, most of the *kama'āina* families—including those of Hawaiian ancestry—moved away from the Kukui'ula area decades ago, taking with them whatever traditional knowledge of the area they may have possessed.

Discussions of specific aspects of Hawaiian culture within the project area are presented below. The concluding discussion examines resources and practices identified within the project area in the broader context of the encompassing Kōloa Ahupua'a.

It should be noted that, based on the research for this assessment, at present no contemporary or continuing cultural practices occur within the project area. It should also be noted that the Kukui'ula project area is located *mauka* of the Kōloa coast, and *mauka* of Lāwa'i Beach Road which provides public access to coastal areas. Thus shoreline access to cultural resources and associated practices and beliefs will not be affected by the Parcel J1 Kukui'ula project.

7.1 Native Gathering Practices for Plant Resources

No specific Native Hawaiian gathering practices for plant resources were identified within the Kukui'ula project area in the historic documentation, archaeological investigations, or *kama'āina* interviews documented in the CIA. The twentieth century sugarcane planting and cattle ranching have effectively eliminated traditional plant resource areas within the project area and restricted the project area from cultural usage.

7.2 Native Hawaiian Hunting Practices

No specific Native Hawaiian hunting practices were identified within the Kukui'ula project area in the historic documentation, archaeological investigations, or *kama'āina* interviews included in the CIA.

Game animals hunted on Kaua'i include pigs, goats, black-tailed deer, and a variety of game birds. Black-tailed deer were introduced in 1961 and are not found near the project area. The vicinity of the project area is not shown to have either concentrated or sparse densities of either pigs or goats (Van Riper and Van Riper III, 1982:25, 34). No hunting of game birds (all exotic introductions) has been reported within the project area.

7.3 Agricultural Practices

While the Kōloa Field System of Kōloa Ahupua'a, to the east closer to Waikomo Stream, was very extensive and has been richly documented, it did not extend as far west as the Parcel J1 project

area. We find no evidence of traditional agriculture on the *makai* tablelands of Kōloa Ahupua'a as far west from Waikomo Stream as Parcel J1, but admittedly if there was, for example, ad hoc cultivation of sweet potatoes, that evidence would have been lost over nearly 120 years of intensive commercial sugarcane cultivation.

7.4 Coastal and Marine Resources

The nearest point to the coast of the Parcel J1 project area is approximately 750 m inland. Proposed development of Parcel J1 is believed unlikely to have an impact on coastal and marine resources.

7.5 Freshwater Resources

There is no known source of perennial fresh water nearer than Waikomo Stream. The Aepo Reservoir drainage (Aepo, Aepoalua, Aepoekolu, Aepoeha reservoirs) into Kukui'ula Bay is closer (500 m to the west) and may have been a source of drinking water much of the year in traditional Hawaiian times. Proposed development of Parcel J1 is believed unlikely to have an impact on freshwater resources.

7.6 Cultural Historic Properties

No cultural historic properties have been identified in the project area during the archaeological inventory survey (Hammatt et al. 1988) or in a recent field inspection (Hammatt 2023).

Two cultural properties (SIHP #s -01903 and -01904) have been identified more than 1.2 km west of Parcel J1 (see Figure 19 for location and sections 5.3.1 and 5.3.2 for descriptions). These have both been preserved within an SHPD-accepted preservation plan (Hammatt et al. 2000) with specific buffers and long-term management provisions including site access codified.

7.7 Any Other Resources Detected

No other traditional Hawaiian resources have been reported from the Parcel J1 project area.

7.8 Nā Inoa 'Āina (Place Names)

As has been previously noted, the absence of traditional Hawaiian place names near the Parcel J1 project area on historic maps of 1872 (see Figure 9), 1896 (see Figure 10), 1900 (see Figure 11), 1910 (see Figure 12), and 1963 (see Figure 15) supports that the project area was not an area in which Hawaiians were traditionally active.

7.9 Burials

The archaeological inventory survey and data recovery investigations documented the presence of two traditional Hawaiian burials in the totality of the Kukui'ula project area. Human skeletal remains were encountered in a lava tube (SIHP # -01927 Feature A) approximately 400 m southeast of the Parcel J1 project area (these were addressed in a Hammatt and Shideler 2001 burial treatment plan and were preserved in place). In 2007 human skeletal remains were inadvertently discovered in another lava tube (SIHP # -00682) in Kōloa Ahupua'a approximately 1.6 km east of the present project area (Tulchin and Hammatt 2007; these were relocated to the SIHP # -01927 Feature A burial preserve).

A CSH (Reveal and Hammatt 2014) study documents the identification of fragmentary human skeletal remains in sediment samples from SIHP # -01927A. This circumstance was shared with the KNIBC at the meeting 24 May 2016 with proposed reinterment back in SIHP # -01927; reinterment was completed in October 2017.

There was an inadvertent discovery of human skeletal remains on 9 August 2016 at Kukui'ula Bay (in Kōloa Ahupua'a near the Kōloa/Lāwai *ahupua'a* boundary) reported to the Kaua'i/Ni'ihau Island Burial Council (Agenda for the KNIBC Meeting of 21 September 2016). In consultation with members of the KNIBC, these *ivi* were reinterred at the Kukui'ula reinterment location in a lava tube (designated SIHP # -01927 Feature A, known as the "*piko* preserve") approximately 400 m southeast of the Parcel J1 project area.

We also wish to note in passing there was a Kamala'ula Cemetery (Kamaloula), (SIHP # -01985) at the Lawai Beach Resort (described in detail in McCurdy and Hammatt 2007) but that this was not in Kukui'ula lands, and it was approximately 1.0 km distant southeast of the Parcel J1 project area.

During archaeological investigations of surface sites, no burials were encountered within the project area. However, there is almost always a possibility that heretofore unrecorded burial sites are present within the project area. Concerns related to this possibility are addressed below.

The *kama'āina* interviewees for the CIA were not aware of any burials within the entirety of the Kukui'ula project area. Several, however, spoke of a former cemetery located outside and *makai* of the Kukui'ula project area, on the site of the present Lawai Beach Resort. The interviewees recalled it was a formal cemetery with grave markers and some fencing at its boundaries, and that interments continued into the first half of the twentieth century.

7.10 Trails

None of the historic maps of Kōloa and Lāwa'i *ahupua'a* examined during the course of this study indicated any route through the project area identifiable as a traditional Hawaiian trail. The routes shown on these maps appear to be roads associated with nineteenth century developments within the *ahupua'a*, including the establishment of Kōloa Town and the building of Queen Emma's residence in Lāwa'i.

None of the *kama'āina* interviewees in the CIA recalled any trails within the project area.

Section 8 Ka Pa'akai Analysis

8.1 Summary of Cultural Practices and Resources Identified during Background Research and Consultation

Reviewing the information provided by the elements of this study—historic documentation, archaeological research, the prior CIA *kama'āina* interviews, and results of the present outreach—there emerges a more detailed picture of the Parcel J1 project area and vicinity through time.

By the eighteenth century, the Kōloa Kukui'ula lands to the east comprised the western extent of an intricate network of taro *lo'i*, *'auwai*, and associated habitation sites that stretched across the *makai* floor of Kōloa Ahupua'a. This network, identified by CSH as the Kōloa Field System, incorporated unique engineering innovations that allowed otherwise inhospitable lands—at a distance from water sources—to sustain a growing population. Archaeological investigations of the Kukui'ula project area documented habitation sites, agricultural sites, burial sites, and religious sites that indicate a full range of traditional Hawaiian cultural life in the eastern Kōloa Ahupua'a portion of Kukui'ula.

We put stock in the description of the vicinity of Queen Emma's home (west of the Parcel J1 project area), that (ca. 1870) "The surrounding area was an arid, stony pasture, suitable only for grazing" (Forbes 1970:4).

There were no native tenant LCAs in the vicinity (see Figure 8).

The general absence of place names on historic maps of 1872 (see Figure 9), 1896 (see Figure 10), 1900 (see Figure 11), 1910 (see Figure 12), and 1963 (see Figure 15) supports that this was not an area in which Hawaiians were traditionally active.

The timeframe during which Parcel J1 was in commercial sugarcane production is not completely clear but it is believed to extend from very close to 1876 (when McBryde leased Queen Emma's Lāwa'i land) to very close to 1996 when McBryde harvested the last cane, or nearly 120 years. During this long span of time, it is understood that access inside the project area was restricted to employees of McBryde Sugar Company.

The three aerial photographs (see 1951, Figure 14; 1965, Figure 16; and 1978, Figure 17) show Parcels J1 as covered with commercial sugarcane fields and within a great sea of commercial sugarcane.

Sugarcane and ranching were the dominant land use activities within the project area throughout the past century. These activities—and the sense that the project area was private property—restricted access inside the project area to employees of McBryde Sugar Company. None of the *kama'āina* interviewees who were former residents of the Kukui'ula area knew of any cultural sites in the project area, or could recall anyone entering the project area for any traditional cultural practice. The only interviewees in the CIA with knowledge of traditional culture within the project area were Dr. William Kikuchi and Mrs. Aletha Kaohi who were acquainted with the area through professional and community service pursuits.

As noted in the previous section of this assessment, based on the evidence gathered, no contemporary or continuing cultural practices occur within the Parcel J1 project area.

As also noted in the previous section of this assessment, in the *makai* areas of Lāwa'i and Koloa *ahupua'a*, fishing and marine resource gathering practices continue to occur along the coastal areas. Public access to coastal areas *makai* of the Kukui'ula project area is from Lāwa'i Beach Road. Access to coastal fishing and marine resource gathering areas will continue to be provided with the development of the Kukui'ula project.

8.2 Summary of Community Outreach and *Kama'āina* Perspectives

CSH attempted to contact Hawaiian organizations, agencies, and community members as well as cultural and lineal descendants to identify individuals with cultural expertise and/or knowledge of the project area and vicinity. Community outreach letters were sent to 52 individuals or groups by USPS and/or email (typically both). Nine responded (Galen Kawakami, Terry Kuribayashi, Ka'āhiki Solis, Nancy McMahon, Kalanikumai Ka Maka'uli'uli Puamo'i 'O Nā Ali'i Hanohano [also known as Zacheriah Harmony], Chad Shimmelfennig, Marvin Otsuji, Roslyn Cummings and Aletha Kaohi).

Background study including review of a CIA that included the Parcel J1 project area, review of three additional CIAs, review of a variety of other archaeological and historical data, and the responses to the contemporary cultural consultation outreach has identified no cultural, historical, or natural resources where cultural practices (including traditional and customary Native Hawaiian rights) are being exercised in the Parcel J1 project area.

The recent consultation outreach has identified no cultural, historical, or natural resources where cultural practices (including traditional and customary Native Hawaiian rights) are being exercised in the Parcel J1 project area, thus no impacts to cultural practices are indicated.

Ms. McMahon does raise a potential issue of access, understood as expressing concern regarding access to one or both of two designated historic properties (SIHP #s -01903 and -01904) located more than 1.2 km west of Parcel J1 (see Figure 19 for location and geographic relationship) for the purpose of "lamakū ceremonies." This request has been discussed with owner/developer interests (BBCP Kukui'ula Development, LLC) and it is believed such access can continue to be accommodated on an ad hoc basis with the understanding of possibly restricted vehicular access and reasonable concerns for safety. Access was addressed in a *Preservation Plan for Archaeological Sites, 50-30-10-1903 and 50-30-10-1904 on A & B Properties Lands at Kukui'ula Lāwa'i Ahupua'a, Kaua'i* (TMK: 2-6-03:1) (Hammatt et al. 2000:16)

8.3 Assessment of Impacts Posed to Cultural Practices and Cultural Resources

8.3.1 Individual's Comments or Thoughts on the Potential Impacts the Proposed Project may have on Ongoing Traditional Cultural Practices and Cultural Resources within the Proposed Project Area and Greater *Ahupua'a*

In the course of the prior CIA, none of the 29 Hawaiian organizations, government agencies, community members, and cultural and lineal descendants with ties to Kukui'ula contacted (eight of whom were interviewed) knew of any cultural resources (other than identified archaeological sites) in the greater Kukui'ula project area, or could recall anyone entering the project area for any traditional cultural practice (Hammatt et al. 2002:103).

The responses to the contemporary cultural consultation outreach to 52 parties identified no cultural, historical, or natural resources where cultural practices (including traditional and customary Native Hawaiian rights) are being exercised in the Parcel J1 project area.

Concern was expressed regarding access to one or both of two designated historic properties located more than 1.2 km west of Parcel J1 (SIHP #s -01903 and -01904, see Figure 19 for location and geographic relationship) for the purpose of "lamakū ceremonies." This request has been discussed with owner/developer interests (BBCP Kukui'ula Development, LLC) and it is believed such access can continue to be accommodated on an ad hoc basis with the understanding of possibly restricted vehicular access and reasonable concerns for safety. Access was addressed in a *Preservation Plan for Archaeological Sites, 50-30-10-1903 and 50-30-10-1904 on A & B Properties Lands at Kukui'ula Lāwa'i Ahupua'a, Kaua'i (TMK: 2-6-03:1)* (Hammatt et al. 2000:16) accepted by the SHPD.

8.3.2 Comments or Thoughts on the Potential Impacts the Proposed Project may have on Cultural Properties and *Wahi Pana* within the Proposed Project Area and Greater Ahupua'a

No cultural sites or *wahi pana* have been identified in the project area either in the prior CIA or in the present study. No substantive responses have been received in the cultural consultation outreach.

It is concluded that the development of the Parcel J1 project lands will have no adverse impact on cultural properties elsewhere in the *ahupua'a*.

8.3.3 CSH Assessment of Impacts Posed to Cultural Practices and Cultural Resources, Integrating Perspectives from Consultation, and Evidence from Background Research

No prior or ongoing cultural practices and cultural resources have been identified in the project area either in the prior CIA or in the present consultation. Thus no impact to cultural resources will occur in the development of this specific project area.

8.4 Mitigation Possibilities Identified during Consultation and Background Research

The only mitigation possibility raised during consultation concerns access to one or both of two designated historic properties (SIHP #s 01903 and -01904, more than 1.2 km west of Parcel J1) for the purpose of "lamakū ceremonies" as has been noted above, and the issue of access to these sites was addressed previously to the satisfaction of the SHPD within a preservation plan.

The absence of traditional cultural properties and practices within the project area per se relates to the micro-environment of the project area which is well back from the coast and relatively far from freshwater. The project area prior to commercial sugarcane cultivation was described as "desolate to those accustomed to Honolulu. The surrounding area was an arid, stony pasture, suitable only for grazing" (Forbes 1970:4). The project area was under intensive sugarcane cultivation for nearly 120 years (1876–1996). During this long span of time it is understood that access inside the project area was restricted to employees of McBryde Sugar Company.

This study recommends, and the County of Kaua'i Department of Planning might support, that:

1. Project construction workers and all other personnel involved in the construction and related activities of the project should be informed of the possibility of inadvertent cultural

finds, including human remains. Should any potential historic properties be identified during construction activities, all activities will cease and the SHPD will be notified pursuant to HAR §13-280-3. In the event that *iwi kūpuna* (Native Hawaiian skeletal remains) are identified, all earth moving activities in the area will stop, the area will be cordoned off, and the SHPD, coroner, and Police Department will be notified pursuant to HAR §13-300-40. In addition, in the event of an inadvertent discovery of human remains, the completion of a burial treatment plan, in compliance with HAR §13-300 and HRS §6E-43, is recommended.

2. In the event that *iwi kūpuna* and/or cultural finds are encountered during construction, project proponents should consult with cultural and lineal descendants of the area to develop a reinterment plan and cultural preservation plan for proper cultural protocol, curation, and long-term maintenance.

Section 9 References Cited

Akana, Collette Leimomi with Kiele Gonzales

2015 *Hānau Ka Ua, Hawaiian Rain Names*. Kamehameha Publishing, Honolulu.

Alexander, Arthur C.

1937 *Koloa Plantation 1835-1935, A History of the Oldest Hawaiian Sugar Plantation*. Star-Bulletin, Honolulu.

Ava Konohiki

2015 Ancestral Visions of 'Āina website. Available online at <http://www.avakonohiki.org/>.

Belluomini, Scott A. and Hallett H. Hammatt

2015 *Archaeological Assessment Report for the Kukui'ula Community Development Parcel H Project, Kōloa Ahupua'a, Kōloa District, Kaua'i, TMK: [4] 2-6-015:014 por.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

2016 *Archaeological Inventory Survey Report for the Kukui'ula Community Development Parcel A Project Lāwa'i and Kōloa Ahupua'a, Kōloa District, Kaua'i, TMK: [4] 2-6-015:014 por.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Belluomini, Scott A., Thomas Martell II, and Hallett H. Hammatt

2022 *Archaeological Literature Review and Field Inspection Report for the Kukui'ula Manuhomihonu Reservoir Alteration Project, Kōloa Ahupua'a, Kōloa District, Kaua'i, TMKs: (4) 2-6-003:031 por., 2-6-015:001 por., and 2-6-017:051.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Bennett, Wendell C.

1931 *The Archaeology of Kaua'i. Bishop Museum Bulletin 80*. Bernice Pauahi Bishop Museum, Honolulu.

Bingham, Hiram

1847 *A Residence of Twenty-One Years in the Sandwich Islands*. Convers, New York.

Bordner, Richard M.

1977 *Archaeological Reconnaissance for an 'Auwai, Kōloa, Kona, Kaua'i Island*. Archaeological Research Center Hawaii, Inc., Honolulu.

Borthwick, Douglas F., Mark Stride, and Hallett H. Hammatt

1990 *Archaeological Data Recovery: Kukui'ula Bay Planned Community Preliminary Reports; End of Fieldwork and Progress Report Phase I*. Cultural Surveys Hawai'i, Kailua, Hawai'i.

Ching, Francis K.W.

1983 *Archaeological Reconnaissance of an A&B 230+ Acre Property, Kukui'ula-Kualu, Koloa & Lāwa'i, Kona, Kaua'i Island*. Royal Order of Kamehameha I Chapter 3 – Kaumuali'i. Lihu'e, Kaua'i, Hawai'i.

Chiogioji, Rodney and Hallett H. Hammatt

2003 *He Ho'olina ma ka Pōhaku (A Legacy in Stone): A Long-Term Preservation plan for an Approximately 16 Acre Archaeological Preserve in Kukui'ula, Kōloa Ahupua'a, Island of Kaua'i*. Cultural Surveys Hawai'i, Inc., Kailua.

Clark, John R.K.

1990 *Beaches of Kaua'i and Ni'ihau*. University of Hawaii Press, Honolulu.

Cleghorn, Paul L. and James McIntosh

2001 *Archaeological Inventory Survey at Koloa, Kaua'i, Hawai'i (TMK 2-6-8:11 and 22)*. Pacific Legacy, Inc., Kailua, Hawai'i.

Commission on Water Resource Management

1993 *Hawai'i Streams: Nā Kahawai o Hawai'i*. Commission on Water Resource Management, Department of Land and Natural Resources, State of Hawai'i, Honolulu.

Condé, Jesse C.

1993 *Fowler Locomotives in the Kingdom of Hawaii*. In *The Narrow Gauge*, edited by Alan Burgess. Peterborough, England.

Condé, Jesse C. and Gerald M. Best

1973 *Sugar Trains, Narrow Gauge Rails of Hawaii*. Glenwood Publishers, Felton, California.

Cook, James P.

1784 *A Voyage to the Pacific Ocean 1776, 1777, 1779, and 1780*. Vol. 2 and 3. G. Nichol and T. Cadell, London.

Creed, Victoria S., Douglas F. Borthwick, and Hallett H. Hammatt

2002 *Archaeological Inventory Survey of 11.5 Acre Makai Lands at Lāwa'i Ahupua'a, Kona District, Island of Kaua'i (TMK 2-6-03:3, 20 and 2-6-02: por. 1)*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Coulter, John Wesley

1931 *Population and Utilization of Land and Sea in Hawaii. 1853*. Bishop Museum Bulletin 88. Bernice Pauahi Bishop Museum, Honolulu.

Damon, Ethel M.

1931 *Koamalu*. 2 vols. Privately printed by the Honolulu Star-Bulletin Press, Honolulu.

Donohugh, Donald

2001 *The Story of Koloa: A Kaua'i Plantation*. Mutual Publishing, Honolulu.

Dorrance, William H. and Francis S. Morgan

2000 *Sugar Islands: The 165-Year Story of Sugar in Hawaii*. Mutual Publishing, Honolulu.

ESRI, Inc.

2016 *Map Image Layer*. Esri, Inc. Redlands, California.

Farley, J.K.

1907 *Notes on Maulili Pool, Kōloa*. In *Hawaiian Almanac and Annual for 1908*. Thos. G. Thrum, Honolulu.

Folk, William, Scott A. Belluomini, Nancine "Missy" Kamai, and Hallett H. Hammatt

2017 (draft) *Supplemental Archaeological Inventory Survey Report for the Kukui'ula Community Development Parcel A Project Lāwa'i and Kōloa Ahupua'a, Kōloa District, Kaua'i, TMK: [4] 2-6-015:014 por.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Folk, William and Hallett H. Hammatt

- 1992 *Archaeological Monitoring of Lawai Beach Hotel Parking Structure* (letter report). Cultural Surveys Hawai'i, Kailua, Hawai'i.

Folk, William, Nancine "Missy" Kamai, and Hallett H. Hammatt

- 2020 *Archaeological Monitoring Report for Kukui'ula Parcel FF, Phase 1 Project, TMK: [4] 2-6-019:017*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Fong, Jeffrey W. K., Sallee Freeman, Douglas F. Borthwick, David W. Shideler, and Hallett H. Hammatt

- 2005 *Archaeological Inventory Survey of an 5.947-Acre Parcel at Kōloa Ahupua'a, Kona District, Kaua'i Island (TMK: 2-8-15:75)*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Foote, Donald E., Elmer L. Hill, Sakuichi Nakamura, and Floyd Stephens

- 1972 *Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii*. U.S. Department of Agriculture, Soil Conservation Service, in cooperation with the University of Hawai'i Agricultural Experiment Station. U.S. Government Printing Office, Washington, D.C.

Forbes, David

- 1970 *Queen Emma and Lawa'i*. Kauai Historical Society, Lāwa'i, Hawai'i.

Fornander, Abraham

- 1918 *Fornander Collection of Hawaiian Antiquities and Folk-lore*. Volume V. Memoirs of the Bernice Pauahi Bishop Museum. Bishop Museum Press, Honolulu.
- 1996 *Fornander's Ancient History of the Hawaiian People*. Mutual Publishing, Honolulu.

Gay, James

- 1872 Map of Lawa'i and Koke'e. Map by James Gay, Registered Map 1373. Hawai'i Land Survey Division, Department of Accounting and General Services, Honolulu. Available online at <http://dags.hawaii.gov/survey/search.php>

Giambelluca, T.W., Q. Chen, A.G. Frazier, J.P. Price, Y.-L. Chen, P.-S. Chu, J.K. Eischeid, and D.M. Delparte

- 2013 Online Rainfall Atlas of Hawai'i. *Bulletin of the American Meteorological Society* volume 94, pp. 313-316, doi: 10.1175/BAMS-D-11-00228.1. Electronic document, <http://rainfall.geography.hawaii.edu> (accessed 10 May 2022).

Hammatt, Hallett H.

- 1990 *Archaeological Inventory Survey of a 4.7 Acre Parcel for the Proposed Pa'anau Housing Project, Kōloa, Kaua'i*. Cultural Surveys Hawai'i, Kailua, Hawai'i.
- 1992a *Archaeological Survey of the Proposed Western Bypass Road, Kukuiula Planned Community, Phase I*. Cultural Surveys Hawai'i, Kailua, Hawai'i.
- 1992b *Letter Report on the Preserve Area Rock Pile, Kukuiula*. Cultural Surveys Hawai'i, Kailua, Hawai'i.
- 1992c *Archaeological Reconnaissance of the Po'ipu Road and Lāwa'i Road Junction, Kōloa, Kaua'i*. Cultural Surveys Hawai'i, Kailua, Hawai'i.
- 1992d *Archaeological Reconnaissance Survey TMK 2-6-04:49, 2 Acres, Kōloa, Kaua'i*. Cultural Surveys Hawai'i, Kailua, Hawai'i.

- 1993 *Archaeological Reconnaissance Survey TMK 2-6-04:14, 1.75 Acres Koloa, Kaua'i, Subdivided Lots A1-A1, A1 A2.* Cultural Surveys Hawai'i, Kailua, Hawai'i.
- 1996 *Letter Report: Report on Subsurface Testing for the Proposed Location of Queen Emmas Cottage, Lawai Valley.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- 2014 *Archaeological Monitoring Report for Kukui'ula Lot 14A Project, Lāwa'i Ahupua'a, Kona District, Kaua'i Island TMK: (4) 2-6-015:014 por.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- 2020 *Field Inspection Letter Report for Improvements to Parcel E of the Kukui'ula Community Development Project, TMK: (4) 2-6-022:021 por. [Formerly (4) 2-6-015:014], Kōloa Ahupua'a, Kōloa District, Kaua'i.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- 2022 (Draft) *Archaeological Field Inspection Letter Report for Parcels A2, F2, and F3 of the Kukui'ula Community Development Project, TMK (4) 2-6-015:014 por., Kōloa Ahupua'a, Kōloa District, Kaua'i.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- 2023 *Archaeological Field Inspection Letter Report for Parcel J1 of the Kukui'ula Community Development Project, TMK (4) 2-6-015:001, Kōloa Ahupua'a, Kōloa District, Kaua'i.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- Hammatt, Hallett H., B. Kaipo Akana, and Rodney Chiogioji**
- 2002 *A Cultural Impact Assessment for an Approximately 1000-Acre Property in Kukui'ula, Kōloa and Lāwa'i Ahupua'a, Kōloa District, Island of Kaua'i.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- Hammatt, Hallett H., Richard M. Bordner, M.J. Tomonari-Tuggle, Marvin Miura, and Francis Howorth**
- 1978 *Archaeological and Biological Survey of the Proposed Kiahuna Golf Village Area, Koloa, Kona, Kaua'i Island, Hawaii.* Archaeological Research Center Hawai'i, Inc. Lāwa'i, Hawai'i.
- Hammatt, Hallett H., Douglas Borthwick, David W. Shideler, and Mark Stride**
- 1988 *Archaeological Inventory Survey of the Proposed Kukui'ula Bay Planned Community, Kōloa, Kaua'i.* Cultural Surveys Hawai'i, Kailua, Hawai'i.
- Hammatt, Hallett H., Kristina W. Bushnell, Gerald K. Ida, Rodney Chiogioji, Victoria S. Creed, and David W. Shideler**
- 1999 *Archaeological Data Recovery for Kukui'ula Bay Planned Community, Phase II Development Area, Kukui'ula, Kōloa, Kaua'i, (TMK 2-6-03:Por. 1 and 2-6-04:Por. 33, 38, 40).* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- Hammatt, Hallett H., Ronald Chiogioji, David W. Shideler, Douglas Borthwick, Matthew McDermott, and Ian Masterson**
- 1998 *Archaeological Data Recovery Report for the Kukui'ula Planned Community Phase I Development, Kōloa, Ahupua'a, Kona District, Island of Kaua'i, Hawai'i, (TMK 2-6-04:16, 22, 38, 44 and 45) Volume 1.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Hammatt, Hallett H. and David W. Shideler

- 2001 *Preservation and Burial Treatment Plan for Archaeological Site 50-30-10-1927, on A & B Properties Lands at Kukui'ula, Kōloa Ahupua'a, Kaua'i (TMK 2-6-03:1).* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- 2012 *Archaeological and Cultural Impact Assessment Status Review for Parcel DD at Kukui'ula, Kōloa Ahupua'a, Kōloa District, Kaua'i TMK [4] 2-6-019:032.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Hammatt, Hallett H., David W. Shideler, and Douglas F. Borthwick

- 2000 *Preservation Plan for Archaeological Sites 50-30-10-1903 and 50-30-10-1904 on A&B Properties Lands at Kukui'ula, Lāwa'i Ahupua'a, Kauai.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Handy, E.S. Craighill

- 1940 *The Hawaiian Planter, Volume I.* Bishop Museum Bulletin 161. Bishop Museum Press, Honolulu.

Handy, E.S. Craighill and Elizabeth G. Handy

- 1972 *Native Planters in Old Hawaii: Their Life, Lore, and Environment.* Bishop Museum Bulletin 233. Bishop Museum Press, Honolulu.

Hawaii Tax Map Key (TMK) Service

- 2013 Tax Map Key: (4) 2-6-015. Hawaii TMK Service, Honolulu.

Hazlett, Alex and Hallett H. Hammatt

- 2008 *Archaeological Monitoring Report for the Western Bypass Road Project Kōloa Ahupua'a, Kōloa District, Kaua'i Island, TMK (4) 2-7-003:006, 2-6-003:001 and 035, and 2-6-004:038, 040, and 044.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Hoerman, Rachel and Robert L. Spear

- 2009 *Archaeological Inventory Survey of an Approximately 90 Acre Parcel Lāwa'i Ahupua'a, Kōloa District, Kaua'i Island, Hawai'i [TMK: (4) 2-6-002: 001, 004 to 006].* Scientific Consultant Services, Inc., Honolulu.

Ho'oulumāhie

- 2008a *Ka Mo'olelo O Hi'iakaikapoliopele.* Awaiaulu Press, Honolulu.
- 2008b *The Epic Tale Of Hi'iakaikapoliopele.* Puakea Nogelmeier, translator. Awaiaulu Press, Honolulu.

Ida, Gerald K., W. Bushnell, and Hallett H. Hammatt

- 2000 *Mitigation of a Portuguese Oven Site (A Portion of State Site 50-30-10-1911), Kukui'ula, Kōloa, Kaua'i.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Ida, Gerald K., Victoria S. Creed, and Hallett H. Hammatt

- 1997 *Burial Treatment at a Kukui'ula House Lot (TMK 2-6-11:8, Lot 7).* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Ida, Gerald K. and Hallett H. Hammatt

- 1994 *Archaeological Inspection and Historic Background for the Ho'onani Road Bridge Across Waikomo Stream, Kōloa, Kaua'i (TMK 2-7-4:76).* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

- 1998 *Report on Historical Research on Site 50-30-10-1911, Kukui'ula Phase II*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- Ida, Gerald K., David W. Shideler, and Hallett H. Hammatt**
- 2005 *Archaeological Monitoring Report for Bee Removal at Site 50-30-10-3075B in Kukui'ula, Kōloa, Kaua'i TMK 2-6-03:1*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- Ida, Gerald K., Angela L. Yates, and Hallett H. Hammatt**
- 2020 *Archaeological Monitoring Report for the Parcel U/AA Kukui'ula Development Project, Kōloa Ahupua'a, Kōloa District, Kaua'i, TMKs: [4] 2-6-019:022, 023, and 024*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- Jarves, James J.**
- 1844 *Scenes & Scenery in the Sandwich Islands . . . during the Years 1837–1842*. James Munroe and Company, Boston
- Jones, Kulani and Hallett H. Hammatt**
- 2008 Revised: *Interim Report of the Implementation of the Preservation Plan for Archaeological Sites 50-30-10-1903 and 50-30-10-1904 Lāwa'i Ahupua'a, Kōloa District, Kaua'i Island TMK: 2-6-15:1*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- Judd, Bernice**
- 1935 Kōloa, A Sketch of Its Development. In *Kaua'i Historical Society Papers*, Volume II, Honolulu.
- Kaua'i County Planning Department**
- 2022 *Kaua'i Planning Department Worksheet for Ka Pa'akai Assessment*. Kaua'i County Planning Department, Līhu'e, Kaua'i.
- Kaua'i/Ni'ihau Island Burial Council (KNIBC)**
- 2016 "Item VB: Inadvertent Discovery of Human Skeletal Remains on August 9, 2016 at Kukui'ula, Kōloa Ahupua'a, Kōloa District, Island of Kauai, TMK (4) 2-6-016:014 & 094. Information/Discussion/Recommendation." *KNIBC Minutes of Wednesday 21 September 2016*.
- Kikuchi, William K.**
- 1963 *Archaeological Survey and Excavations on the Island of Kaua'i, Kōloa District, Hawaiian Islands*. Honolulu.
- 1988 *Archaeological Reconnaissance of Proposed Multi-Family Rental Subdivision, Pa'anau Camp Ahupua'a of Kōloa, Kōloa District, Kaua'i, TMK 2-6-04:46*. Committee for the Preservation of Hawaiian Culture, Līhu'e, Kaua'i, Hawai'i.
- Kirch, Patrick Vinton**
- 2010 *How Chiefs Became Kings: Divine Kingship and the Rise of Archaic States in Ancient Hawai'i*. University of California Press, Oakland, California.
- LaChance, Fredrick, David W. Shideler, and Hallett H. Hammatt**
- 2014 *Archaeological Inventory Survey for Kukui'ula Lot 14A Project, Lāwa'i Ahupua'a, Kōloa District, Kaua'i Island TMK: (4) 2-6-015:014 por.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Lahainaluna School

- 1885 *Papers by Lahainaluna Students After Interview with Old Residents of Kauai*. HEN (Hawaiian Ethnological Notes). Bishop Museum Archives, Honolulu.

Landrum, James III

- 1984 *Archaeological Reconnaissance of Alexander and Baldwin Lands at Kukui'ula, Koloa, Kaua'i*. Department of Anthropology, Bernice Pauahi Bishop Museum, Honolulu.

Macdonald, Gordon A. and Agatin T. Abbott

- 1970 *Volcanoes in the Sea*. University of Hawaii Press, Honolulu.

McBryde Sugar Company

- 1949 *The Story of McBryde Sugar Co.: 1899 to 1949*. Managers' reports to the agents. McBryde Sugar Company, Kaua'i.

McCurdy, Todd D. and Hallett H. Hammatt

- 2007 *Lawai Beach Resort Burial Recovery Report SIHP #50-30-10-1985 Kamala'ula (Kamalo'ula) Cemetery Kōloa, Kaua'i TMK: [4] 2-6-005:004*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

McMahon, Nancy

- 1996 *Results of Archaeological Monitoring and Mapping of Rock Wall (Site 50-30-10-3015) along Lawai Road for Improvements/Access to proposed Visitor Center for National Tropical Botanical Gardens TMK: 2-6-3:001 Koloa, Kona, Kauai*. Exploration Associates, Ltd., Kōloa, Kaua'i, Hawai'i.

McMahon, Nancy and Peter R. Mills

- 1991 *Inadvertent Discovery - Tooth 2-6-11: 13 Kukuiula, Koloa, Kauai*. State Historic Preservation Division, Honolulu.

Monsarrat, M.D.

- 1896 Map of Eleele to Koloa. Registered Map 1842. Hawai'i Land Survey Division, Department of Accounting and General Services, Honolulu. Available online at <http://dags.hawaii.gov/survey/search.php>
- 1900 Map of McBryde sugar lands. Registered Map 2145. Hawai'i Land Survey Division, Department of Accounting and General Services, Honolulu. Available online at <http://dags.hawaii.gov/survey/search.php>

Nagata, Ralston H.

- 1988 Letter to Dr. H. Hammatt of 30 June 1988 entitled "Historic Preservation Review of Draft Report (Hammatt, Borthwick, Shideler and Stride 1988. Archaeological Inventory Survey of the Proposed Kukui'ula Bay Planned Community, Koloa) Kukui'ula Bay Planned Community Koloa & Lawa'i, Koloa Kaua'i."

Nakuina, Moses K.

- 1990 *The Wind Gourd of La'amaomao*. First edition. Esther T. Mookini and Sarah Nākoa, translators. Kalamakū Press, Honolulu.
- 1992 *The Wind Gourd of La'amaomao*. Second edition. Esther T. Mookini and Sarah Nākoa, translators. Kalamakū Press, Honolulu.

Office of Hawaiian Affairs

- 2015 *Papakilo Database*. Office of Hawaiian Affairs cultural and historical database. Electronic document, <http://papakilodatabase.com/main/index.php>.

O'Leary, Owen and Hallett H. Hammatt

- 2005 *Archaeological Inventory Survey of a 40-Foot Wide Corridor Along the Eastern Edge of Lāwa'i Bay Lāwa'i Ahupua'a, Kona District, Kaua'i Island TMK: 4-2-6-02: por. 1*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- 2006 *Archaeological Assessment for the Kukui'ula – Po'ipū Road 24-Inch Sewer Line, Kōloa Ahupua'a, Kōloa District, Island of Kaua'i TMK: [4] 2-6-004: por 3, 2-6-015: por. 1, and 2-8-014: por. 27, and portions of Po'ipū Road and Lāwa'i Road*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

O'Leary, Owen, Todd Tulchin, and Hallett H. Hammatt

- 2005 *Archaeological Inventory Survey of Four Parcels (1.855 Acres) at Kukuiula Bay Kōloa Ahupua'a, Kaua'i Island (TMK 2-6-11: Por. 1, 2, 3, 15)*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Palama, Stephen L. and Catherine Stauder

- 1973 *Archaeological Reconnaissance of the Proposed Cane Haul Road to the Koloa Mill for McBryde sugar Co., Ltd.* Archaeological Research Center Hawaii, Inc., Lāwa'i, Kaua'i, Hawai'i.

Pukui, Mary K.

- 1983 *Ōlelo No 'eau: Hawaiian Proverbs and Poetical Sayings*. Bishop Museum Special Publication No.71. Bishop Museum Press, Honolulu.

Pukui, Mary K. and Samuel H. Elbert

- 1986 *Hawaiian Dictionary*. University of Hawaii Press, Honolulu.

Pukui, Mary K., Samuel H. Elbert, and Esther Mookini

- 1974 *Place Names of Hawaii*. University of Hawaii Press, Honolulu.

Raff-Tierney, Angus M. and Hallett H. Hammatt

- 2016 *Archaeological Assessment Report for the Kukui'ula Manuhonuhonu Borrow Site Phase 3, Kōloa Ahupua'a, Kōloa District, Kaua'i (TMK: [4] 2-6-003:001 por.)*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Reveal, Malina and Hallett H. Hammatt

- 2014 *Identification of Human Skeletal Remains During Sorting of Sediment Samples at Cultural Surveys Hawai'i, Inc. (May 2014)*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Rieth, Timothy and Ethan E. Cochrane

- 2015 *Chronology of Colonization in Remote Oceania (The)*. In *Oxford Handbook of Prehistoric Oceanic* (forthcoming). Oxford Handbooks Online, www.oxfordhandbooks.com.

Schmitt, Robert C.

- 1977 *Historical Statistics of Hawaii*. University of Hawaii Press, Honolulu.

Shideler, David W. and Hallett H. Hammatt

- 2014 *Letter Report for On-Site Archaeological Monitoring for SIHP #s 50-30-10-990, -3071, and -3072, Lāwa'i Ahupua'a, Kona District, Kaua'i, TMKs: [4] 2-6-003:3 and [4] 2-6-002: por. 1.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Sinoto, Akihiko

- 1975 *Archaeological Reconnaissance Survey of Knudsen Trust Lands at Koloa, Poipu, Kauai.* Anthropology Department, Bernice Pauahi Bishop Museum. Honolulu

Soehren, Lloyd

- 2013 *Hawaiian Place Names.* Ulukau: The Hawaiian Electronic Library. Electronic document, <http://ulukau.org> (accessed May 2022).

Stauder, Catherine

- 1973 Observations on Kuhiau Heiau. *Archaeology on Kauai* Vol 2, No. 4 October 1973. Kaua'i Community College, Līhu'e, Hawai'i.

Tome, Guerin and Michael Dega

- 2003 *Report on Human Skeletal Remains Identified During Monitoring of Foundation Excavation of a Coastal Residential Lot Within Koloa, Kaua'i, Hawai'i [TMK: 2-6-11 Parcel 9 Lot 6-A].* Scientific Consultant Services, Inc., Honolulu.

Townsend, John

- 1839 *Narrative of a Journey Across the Rocky Mountains....and a Visit to the Sandwich Islands and Chile...* H. Perkins and Marvin, Boston.

Tulchin, Jon and Hallett H. Hammatt

- 2007 *Inadvertent Discovery of Human Remains at the Kukui'ula Development Area, Kōloa Ahupua'a, Kōloa District, Kaua'i TMK: [4] 2-6-016:014 & 094.* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Tulchin, Todd and Hallett H. Hammatt

- 2004 *Archaeological Inventory Survey in Support of the Offsite Portion of the Proposed Western Bypass Road, Kōloa Ahupua'a, Kona District, Island of Kaua'i (TMK 2-7-03:6, 2-6-03:1, and 35).* Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Ulukau

- 2014 *Māhele Database.* Hawaiian Electronic Library, <http://ulukau.org/cgi-bin/vicki?l=en..>

USDA (U.S. Department of Agriculture)

- 1965 USDA Aerial Photograph, Lāwa'i. University of Hawaii Maps, Aerial Photographs, and Geographic Information Systems (UH MAGIS) (<http://guides.library.manoa.hawaii.edu/magis>).
- 2001 Soil Survey Geographic (SSURGO) database. U.S. Department of Agriculture, Natural Resources Conservation Service. Fort Worth, Texas. <http://www.nrcs.nrcs.usda.gov/products/datasets/ssurgo/> (accessed May 2022).

USGS (U.S. Geological Survey)

- 1910 Lihue and Hanapepe USGS 7.5-minute series topographic quadrangle. USGS Information Services, Denver, Colorado.

- 1951 Lawai USGS aerial photograph. UH MAGIS (University of Hawaii Maps, Aerial Photographs, and Geographic Information Systems), online at <http://guides.library.manoa.hawaii.edu/magis>.
- 1963 Koloa USGS 7.5-minute series topographic quadrangle. USGS Information Services, Denver, Colorado.
- 1978 USGS Orthophoto of Koloa. USGS Information Services, Denver, Colorado.
- 1996 Koloa USGS 7.5-minute series topographic quadrangle. USGS Information Services, Denver, Colorado.
- Vancouver, George**
- 1798 *A Voyage of Discovery to the North Pacific Ocean and Round the World Performed in the Years 1790-95*. 3 Volumes. G.G. and J. Robinson and J. Edwards, London, England.
- Van Riper, Sandra G. and Charles Van Riper III**
- 1982 *A Field Guide to Mammals in Hawaii*. The Oriental Publishing Company. Honolulu.
- Van Ryzin, Karl, David W. Shideler, and Hallett H. Hammatt**
- 2004 *Archaeological Inventory Survey for the Proposed Aepo Waterline Project, 'Ōma'o, Kōloa, Kaua'i Island TMK: 2-6-03:31, 32*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- Waihona 'Aina**
- 2022 *The Māhele Database*. Electronic document, <http://waihona.com> (accessed 10 April 2014).
- Walker, Alan T., Lehua Kalima, and Susan T. Goodfellow**
- 1991 *Archaeological Inventory Survey, Lihue/Puhi/Hanamaulu Master Plan, Lands of Hanamaulu, Kalapaki, Nawiliwili, Niumalu, and Wailua, Lihue District, Island of Kauai*. Paul H. Rosendahl, Inc., Hilo, Hawai'i.
- Walker, Alan T. and Paul H. Rosendahl**
- 1990 *Archaeological Inventory Survey, Hyatt Regency Kauai Proposed Golf Course Project Area, Land of Paa, Koloa District Island of Kauai (TMK: 4-2-9-01: por. I)*. Paul H. Rosendahl, Inc., Hilo, Hawai'i.
- Wichman, Frederick B.**
- 1998 *Kaua'i. Ancient Place-Names and Their Stories*. University of Hawai'i Press, Honolulu.
- Wilcox, Carol**
- 1996 *Sugar Water: Hawaii's Plantation Ditches*. University of Hawai'i Press, Honolulu.
- WRCC (Western Regional Climate Center)**
- 2010 *1961-1990 Monthly Climate Summary for Kawailoa*. Available online at <http://www.wrcc.dri.edu/cgi-bin/cliMAIN.pl?hi3754>
- Yamanaka, William K. and Takeo Fuji**
- 2001 *History of McBryde Plantation 1899-1996*. Electronic document, <http://members.aol.com/kauaihistory/bk1.htm>.

Yorck, Jesse and Hallett H. Hammatt

- 2005 *Archaeological Inventory Survey of a Proposed Roundabout Construction, Driveway Reconstruction and Road Widening in the Vicinity of the Intersection of Pō'ipū & Lāwa'i Roads, Kōloa Ahupua'a, Kona District, Kaua'i Island*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Yorck, Jesse, David W. Shideler, and Hallett H. Hammatt

- 2003 *Data Recovery of Five Sites (50-30-10-1918, 1919, 1920, 1921 and 1923) at Kukui'ula. Kōloa Ahupua'a, Kaua'i Island (TMK 2-6-04)*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.
- 2004 *Addendum to an Archaeological Inventory Survey of Three Proposed Well Sites and Appurtenances in the Vicinity of the Pīwai Reservoir, Kōloa Ahupua'a, District of Kona, Island of Kaua'i (TMK 2-5-01: por. 8)*. Cultural Surveys Hawai'i, Inc., Kailua, Hawai'i.

Appendix A Community Outreach Letter

CULTURAL SURVEYS HAWAII

ARCHAEOLOGICAL, CULTURAL, AND HISTORICAL DOCUMENTATION SERVICES - SINCE 1982



P.O. Box 1114

Kailua, Hawai'i 96734

Ph: (808) 262-9972

Fax: (808) 262-4950

Aloha mai kākou **Name of Recipient**,

With this letter, Cultural Surveys Hawai'i (CSH) humbly requests your *mana'o* and *'ike* (experience, insights, and perspectives) regarding past and ongoing cultural, practices, beliefs, and resources within certain proposed development areas at Kukui'ula lands within Lāwa'i and Kōloa Ahupua'a (see following figures).

Consultation with *kūpuna*, *kama'āina*, and Hawai'i's diverse ethnic communities is an important and deeply valued part of our work and the environmental review process for proposed projects in Hawai'i. Your contributions will revitalize and keep alive knowledge of cultural practices, storied places, and life experiences that will remind Hawai'i's children of their history for generations to come.

Project Description

At the request of Kukui'ula Development Co LLC, CSH is preparing a Ka Pa'akai Analysis study for the residential development of parcels A2, F2, and F3 within the western (Lāwa'i Ahupua'a) portion and also for another discrete area Parcels JKL in the north central (Kōloa Ahupua'a) portion of the of the Kukui'ula Development Area. The location and boundaries of the proposed project are delineated on a 1996 Koloa USGS map (Figure 1), a Tax Map Key plat (Figure 2) and a 2019 aerial photograph attached to this invitation.

Purpose of this Study

The purpose of this Ka Pa'akai Analysis outreach is to (1) the identity and scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action. This is accomplished through consultation and background research using previously written documents, studies, and interviews. This information is used to assess potential impacts by the proposed project to the specific identified resources, practices, and beliefs in the project area. As a knowledgeable member of the community and a holder of long-term cultural knowledge, your insight, input, and perspective provide a valuable contribution to the assessment of potential effects of this project and an understanding of how to protect these resources and practices.

Insights focused on the following topics in the project area are especially helpful and appreciated:

- Your knowledge of traditional cultural practices of the past within the proposed project area portions of Lāwa'i and Kōloa Ahupua'a
- Your specific traditional cultural practice and its connection to the proposed project areas and Lāwa'i and Kōloa Ahupua'a
- The different natural resources associated with your cultural practice

Ka Pa'akai Analysis for Parcels A2, F2 and F3 in the Lāwa'i Ahupua'a Portion of the Kukui'ula Development Area and Parcel JKL in the Kōloa Portion of the Kukui'ula Development Area

Page 2

- Legends, stories, or chants associated with your cultural practices and their relationships to the proposed project area portion of Lāwa'i and Kōloa Ahupua'a
- Referrals to other *kūpuna*, *kama'āina*, and traditional cultural practitioners knowledgeable about the proposed project area portion of Lāwa'i and Kōloa Ahupua'a
- Your comments or thoughts on the potential impacts the proposed project may have on your ongoing traditional cultural practices and natural resources within the proposed project area portions of Lāwa'i and Kōloa Ahupua'a
- Your knowledge of cultural sites and *wahi pana* (storied places) within the proposed project area portions of Lāwa'i and Kōloa Ahupua'a
- Your comments or thoughts on the potential impacts the proposed project may have on cultural sites and *wahi pana* within the proposed project area portions of Lāwa'i and Kōloa Ahupua'a

Consultation Information

Consultation is an important and deeply valued part of a Ka Pa'akai Analysis study. Your contributions will revitalize and keep alive our combined knowledge of past and ongoing cultural practices, historic places, and experiences, reminding following generations of their history.

With your agreement to participate in this study, your contributions will become part of the comprehensive understanding of traditions of the area, and part of the public record.

As a part of this process, your knowledge may be used to inform future heritage studies of cultural practices and resources that need protection from impacts of proposed future projects. If you engage in consultation, and the *mana'o* and *'ike* you provide appears in the study, we would like to recognize your contribution by including your name. If you prefer not to allow your name to be included, your information can be attributed to an anonymous source.

The consultation interview structure and format are flexible. We will accommodate your preference on how to get together; talk story, over the phone, by email correspondence, remotely via Zoom, MS Teams, Google Chat or other remote meeting platforms.

Your knowledge of the resources and potential effect of the project on traditional practices in the project area portions of Lāwa'i and Kōloa Ahupua'a focusing on the topics in the bullet points above can also be submitted in a written statement. CSH will provide return postage of your written statement on request.

CSH is happy to provide a list of topics for discussion, a more structured questionnaire of interview questions, or any other assistance that might be helpful.

If you have questions regarding consultation, or are interested in participating in this study, please contact CSH Cultural Researcher [name] by email at [CSH staff email] or phone at [CSH staff telephone number].

Mahalo nui loa for your time and attention to this request for consultation.

Ka Pa'akai Analysis for Parcels A2, F2 and F3 in the Lāwa'i Ahupua'a Portion of the Kukui'ula Development Area and Parcel JKL in the Kōloa Portion of the Kukui'ula Development Area

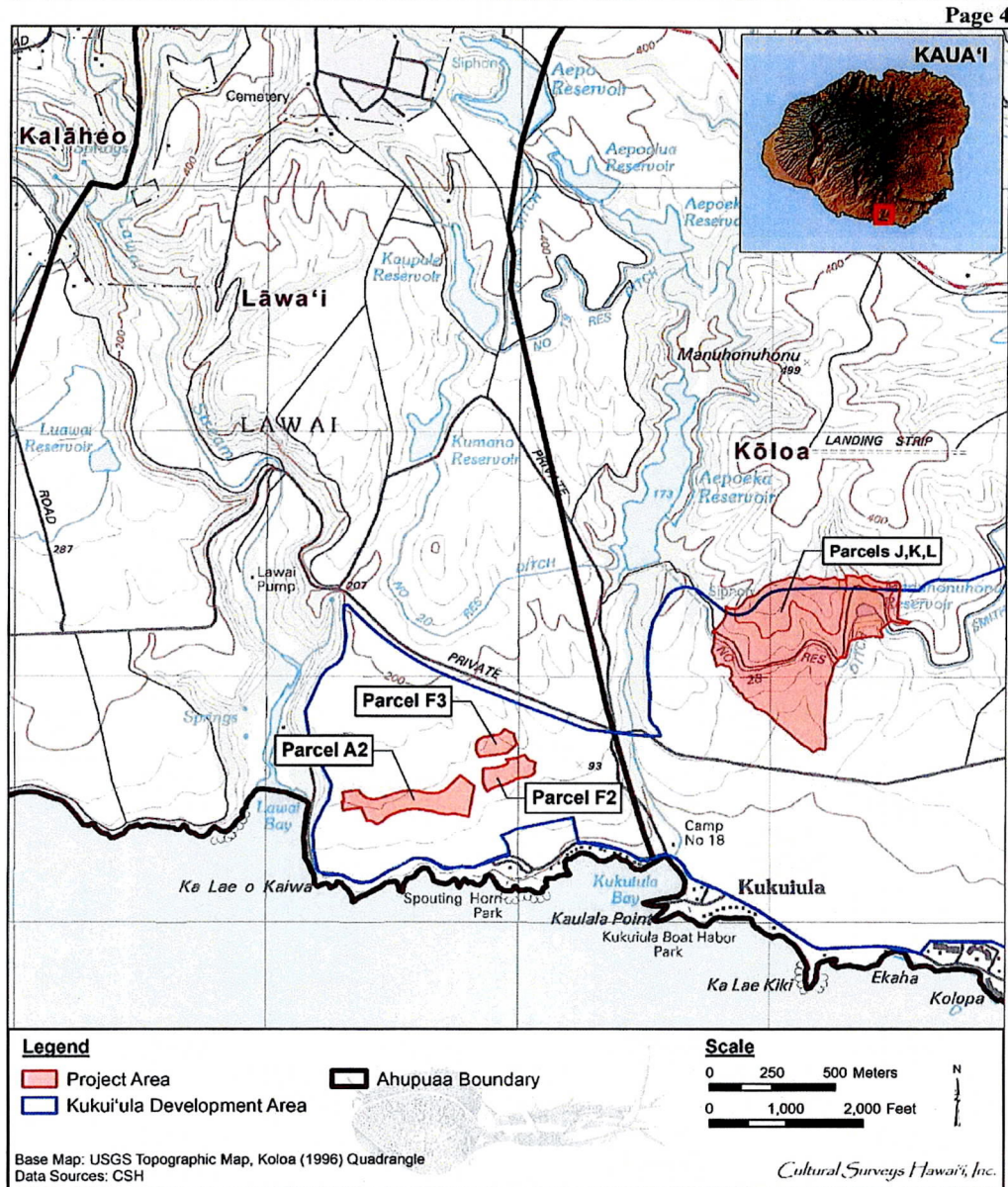
Page 3

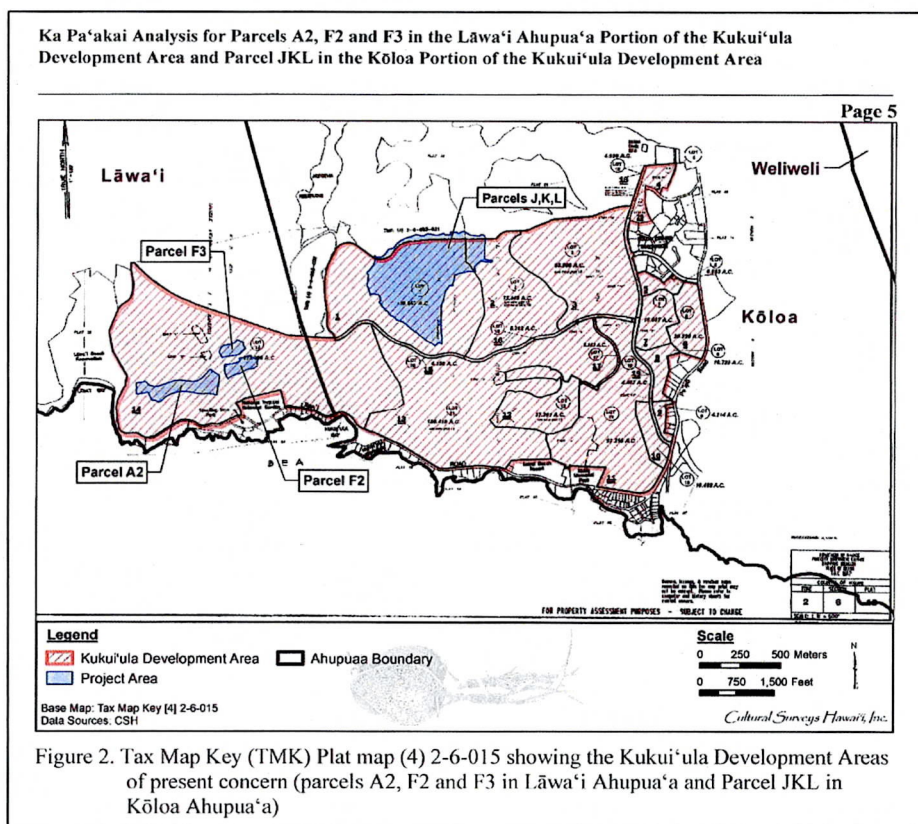
Yours with much aloha and appreciation,

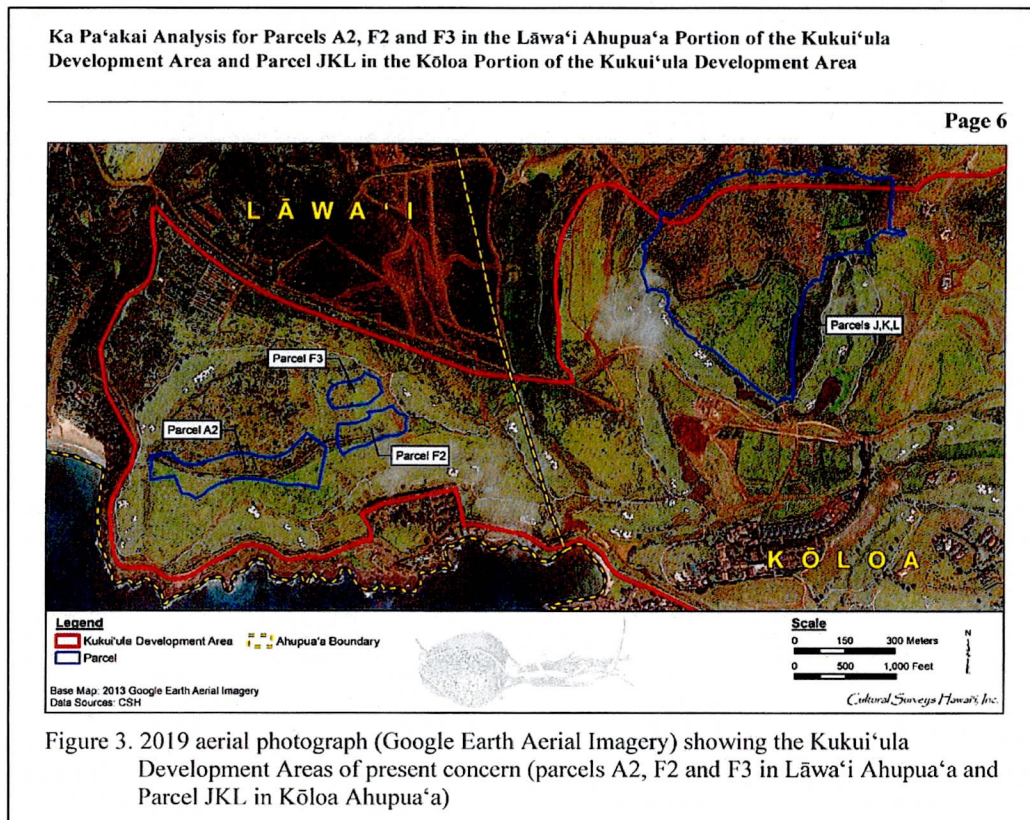
Name

CSH Cultural Researcher

Ka Pa‘akai Analysis for Parcels A2, F2 and F3 in the Lāwa‘i Ahupua‘a Portion of the Kukui‘ula Development Area and Parcel JKL in the Kōloa Portion of the Kukui‘ula Development Area







Appendix B Testimony of Manawaiakea (Roslyn Cummings)

[without honor, there is no trust, without trust, there is no honor]

Pule, Prayer

E I'O mahalo no kōia iā,
mahalo no kō mākou ola,
no kō mākou ea a kō mākou mana.
Aia no mākou i nei 'Āina 'O Kauai ke kō nei no ka palekana o nā iwi kūpuna, 'āina, na kamali'i,
wahine, kane
He noi ha'aha'a kēia no kou palekana i luna o mākou pākahi a pau.
E mālama i ka pono ma ke aō a me ka pō.
E kōkua iā mākou e kō me ka ha'aheo no kō mākou kūpuna a no kō mākou lau manamana. Me
ke aloha pau 'ole, 'āmama ua noa, 'amene.

Kou Inoa Manawaiakea, noho Kalaheo Ahupua'a, Kona Moku, Mokupuni Kauai (Manokalanipo,
Kamawaelualani),

Wahine Maoli (Women) taught to me by my tutu Kane
Kalani Pal'eia Wohi o Kaleikini Keali'ikui Kamehameha o 'Iolani i Kaiwikapu kau'i Ka Liholiho
Kūnuiākea he called me a- "Wahine Maoli"

Kuleana: Kahuna Papakulo, Mana Lomi, Kahea, Kea
(Child of God) Alo to be present in Hā life essence as equals (not above, nor below) as equals

He āina Ha Wai 'I I am of Hawaii
Home of our ancestors, those that walk before us.

Kou hanau Waimea, Kauai (Ka Ua 'I)

Hapai 'ia Pokiikauna, Kauai, Makaweli, Kauai, Ko'ula Kauai, Polihale Kauai, Nualolo Kauai,
Lawai, Kauai, Kalaheo, Kauai, Kōloa, Kauai, Kailua-Kona, Hawaii

Ike Papalua

Kukuila is a place where our ancestral burials and cave systems are so vast we hold near and
dear the secrets of their passage. Palekana (DO NOT TRESPASS)
To forgive us our trespasses as we forgive those we trespass against us. Modern day Kukuila
is known for its reinterment site amongst high end luxury homes. Specifically the Kapu burials of
our tutu wahine chiefs along with the burial that had been desecrated back in the 2000's of
George Humehume our tutu kane through Eke, Ese Oponui. He aligns with the birthing place of
Prince Kuhio the one of whom descends from those that are buried in these vast burial systems
which hold a large amount of our wealth (waiwai) wai (waters) a large part of our sustenance.
Without it we are malnourished. As our ancestors were in the times of disease and famine.
Bought to our lands by greed. The area host a large amount of spiritual, cultural, religious
significance. To each a kuleana, to have respect and be responsible for. It seems that kanaka
maoli in the past 50-60 years have failed their kuleana.

Kamakahelei would summon her warriors at the heiau of Kanaloa. A large voyaging Heiau dedicated to Kanaloa, rededicated to 'I'O 'I supreme, 'O earth, universe ever revolving. In the time of 'I'O, the great awakening, the reckoning (knowing what is right by doing what is right)

Amongst our Ali'i (Ali 'I) are the warriors and it's people. The villagers. Held in high respect, regard is the Ahupua'a. Where many thrived.

Koloa borders the ahupuaa of Lawai to the west and Weliweli to the east.

Developments are detrimental to our people, kanaka maoli. Its effects are felt for generations. I am here as you should be to stop the progress of DEVELOPMENT. Damaging our eco-system. Kukuuiula as wetlands. Depleted by the unset of large luxury homes. Waste and Water usage damaging our waters from Mauka to Makai. Water needing to be diverted to feed into these man made systems what is protected under law! Effecting our wai. Our reefs which host a large amount of our healthy iron (limu) is being depleted on the entire coastline throughout Kona Moku.

We fish here, we gather here. We pray here. We visit our ancestral burials here.

The original name prior to Prince Kuhio Birthplace was Kualu a name carried down through my Great grandfather William Waikaka Kanakanui Kualu. A name Kapu to most. A name that came before our time. Since time immemorial- Kualukiniakua of the Mu, Kualunuikupaumokumoku of the Wao, and Kualunuiaola of the Menehune.

The developer, limited warranty deed holder Gary Pinkston if Meridian Pacific Ltd. A brand of MP Financial (Nevada based Corporation of investors) removed the surface layers of the seating house of Kualunuikupaukokumoku. He removed the birthing stone of Kamawaelualani son of Wakea and Papanuihanaumoku Haumea I am a descendant as we are, kanaka maoli.

Kiahuna in the 1950's it was shared that a mummified burial surrounded by shrunken skulls were found.

In lke papalua that area from modern time going back in history: host a lot of our waiwai; collective. Kaikioewa the first governor of Kauai elected at the time by his hanai son Kauikeaouli is kanu in the proposed area we call Palikua lot. He is also known as Palikua.

There is a piko that is present day in that particular development. Where all souls exit when it leaves the outer islands. They enter through here. 'O oio spirit pathway. The heiau is shaped in the creation symbol. Like a labyrinth. On the west side of the fraudulent tmk is the cave system that has been collapsed during Kiahuna development. You can still see the tree trunk and the lauhala tree which sits in the collapsed cave, lava tube, cavern. Bars within tells- burials!

On the north side of the Āina the Catholic Church built an altar right over a known cave, cave systems as shown in previous maps. To the east of said property there is also a preserve area. So, how can slap, dab in the middle not be significant as KAUAI COUNTY, DLNR, SHPD, and numerous Agencies have made claims to. Accountability goes a long way.

On the southwest you have Pa'u a Laka Heiau and to the southwest of that another preserved area. Both are surrounded by development. Homes of foreign investors. I say foreign because there is no pilina in the area. It's culture and history. Not even to our practices. To the south there are the remnants of the Kōloa field system of which Hallett Hammett of Culural Survyes Hawaii speaks so highly of and later claims "no significance". To whose belief?

Our people come from oral history. Āina is our foundation. You cannot build a house where one is already standing.

In the story of Kawelo whose villagers are buried kanu in these lands and its surrounding. The heiau is part of the Kiahuna development which the archeologists stated somewhere along the lines of- it's just landscape for the golf course. So, I ask- what was here first? Our ancestors the kanaka maoli or the golf course. There are many Kalweo make sure what you perceive comes from the source- Ike papalua

Right above you have maulili a well known historical site of the legends of Kane and Kanaloa

There are waterways underground of this property and using our natural resource foreigners call Blue Rock. Again, depleting resources that do not belong to foreigners. Resources that need to be preserved and protected.

The blind eyed spiders and the amphipods they feed on are FEDERALLY protected species. U.S. Fish and Wildlife claim they do not have a full survey of the area. Then why is the County of Kauai, SHPD, and DLNR permitting projects over preserved lands. Lands that since the 1970's have been monitored and written about. Desecration of burials documented but controlled narratives. Large amount of burials have been taken out, destroyed and sold in the history of Kōloa!

Mainly, Ike papalua will share that these lands is a huge part of the battle, war in the time of Kukona and his son Manokalanipo. Why would we allow such history to be erased for modern day process by the hands of those who are greedy. Which only see on the surface. Not below nor above. They only see the view. Sooner or later we won't have the practice of papakulo if this does not stop.

Remember now, Maweke landed in Lawai

Kawaikini is our Mauna. Kahili is in alignment with the said developed area. They are diverting 20 million gallons of water from the east watershed to south. The cause and effects need to be considered.

Kauai cannot be another Oahu. These projects are a stem from Moana Corporation Kiahuna Land Commission Use. Where from the early 2000's through the mid 2015 lahui fought against development. Knudsen trust who in a 1970's newspaper article admitted to "stewards" of the land not ownership. Their title is held through a 1920's Anne Sinclair (Knudsen) land grant after the unlawful overthrow of our Hawaiian Kingdom Government. These people control our waters and sold our lands including our ancestral burials and artifacts. History cannot repeat itself.

the Hawaiian Kingdom

On May 28, 1892, in her opening address to the last lawful Legislature, her Majesty Queen Liliuokalani declared her intentions and legislative agenda:

'...I shall firmly endeavor to preserve the autonomy and absolute independence of this Kingdom and to assist in perpetuating the rights and privileges of all who are subject to our laws and in promoting their welfare and happiness...'

On November 25, 1892 'An Act, To Reorganize The Judiciary Department' was enacted by the Hawaiian Kingdom Legislature, and became law on January 1, 1893:

'The common law of England, as ascertained by English and American decisions, is hereby declared to be the common law of the Hawaiian Islands in all cases, except as otherwise expressly provided by the Hawaiian Constitution or laws, or fixed by Hawaiian judicial precedent, or established by Hawaiian national usage, provided however, that no person shall be subject to criminal proceedings except as provided by the Hawaiian laws' [Section 5. Chapter LVII. An Act, To Reorganize The Judiciary Department, enacted on November 25, 1892, effect on January 1, 1893]

In no way can this interview over email be altered. In no way will it bring harm upon my 'Ohana. I pray this will help the next 7-21 generations in a way that they are provided a foundation of sustenance. An end to systematic failures upon our people. To our children I pray you find peace of what I am giving. To stand in protection of āina!

Aloha No,
Manawaiakea
Roslyn Nicole Manawaiakea Malama mare Cummings
General Delivery [Box 315]
Kalaheo Station, [U.S.P.Z. Exempt- 96741]

roslyncummings@gmail.com

E Ola Kakou Hawaii

The United States of America must uphold:

On December 20, 1849, the Treaty between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C. Ratifications by both countries were exchanged in Honolulu on the Island of O'ahu, on August 24, 1850. Article VIII of the treaty provides:

"...each of the two contracting parties engages that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries, respectively."

In addition, Article XVI of the said treaty provides that any:

"...citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation."

Neither the United States nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XVI of the 1849 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date.

Appendix C Testimony of Zacheriah Harmony

From: Zacheriah Harmony <nurture.hope@hawaii.rr.com>

Sent: Monday, June 13, 2022 9:08 PM

To: Kellen Tanaka <ktanaka@culturalsurveys.com>

Subject: Re: Ka Pa'akai Analysis study for Parcels A2, F2 and F3 in the Lāwa'i Ahupua'a Portion of the Kukui'ula Development Area and Parcel JKL in the Kōloa Portion of the Kukui'ula Development Area

The following are the responses I recently submitted to a questioner regarding this study that I was asked to participate in. My statements and opinion's are directly responding to the survey's questions. I do have a bit more generational and acquired information regarding at least two of the parcels .

I did follow the recent march and view the terrain and it's proximity to a ancient Heiau that I hold a Kuleana , or responsibility to as part of my family's heritage.

I am also concerned about the swale, tsunami, tide surges and vulnerability of "Cottages" near the Kukui'ula Boat Harbor. Family members of mine in the 1970's were displaced under "eminent domain" by the State in expanding the harbor and their homes razed commercializing the area forcing relocation of local families and now countermanding their previous stance reducing density in the area of the harbor.

Perhaps if you could forward me copies of the types of habitations planned for the different sites and their locations I could further comment.

I look forward to your response.

Kalanikumai Ka Maka'uli'uli Puamō'i 'O Nā Ali'i Hanohano.

Koloa Interview 6/10/2022

1. Cultural Practitioner/ Gardener/ Poet.
2. Born Koloa, HI. 37 years, 7th generation Kama'āina (36 years in Americas).
3. Koloa District (back of Lāwa'i Valley).
4. Genealogy linked to Maunapōhakū Heiau which is on Pau a Laka located within 200 yards of Project area, Personal Kuliana as ancestor Nahinu owned and had responsibility over Heiau and area including Project site. Maunapōhaku Heiau.
5. Visits and inspections to Heiau over past 25 years, meeting & greeting with former adjacent neighbors, location confirmed by Hal Hemmitt; My nephew is currently working to on maintaining vegetation around Heiau. I still do prayer ceremonies on site.
6. Great-Grandmother's Uncle "Kaluhimoku Nakapa'ahu" was known as the Kahuna Lā'au Lapa'au who accessed Project area to Gather and Harvest various Plants, Flowers and medicinals (1953 recording validates), personal experience of accessing site in past 30+ years.
7. Underground seepages and lava tube flow contributes to hydrological reservoir of Pō'ipū basin, Weliweli and Pa'a drainage delivering nutrients to aquatic estuaries as part of Hawaiian cosmology. Disturbance of which affects ecology. I am very concerned about the consequence of blasting on the site risking the contamination of Poipu basin.
8. Legend of Pā'ilā'a, Kupū'a defeating twins of Wailua; Legend of Ali'i Wind (100 year recurring event scouring area; Ancient Rock wall formations and enclosures within as part of Koloa Field system; Eastern extension of Kane'ioulouma complex, Waikomo aūwai irrigation system.
9. Tsunami zone; during Iniki ,road was closed due to flooding fronting Pō'ipū Shopping Village with no exit available. Opening tunnel thru mountain to Kaumuali'i Hwy could relieve stranding. Additional traffic congestion during and

- subsequent to construction; Pō'ipū Road inadequate to handle impact of heavily loaded trucks and equipment without damage to roadway.
10. Native Hawaiian access and gathering rights upon undeveloped lands.
 11. Change from visitor Condos, Luxury Homes and Boat Harbor Cottages to single family affordable housing for residents.
 12. Overextension of accommodations for transitory and transplant populations will experience an oversupply of unsuitable accommodations for local residents, a downtick in Visitor travel and economic losses may well result in major losses and ruin for the developer with no benefit to the workforce who so desperately need housing.
 13. Inter generational family members with four or more generations in area that have knowledge of traditions and former land use; Koloa Field system.
 14. Kūpuna of local intergenerational families- Koloa Field system records.